

A stylized graphic of a person's head in profile, facing left. The head is a solid black silhouette. The background is a solid blue color. The head is positioned in the lower half of the image, with the top of the head reaching towards the top of the frame. The neck and shoulders are also visible in silhouette.

ATTACKING DEFENDERS

The Criminalization of Human Rights Advocacy

A guide to international law rights of
human rights defenders

Lawyers' Rights Watch Canada, 2020

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ACRONYMS & ABBREVIATIONS

ACHR:	American Convention on Human Rights
American Declaration:	American Declaration of the rights and duties of man
ACHPR:	African Commission on Human and Peoples' Rights
AU:	African Union
Banjul Charter:	African Charter on Human and Peoples' Rights
CAT:	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW:	Convention on the Elimination of All Forms of Discrimination against Women, UN Committee on the Elimination of All Forms of Discrimination against Women
CERD:	Committee on the Elimination of Racial Discrimination
CMW:	UN Committee on the Protection of Migrant Workers and Members of their Families
COE:	Council of Europe
CPT:	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC:	Convention on the Rights of the Child, UN Committee on the Rights of the Child
CRPD:	Convention on the Rights of Persons with Disabilities
ECHR:	European Convention on Human Rights
ECtHR:	European Court of Human Rights
HRC:	UN Human Rights Council
HR Committee:	UN Human Rights Committee
IACHR:	Inter-American Commission on Human Rights
IACtHR:	Inter-American Court of Human Rights
ICCPR:	International Covenant on Civil and Political Rights
ICERD:	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR:	International Covenant on Economic, Social and Cultural Rights
ICMW:	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
OAS:	Organization of American States

OHCHR:	(UN) Office of the High Commissioner for Human Rights
OP-ICCPR:	Optional Protocol to the International Covenant on Civil and Political Rights
SR:	Special Rapporteur
UDHR:	Universal Declaration of Human Rights
UN:	United Nations
WGAD:	UN Working Group on Arbitrary Detention

FOREWORD

After 13 years of negotiation, the United Nations Declaration on human rights defenders was adopted in 1998, recognizing and enshrining the right to defend rights. It sets out the responsibility for States to protect this right and those who embody human rights struggles.

Yet all over the world, human rights defenders are facing unprecedented attacks. This has become one of the most common diagnoses regarding the state of organized civil society and we seem to be always one step behind initiatives developed by States and non-State actors to limit human rights work.

Since becoming UN Special Rapporteur on the situation of human rights defenders in 2014, I have had the privilege and opportunity to learn and see how local communities, social movements and defenders constantly reinvent themselves in this difficult context.

Far from giving up the ideals held by the Universal Declaration of human rights, human rights defenders learn how to navigate these new challenges, sometimes paying a high price, individually and collectively.

This report shows how criminalization has become over the years a tool for the powerful to muzzle the powerless and how the law has been used to attack rather than to protect. This report shows how criminalization impedes human rights work, how it affects rights holders and how it ultimately undermines the human rights architecture that has been patiently built over the last seventy years to ensure the rights and dignity for all.

The report helps identify the main forms of criminalization and the groups that are the most affected by this practice. It identifies and explains the international human rights laws, standards and jurisprudence developed to protect human rights defenders and human rights advocacy. Finally, it lists a number of good practices that contribute to strengthening the protection of human rights defenders.

Democracy, peace and human security flourish when human rights defense and the right to engage in human rights advocacy are guaranteed and promoted. It is our common responsibility to help push back criminalization and convince public opinions and political leaders that human rights defenders are not criminals – but rather our best protectors in uncertain times.

Michel Forst
United Nations Special Rapporteur on the
situation of human rights defenders

“

The Declaration [on Human Rights Defenders] makes human rights violations faced by any individual the concern of all of us; we each have a vested interest in the protection of human rights and have the right to participate in their discussion and promotion, in their monitoring and advocacy, and in ensuring their implementation. The Declaration reminds us that the human rights obligations of States are *erga omnes* in the broadest possible sense of the term: not just owed by a State to the right holder, nor only owed to the international community, but owed to us all by virtue of our shared humanity.

Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, 23 July 2018, A/73/215, para. 25.

INTRODUCTION

In December 1998, on the fiftieth anniversary of the *Universal Declaration of Human Rights* (UDHR)¹, the UN General Assembly adopted by consensus the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (Declaration on Human Rights Defenders)². Negotiated over nearly two decades, the Declaration was motivated by the severity and scale of reprisals being committed against human rights defenders (HRDs).³ While the primary responsibility for the promotion and protection of human rights lies with states, the Declaration on Human Rights Defenders “recognizes the central role of individuals and groups within society in the realization of the aspirations of the Universal Declaration of Human Rights and the rights enshrined therein”.⁴ The Declaration on Human Rights Defenders provides:

1. Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

As such, the Declaration on Human Rights Defenders represents a “paradigm shift away from a top-down, State-centric approach to the realization of human rights.”⁵ The Declaration on Human Rights Defenders reaffirms

1 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 14 November 2019].

2 UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (“Declaration on Human Rights Defenders”): resolution / adopted by the General Assembly, 8 March 1999, A/RES/53/144, available at: <https://www.refworld.org/docid/3b00f54c14.html> [accessed 14 November 2019].

3 UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights*, April 2004, No. 29, p. 10, available at: <https://www.refworld.org/docid/479477470.html> [accessed 14 November 2019].

4 UN General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 3, available at: <https://undocs.org/A/73/215>.

5 *Ibid.*, para. 10.

core human rights most needed by those who defend human rights. These fundamental rights which are set out in international and regional human rights treaties and also form part of customary international law include, *inter alia*: the right to be protected; freedom of opinion and expression; freedom of assembly and association; the right to take part in the conduct of public affairs; the right to protest; the right to access and communicate with international bodies; the right to access funding; the right to develop and discuss new human rights ideas; and the right to a remedy.⁶ The central focus of the Declaration on Human Rights Defenders is not to protect fundamental freedoms that are protected elsewhere, but to reiterate these rights and to provide legitimacy to and protect activities that protect and promote universally recognized human rights and fundamental freedoms.⁷

Article 10 of the Declaration on Human Rights Defenders makes it clear that non-State actors must also promote and respect the rights of HRDs:

10. No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Under Article 12 of the Declaration on Human Rights Defenders, States have a duty to protect HRDs in the exercise of their rights under the Declaration:

12. (2) The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

Despite developing international recognition of the right to promote and seek the realization of human rights and the securing of greater protections

⁶ *Ibid.*, para. 18.

⁷ UN, OHCHR, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, July 2011, p. 101, available at: <https://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

for the victims of violations, HRDs are themselves increasingly the target of attacks and rights violations in every region of the world.

UN SR Michel Forst observed in 2018 that,

[i]n the 20 years since the adoption of the Declaration on Human Rights Defenders, the challenges facing those who defend human rights have not diminished, nor has the irrefutable logic that lies behind the Declaration changed. Although the institutional resources for the promotion and protection of defenders within the United Nations, regional organizations and national systems have grown in the past two decades, they remain insufficient to address the ongoing human rights violations around the globe.⁸

Worsening situation for HRDs

Two decades after the adoption of the Declaration on Human Rights Defenders, many countries do not guarantee the safe space contemplated by the Declaration on Human Rights Defenders as necessary to enable HRDs to safely and effectively carry out their legitimate activities. Indeed, in the 2018 *World Report on the Situation of Human Rights Defenders*⁹, UN SR Michel Forst observed that, not only is the Declaration on Human Rights Defenders incompletely implemented by almost all States, “a growing number of States have actively taken steps to frustrate the enjoyment of the rights outlined in the Declaration.”¹⁰


On the occasion of the 20th anniversary of the Declaration on Human Rights Defenders, UN High Commissioner for HR, Michelle Bachelet, observed that

In a growing number of societies across the world, human rights defenders are being slandered as traitors and harassed or attacked. Their work is severely restricted by the authorities. Dissenting – and

⁸ UN General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 5.

⁹ Michel Forst, United Nations Special Rapporteur on the Situation of Human Rights Defenders, *World Report On The Situation Of Human Rights Defenders*, December 2018, available at: <https://www.protecting-defenders.org/sites/protecting-defenders.org/files/UNSR%20HRDs-%20World%20report%202018.pdf>.

¹⁰ *Ibid.*, at p. 7.



“What we are witnessing today is a full-frontal assault by governments, armed groups, corporations and others on the right to defend human rights.

Salil Shetty, Secretary General, Amnesty International, Amnesty International Ltd., Human Rights Defenders under Threat – A Shrinking Space for Civil Society (2017), Foreword.

legitimate – views are termed “terrorist”. Acts of compassion and solidarity for people in need are hounded and criminalized.¹¹

Treaty bodies report widespread human rights abuses faced by HRDs around the world, including killings; death threats, enforced disappearances; violence, including sexual violence; public shaming, smear campaigns and other forms of harassment and intimidation; abductions; arbitrary arrest and detention; torture; baseless and illegitimate criminal charges and arbitrary legal proceedings; defamation campaigns; misapplication of security measures to target HRDs; restricting the environment in which HRDs operate and other tactics to interfere with their work; and attacks on and burglary and unauthorized searches of the homes and offices of HRDs.¹²

For cooperating with the UN on human rights, HRDs face disbarment, refusal of exit permits, travel bans, imprisonment, assault, threats against their families, intimidation, arrest and torture, enforced disappearance, exile and death.¹³ According to UN data, at least 1,019 HRDs, journalists and trade unionists have been killed in 61 countries across the world from 2015 to 2017.¹⁴

With respect to the situation of HRDs in the Americas, the IACHR noted in December 2018, a “growing sophistication in the actions taken to prevent, obstruct, and discourage the defense and promotion of human rights”.¹⁵

11 UN General Assembly, Statement by Michelle Bachelet, UN High Commissioner for Human Rights, on the 20th anniversary of the adoption of the Declaration on the rights and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, New York, 18 December 2018, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24032&LangID=E>.

12 See, for example, UN Office of the UN High Commissioner for Human Rights, Europe Regional Office, *Making a Difference: An introduction to human rights* (2018), p. 140, available at: https://europe.ohchr.org/Documents/Publications/MakeADifference_EN.pdf; UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights*, April 2004, No. 29, pp. 10-13, available at: <https://www.refworld.org/docid/479477470.html>.

13 UN General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 56, available at: <https://undocs.org/A/73/215>.

14 UN Economic and Social Council, *Progress towards the Sustainable Development Goals Report of the Secretary-General*, 10 May 2018, E/2018/64, para. 131, available at: <https://undocs.org/E/2018/64>.

15 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015,

HRDs working in the field of business and human rights, in particular, are subject to an increasing number of attacks, often carried out or condoned by State actors and vested business enterprises. In 2015 and 2016 alone, 450 attacks on HRDs by business interests were documented around the world, 25% of which were connected to corporations headquartered in three countries: Canada, China and the USA.¹⁶ UN SR Michel Forst cautions that the number is likely significantly higher as defenders refrain from reporting attacks for a number of reasons, including fear of retaliation.¹⁷ Consistent with the growing trend by States and non-State actors to criminalize the legitimate work of HRDs, of the 450 cases documented, the most common form of attack was criminalization, followed in frequency by killings, intimidation and threats.¹⁸

In 2018, criminalisation was once again the most reported violation, accounting for 63% of cases taken up by Front Line Defenders, an NGO founded with the specific aim of protecting HRDs at risk.¹⁹ According to Front Line Defenders, 321 HRDs were killed in 2018 in 27 countries.²⁰ At least 49% of those killed had previously received a specific direct threat and, in an additional 43% of killings, there had been general threats made to HRDs in the area; 12% of those reported killed were women; and 77% of those killed were working on land, Indigenous peoples' and environmental rights. Although the majority of killings documented by Front Line Defenders are in the Americas, they stress that "the number of killings of defenders of land, indigenous peoples' and environmental rights in Africa and parts of Asia are

para. 11, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

16 UN General Assembly, *Situation of human rights defenders*, 19 July 2017, A/72/170, para. 5, available at: <https://www.refworld.org/docid/59ad61304.html> [accessed 14 November 2019].

17 UN General Assembly, *Situation of human rights defenders*, 19 July 2017, A/72/170, para. 5, available at: <https://www.refworld.org/docid/59ad61304.html> [accessed 14 November 2019].

18 UN General Assembly, *Situation of human rights defenders*, 19 July 2017, A/72/170, para. 15, available at: <https://www.refworld.org/docid/59ad61304.html> [accessed 14 November 2019].

19 Front Line Defenders, *Front Line Defenders Global Analysis 2018* (2019), p.6, available at: https://www.frontlinedefenders.org/sites/default/files/global_analysis_2018.pdf.

20 Front Line Defenders, *Front Line Defenders Global Analysis 2018* (2019), p.4, available at: https://www.frontlinedefenders.org/sites/default/files/global_analysis_2018.pdf.

seriously under-documented or reported”.²¹

HRDs who work in areas of human rights deemed sensitive or controversial are particularly vulnerable to attacks. These areas include women’s rights and reproductive rights, environmental, economic, social, political and cultural rights, the rights of Indigenous peoples, and the rights of minorities, lesbian, gay, bisexual and transgender people.²² The criminalisation of providing humanitarian assistance is yet another emerging tendency that can be identified in a growing number of European countries, including France, Italy, Greece, Belgium and Hungary.²³

Women HRDs are attacked both for their gender and for the work they do.²⁴ In addition to the attacks faced by other HRDs, women HRDs and those working on women’s rights or gender issues, particularly in societies with strict notions about sexuality, gender roles and the place of women in the community and family, are more at risk than their male counterparts of suffering certain forms of violence and other violations. Violations faced by female HRDs can take a gender-specific form, ranging from sexualized smear campaigns and the questioning of their roles as wives and mothers as well as their morals, to sexual harassment, sexual assault, rape and torture.²⁵

HRDs who identify as or who defend the rights of lesbian, gay, bisexual,

21 *Front Line Defenders, Front Line Defenders Global Analysis 2018* (2019), p.7, available at: https://www.frontlinedefenders.org/sites/default/files/global_analysis_2018.pdf.

22 *UN General Assembly, Situation of human rights defenders*, 14 August 2008, A/63/288, Annex, para. 8, available at: <https://www.refworld.org/docid/48e4b8232.html> [accessed 14 November 2019].

23 Office of the Council of Europe Commissioner for Human Rights, *Human Rights Defenders in The Council Of Europe Area: Current Challenges and Possible Solutions*, Report of a Round-Table with human rights defenders held in Helsinki, 13-14 December 2018, 29 March 2019, para. 20, available at: <https://rm.coe.int/hr-defenders-in-the-coe-area-current-challenges-and-possible-solutions/168093aabf>.

24 *UN HRC, Situation of women human rights defenders: Report of the Special Rapporteur on the situation of human rights defenders*, 10 January 2019, A/HRC/40/60, para.11, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/004/97/PDF/G1900497.pdf?OpenElement>.

25 *UN HRC, Report of the Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggya, 20 December 2010, A/HRC/16/44, paras. 23-24, available at: <https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-44.pdf>; *Front Line Defenders, Front Line Defenders Global Analysis 2018* (2019), p.8, available at: https://www.frontlinedefenders.org/sites/default/files/global_analysis_2018.pdf.



“

In order to address the root causes of attacks and criminalization, collective land rights of indigenous peoples need to be recognized. This requires, inter alia, accessible, prompt and effective procedures to adjudicate land titles; the review of laws on expropriation; adequate mechanisms to resolve land disputes; effective protection from encroachment, including through early warning systems and on-site monitoring systems; and the prohibition of forced evictions.

Report of the Special Rapporteur on the rights of indigenous peoples, 10 August 2018, A/HRC/39/17, para. 91f

transgender, and intersex (LGBTI) people experience intersectional discrimination, both for their work as HRDs and because they experience transphobic or homophobic discrimination.²⁶

Indigenous peoples defending their traditional ways of life and rights to occupy land face arrest, detention, forced eviction and violations of other rights.²⁷ Indigenous peoples have seen a drastic increase in attacks and acts of violence, criminalization and threats, particularly in the context of large-scale projects involving extractive industries, agribusiness, infrastructure, hydroelectric dams and logging.²⁸

Youth HRDs face age-based discrimination intersecting with other forms of discrimination.²⁹

Attacks on HRDs most commonly target defenders themselves or their organizations and mechanisms through which they work, but occasionally also target members of their families.³⁰ Even where State officials do not condemn HRDs, silence on the part of the State in the face of attacks on HRDs by powerful social, political and economic interests, contributes to an environment of impunity for those who violate the rights of defenders.³¹ As noted by the Council of Europe Commissioner for Human Rights, a lack of effective and independent investigations for attacks against HRDs and the

26 Amnesty International, *Human Rights Defenders under Threat: A Shrinking Space for Civil Society*, 2017, p. 36, available at: <https://www.amnesty.org/en/documents/act30/6011/2017/en/>.

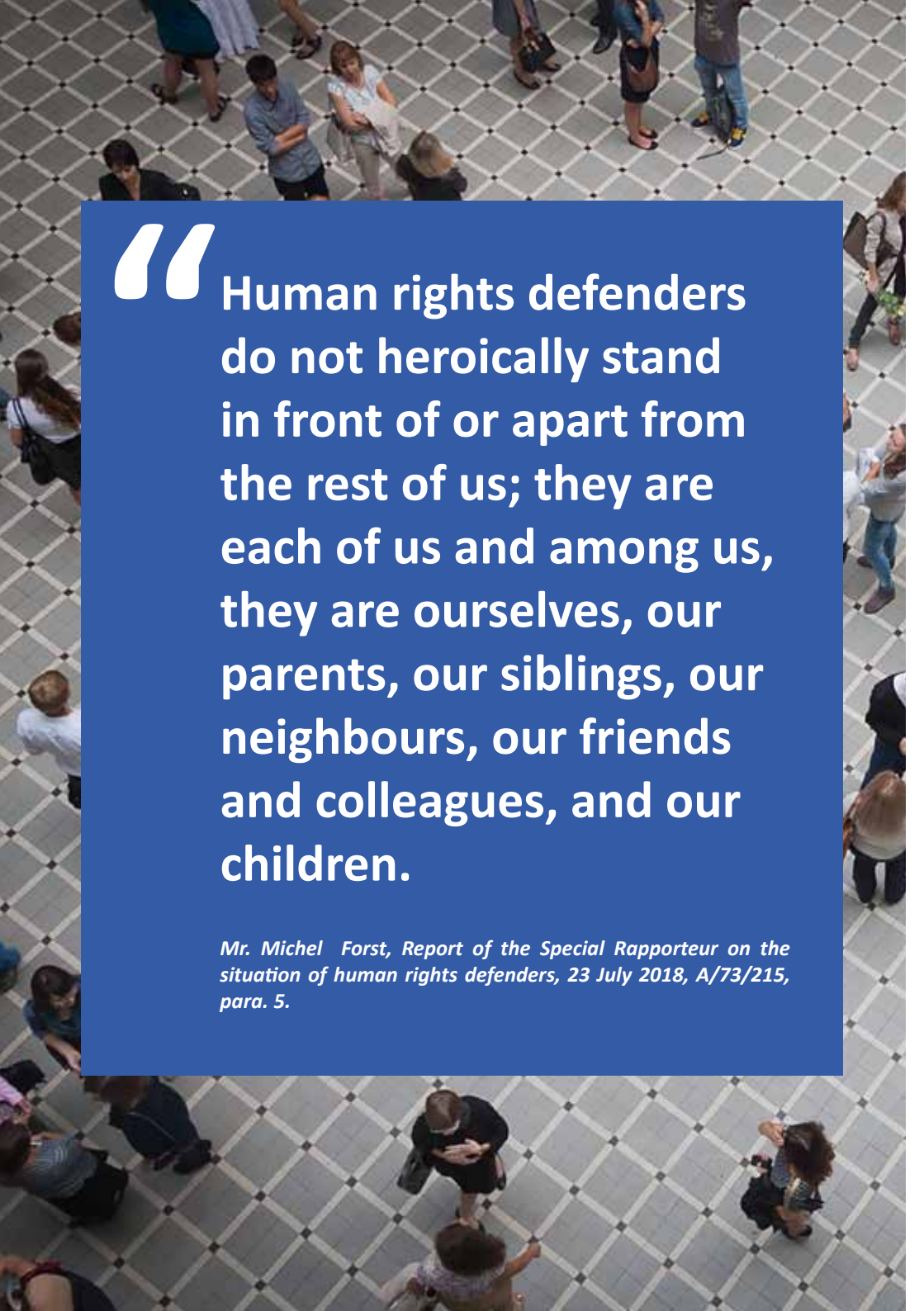
27 UN HRC, *Report of the Special Rapporteur on the rights of indigenous peoples*, 10 August 2018, A/HRC/39/17, para. 28, available at: <https://www.ohchr.org/Documents/Issues/IPeoples/SR/A.HRC.39.17.pdf>.

28 UN HRC, *Report of the Special Rapporteur on the rights of indigenous peoples*, 10 August 2018, A/HRC/39/17, para. 4, available at: <https://www.ohchr.org/Documents/Issues/IPeoples/SR/A.HRC.39.17.pdf>.

29 Amnesty International, *Human Rights Defenders under Threat: A Shrinking Space for Civil Society*, 2017, p. 37, available at: <https://www.amnesty.org/en/documents/act30/6011/2017/en/>.

30 UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights*, April 2004, No. 29, p. 10, available at: <https://www.refworld.org/docid/479477470.html> [accessed 14 November 2019].

31 UN General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 37, available at: <https://undocs.org/A/73/215>.

An aerial, high-angle photograph of a diverse group of people standing on a light-colored floor with a dark, repeating diamond-shaped grid pattern. The people are scattered across the frame, some looking towards the camera, others looking away. They are dressed in casual to semi-formal attire. A large, solid blue rectangular box is superimposed over the center of the image, containing white text. The text is a quote about human rights defenders.

“Human rights defenders do not heroically stand in front of or apart from the rest of us; they are each of us and among us, they are ourselves, our parents, our siblings, our neighbours, our friends and colleagues, and our children.

Mr. Michel Forst, Report of the Special Rapporteur on the situation of human rights defenders, 23 July 2018, A/73/215, para. 5.

resulting impunity make the recurrence of violations almost inevitable.³²

This guide focuses specifically on the misuse by States of criminal law powers to obstruct, delegitimize, punish and prevent the work of HRDs. While administrative or civil obstacles are also used to interfere with the work of HRDs, criminal law is the “most restrictive and severe means available to the State for establishing liability for unlawful conduct”.³³ The guide is intended to assist HRDs and those working to support the efforts of HRDs by identifying the ways in which legal systems—laws, courts and prisons—are misused and manipulated to criminalize the work of HRDs in violation of international human rights law (IHRL). It is also intended as a guide to State and non-state actors, impacted by the work of HRDs and/or either capable of or responsible for protecting the rights of HRDs and remedying violations.

The following section describes the phenomenon of criminalization of HRDs. Part II summarizes the IHRL framework in which HRDs operate. Part III identifies the most significant behaviours engaged in by States and non-State actors to criminalize and delegitimise HRDs. Part III then analyzes how these behaviours infringe IHRL according to UN sources, regional treaty monitoring bodies and the courts. Part IV outlines remedies under IHRL and recommendations of treaty bodies.

Who are human rights defenders?

There is no specific definition of who is or who can be a “human rights defender”. The Declaration on Human Rights Defenders refers to “individuals, groups and associations...contributing to...the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals”³⁴ and “the right and the responsibility of individuals,

32 Office of the Council of Europe Commissioner for Human Rights, *Human Rights Defenders in The Council Of Europe Area: Current Challenges and Possible Solutions*, Report of a Round-Table with human rights defenders held in Helsinki, 13-14 December 2018, 29 March 2019, para. 10, available at: <https://rm.coe.int/hr-defenders-in-the-coe-area-current-challenges-and-possible-solutions/168093aabf>.

33 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 11, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

34 Declaration on Human Rights Defenders, fourth preambular paragraph.

groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels”.³⁵ In accordance with this broad categorization, the term “human rights defender” is used to describe “any person who, individually or in association with others, acts or seeks to act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional or international levels.”³⁶

HRDs come from all walks of life, including, for example, journalists and media professionals working on human rights issues, bloggers, lawyers, farmers, students, environmentalists, trade-unionists, victims of human rights violations and their families, anti-global warming activists, pro-democracy activists, Indigenous rights advocates, educators and others.

HRDs are of any gender and varying ages, and therefore also face specific challenges and risks associated with their gender and/or their gender-related work and age. (See discussion above regarding the specific risks and challenges faced by women HRDs and HRDs working on women’s rights or gender issues.)

Active in all countries, including emerging democracies, countries with long-established democratic institutions, and authoritarian states, HRDs may work for NGOs and intergovernmental organizations, or in some instances, may be government officials, civil servants or members of the private sector.³⁷ HRDs also include people who are acting to promote human rights outside of any professional or employment context, for example, a student organizing a campaign to end torture in prisons is considered a HRD in that context, a is a member of a rural community demonstrating against environmental degradation, or a politician who takes a stand against

35 *Ibid.*, eighth preambular paragraph.

36 UN General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 15, available at: <https://undocs.org/A/73/215>. See also: IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 19, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>; EU Guidelines on Human Rights Defenders, European Union, *Ensuring Protection - European Union Guidelines on Human Rights Defenders*, 14 June 2004, 10056/1/04, para. 3, available at: <https://www.refworld.org/docid/4705f6762.html>.

37 UN OHCHR, *Who is a defender*, online at: <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

endemic corruption with a government, or a witness providing information to international human rights bodies or domestic courts to help them address violations.³⁸

Although no “qualification” is required to be a human rights defender, HRDs must accept the universality of human rights as defined in the UDHR.³⁹

Activities of HRDs may include: documenting violations; seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support, and combating cultures of impunity “which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms”.⁴⁰

The IACtHR has emphasized that

the defense of human rights not only serves civil and political rights, but necessarily covers the monitoring, reporting, and education of economic, social, and cultural rights, in accordance with the principles of universality, indivisibility, and interdependence enshrined in the [American Declaration] and the [ACHR].⁴¹

HRDs seek the promotion and protection of civil and political rights as well as the promotion, protection and progressive realization of economic, social and cultural rights. HRDs also work to encourage governments to fulfill their human rights obligations, contribute to the implementation of human rights treaties and IHRL and provide human rights education.⁴²

What does criminalization of HRDs entail?

The criminalization of HRDs involves the misuse by States and non-State

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *European Union Guidelines on Human Rights Defenders*, 14 June 2004, 10056/1/04, para. 4, available at: <https://www.refworld.org/docid/4705f6762.html>.

⁴¹ IACtHR, *Case of Kawas Fernández v. Honduras*, Judgment of April 3, 2009 (Merits, Reparations and Costs), para. 147, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf.

⁴² UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights*, April 2004, No. 29, pp 2-5, available at: <https://www.refworld.org/docid/479477470.html> [accessed 14 November 2019].

actors of the State's criminal law system to treat the defence, promotion and protection of human rights as illegitimate and illegal, with the ultimate aim of attacking and silencing HRDs, obstructing their activities and preventing and punishing the legitimate exercise of the right to defend human rights.⁴³ The IACHR observes that, in most cases, the criminalization of HRDs "consists of the formulation and application of criminal offenses to behaviors and persons, respectively transforming them into crimes and criminals, which directly or indirectly criminalizes, or makes illegal, the defense of human rights".⁴⁴ Criminalization processes often begin with charges that are either based on fraudulent allegations and evidence or on charges that violate the principle of legality and cannot be either avoided or defended. Such processes are often preceded by stigmatizing statements made by public officials that serve to initiate unjustified criminal proceedings.

The process of criminalization of HRDs is highly selective in nature, in that States are zealous in investigating and processing crimes of which HRDs are wrongfully accused, while failing to adequately prevent and punish human rights violations and aggressions committed against defenders.⁴⁵

Criminalization of HRDs may be reflected in arbitrary pre-trial detentions, judicial harassment; arbitrary convictions and sentencing; the application of overly broad criminal charges and abuse of anti-terrorism laws; or the enactment and use of laws that unduly restrict or criminalize the exercise of internationally protected rights to freedom of assembly, association and expression and the right to take part in the conduct of public affairs, and laws that restrict rights to fair trials and access to independent impartial and competent tribunals to determine rights and charges. The safety,

43 See, for example, IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 43, available at: <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>; "Protection International, *Criminalisation of Human Rights Defenders: Categorisation of the Problem and Measures in Response* (Brussels, 2015), p. 4, available at: https://www.protectioninternational.org/wp-content/uploads/2012/02/ProtectionInternational_English_Update.pdf.

44 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 76, available at: <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>;

45 "Protection International, *Criminalisation of Human Rights Defenders: Categorisation of the Problem and Measures in Response* (Brussels, 2015), p. 31, available at: https://www.protectioninternational.org/wp-content/uploads/2012/02/ProtectionInternational_English_Update.pdf.

security and advocacy rights of HRDs are threatened by national laws that contravene IHRL by restricting or denying, for example: demonstrations without prior permission; foreknowledge and adequate notice of criminal charges; timely and confidential access to a lawyer of choice; independent judicial oversight of detention, treatment and charges, due process; freedom from torture and other prohibited treatment and access to remedies for rights violations. The ACHR notes that baseless criminal actions may also violate the personal integrity, honour and dignity of the targeted HRD.⁴⁶

The criminalization of HRDs affects society as a whole. As the IACHR observes,

The phenomenon of criminalization affects defenders both individually and collectively. For a human rights defender personally, it can cause anguish, insecurity, frustration, and a feeling of powerlessness before State authorities; deprivation of liberty; unexpected economic burdens; and damage to the defender's reputation and credibility. In addition, criminalization stigmatizes human rights defenders collectively and sends an intimidating message to anyone who intended to denounce or had already denounced human rights violations."⁴⁷

⁴⁶ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66 31, December 2011, para. 81, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

⁴⁷ *Ibid.*, para. 79.



Human rights defenders, from different sectors of civil society, and, in some cases, from state institutions, make fundamental contributions to the existence and strengthening of democratic societies. Accordingly, respect for human rights in a democratic state largely depends on the human rights defenders enjoying effective and adequate guarantees for freely carrying out their activities.

IACHR, Report on the situation of human rights defenders in the Americas, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 20.

THE RIGHT TO DEFEND HUMAN RIGHTS UNDER INTERNATIONAL LAW

The international law right of everyone to promote and protect human rights locally, nationally and internationally, is not a single guaranteed right. Rather, it involves components of a number of fundamental rights and freedoms, the enjoyment and effective exercise of which must be ensured by States. These rights, guaranteed by the UDHR and other international and regional instruments and reaffirmed in the Declaration on Human Rights Defenders, include, *inter alia*:

- the right to be protected, including protection from interference, harassment and reprisals (articles 2, 9 and 12);
- the right to freedom of peaceful assembly and protest (articles 5 and 12);
- the right to freedom of association, including the right to access and communicate with international bodies to seek the protection and realization of human rights at national and international levels (articles 5 and 9);
- the right to freedom of opinion and expression, including the right to seek, obtain, receive, hold, disseminate and discuss information relating to human rights, and the right to develop and discuss new human rights ideas and to advocate their acceptance (article 6);
- the right to submit to governmental bodies, agencies, and organizations concerned with public affairs, criticism and proposals for improving their systems, and to draw attention to any aspect of their work that may impede the realization of human rights (article 8(2));
- the right to lawfully exercise the occupation or profession of a HRD (article 11);
- the right to offer and provide professionally qualified legal assistance or other advice and assistance in defense of human rights (3(c));
- the right to solicit, receive, and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad) (article 13); and

- the right to access and benefit from an effective remedy (article 9).

As with all human rights, the rights affirmed by the Declaration on Human Rights Defenders are owed to all persons, individually and collectively, without discrimination on any ground, including gender, sexual orientation, gender identity, disability, race, ethnicity, language, religion, political or other opinion, nationality and class.⁴⁸

The IACHR has described the promotion and protection of human rights as involving three separate dimensions of rights.⁴⁹ First, an individual dimension is developed through the exercise of universally recognized human rights that are realized in each person. States must guarantee that HRDs, like all individuals under their jurisdiction, do not suffer violations of their rights or the unlawful curtailment of their fundamental freedoms. Second, the collective dimension involves the participation of various persons or groups in association with one another, exercising rights to freedoms of association and peaceful assembly, and freedom of expression in its collective dimension. Third, the social dimension of promoting and protecting human rights refers to the intention of HRDs to benefit society by seeking positive changes in the attainment of rights in society in general.

Under article 17 of the Declaration on Human Rights Defenders, the rights of HRDs shall be subject only to such limitations as are:

- in accordance with applicable international obligations;
- determined by law; and
- solely for the purpose of securing due recognition and respect for the human rights and fundamental freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Any limitations must also be reasonable, necessary and proportionate. Even where some rights or freedoms are restricted in a situation of emergency or to protect public order, the right to associate, advocate and protest in relation to the restrictions, in effect the right to monitor and debate the

⁴⁸ Declaration on Human Rights Defenders, Articles 12(2).

⁴⁹ See IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, paras. 32-34, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.



Creating a safe and enabling environment, including by promoting respect and support for the activities of human rights defenders, is essential for the promotion, protection and defence of human rights.

20th anniversary of the UN Declaration on Human Rights Defenders: Joint statement by a group of Chairs, Vice-Chairs and members of the United Nations human rights Treaty Bodies and the UN Special Rapporteur on Human Rights Defenders (June 2018)

restrictions, can neither be restricted nor suspended. As UN SR Michel Forst noted in his 2018 report,

Restrictions on the right to defend human rights must be held to a very high standard; in times of great peril, the need for a robust civil society and independent voices, for independent monitoring and accounting, is even greater.⁵⁰

In addition to the obligations of States to respect and protect the rights outlined in the Declaration on Human Rights Defenders, States are obligated to adopt national laws and other measures necessary to guarantee fulfillment of their obligations arising from treaties or other instruments, to ensure rights.⁵¹ For example, States are required to create a “safe and enabling environment”⁵² for HRDs and to promote and facilitate human rights education.⁵³

The right to be protected

The State’s duty to protect the rights of HRDs from violations committed by State and non-State actors is derived from each State’s primary responsibility and duty to protect all human rights, as enshrined in ICCPR article 2, which establishes the obligation of States to guarantee to all individuals within their territories and subject to their jurisdiction the rights recognized in the ICCPR without discrimination.⁵⁴

The individual dimension of the right to defend human rights includes protection of the internationally protected rights of each person who seeks

⁵⁰ UN General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 24, available at: <http://undocs.org/A/73/215>.

⁵¹ IACTHR, *Case of Suarez Peralta v. Ecuador*, Judgment of 21 May 2013 (Preliminary Objections, Merits, Reparations and Costs), para. 127, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_261_ing.pdf. See *Declaration on Human Rights Defenders*, Articles 2 and 12.

⁵² *Declaration on Human Rights Defenders*, Articles 2, 3, 12(2), 14.

⁵³ *Declaration on Human Rights Defenders*, Articles 15, 16. See also, IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 28, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

⁵⁴ UN General Assembly, *Human rights defenders: note / by the Secretary-General*, 4 August 2010, A/65/223, para. 30, available at: <https://www.refworld.org/docid/4cc123442.html>[accessed 19 October 2019].

to promote and protect human rights, including, *inter alia*, rights to life, liberty and security of person; right to respect for human dignity; freedom from excessive or indiscriminate use of force; freedom from arbitrary arrest or detention; freedom from torture or other cruel, inhuman or degrading treatment or punishment; the right to be presumed innocent; freedom from abusive criminal and civil proceedings; freedom from arbitrary interference with privacy, family, home or correspondence; freedom from attacks upon honour and reputation; and freedom of movement.

UDHR articles 3, 5, 9, 10, 11, 12 and 13 state:

3. Everyone has the right to life, liberty and security of person

5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

9. No one shall be subjected to arbitrary arrest, detention or exile.

10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

13. (1) Everyone has the right to freedom of movement and residence within the borders of each State.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

ICCPR articles 6,(1), 7, 9(1), 10(1), 12, 14, 15(1) and 17 provide:

6. (1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

7. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

9. (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

10. (1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

12. (1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

(2) Everyone shall be free to leave any country, including his own.

14. (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...

(2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

15. (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

17. (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful

attacks on his honour and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks.

CAT article 16(1) states:

16. (1) Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

Articles 2 and 12 of the Declaration on Human Rights Defenders:

2. (1) Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

(2) Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

12. (2) The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

(3) In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and

acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principles 10, 11 and 15 provide:

10. Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

11. (1) A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

(2) A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefore.

(3) A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

15. Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

ACHPR's *Guidelines on Freedom of Association and Assembly*, paragraphs 29 and 30:

29. States shall respect, in law and practice, the right of associations to carry out their activities, including those denoted above, without threats, harassment, interference, intimidation or reprisals of any kind.

30. States shall protect associations, including their principal and most visible members, from threats, harassment, interference, intimidation or reprisals by third parties and non-state actors.

The *European Union Guidelines on Human Rights Defenders* provides:

...legislative, judicial, administrative or other appropriate measures,

undertaken by States to protect persons against any violence, threats retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of any of the rights referred to the UN Declaration on Human Rights Defenders are all relevant in this regard. Where it is called for, HoMs should make recommendations to [the Council Working Party of Human Rights] for possible EU actions, including condemnation of threats and attacks against human rights defenders, as well as for demarches and public statements where human rights defenders are at immediate or serious risk. HoMs should also report on the effectiveness of EU actions in their reports.⁵⁵

The *OSCE Guidelines on the Protection of Human Rights Defenders*:

23. Human rights defenders must not be subjected to judicial harassment by unwarranted legal and administrative proceedings or any other forms of misuse of administrative and judicial authority, or to criminalization, arbitrary arrest and detention, as well as other sanctions for acts related to their human rights work. They must have access to effective remedies to challenge the lawfulness of detention or any other sanctions imposed on them.⁵⁶

The right to equality and non-discrimination

Under IHRL, States must ensure that the rights and fundamental freedoms guaranteed for all persons within their territories and subject to their jurisdiction are enjoyed equally and without distinction of any kind.

The UDHR and each of the core international human rights treaties⁵⁷ explicitly prohibits both formal (*de jure*) and substantive (*de facto*) discrimination. For example, the UDHR, Articles 2 and 7 state:

⁵⁵ European Union, *Ensuring Protection - European Union Guidelines on Human Rights Defenders*, 14 June 2004, (revised 8 December 2008), para. 8, available at: https://eeas.europa.eu/sites/eeas/files/eu_guidelines_hrd_en.pdf.

⁵⁶ OSCE Office for Democratic Institutions and Human Rights (ODIHR) (2014). "Guidelines on the Protection of Human Rights Defenders", para. 23, available at: <http://www.osce.org/odihr/119633?download=true>.

⁵⁷ The core international treaties include: ICERD, ICCPR, ICESCR, CEDAW, CAT, CRC, ICMW, and CRPD.

2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

The ICCPR, Articles 2, 3 and 26 require:

2. (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

26. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

CEDAW Article 7 provides:

7. States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:...

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

The *Durban Declaration and Programme of Action* urges States to

promote, as appropriate, effective and equal access of all members of the community, especially those who are victims of racism, racial discrimination, xenophobia and related intolerance, to the decision-making process in society at all levels and in particular at the local level, and also urges States and encourages the private sector to facilitate their effective participation in economic life;⁵⁸

The right to freedom of opinion and expression

HRDs have protected rights, *inter alia*,

- to form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through the exercise of these rights and other appropriate means, to draw public attention to those matters;
- to know, seek, obtain, receive and hold and freely disseminate views, information and knowledge on all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- to develop and discuss new human rights ideas and principles and to advocate their acceptance; and ,
- to participate in public hearings, procedures, and public trials to form an opinion regarding the implementation of both domestic legal provisions and international obligations.

⁵⁸ UN, *Durban Declaration and Programme of Action*, Adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Violence, 8 September 2001, para. 113, available at: <<http://www.un.org/WCAR/durban.pdf>>.

The right to freedom of opinion and expression is guaranteed by the UDHR (art. 19), a number of core UN human rights treaties⁵⁹ and many other instruments, including the Declaration on Human Rights Defenders (art. 6). At the regional level, freedom of expression is guaranteed in the *African Charter on Human and Peoples' Rights* (Banjul Charter) (art. 9); ACHR (art. 13); *Arab Charter of Human Rights* (art. 32); *ASEAN Human Rights Declaration* (arts. 22, 23) and ECHR (art. 10).

The UDHR Article 19 provides that:

19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The ICCPR, provides

19. (1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

(3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

20. (1) Any propaganda for war shall be prohibited by law.

(2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

⁵⁹ See ICERD (art. 4, 5); CRC (art. 13); ICMW (art. 13); CRPD (art. 21).

The Declaration on Human Rights Defenders Articles 6 and 14 provide:

6. Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

14. (1) The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

(2) Such measures shall include, *inter alia*:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies...

The ACHR Article 13 of provides:

13. (1) Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

(2) The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

(a) respect for the rights or reputations of others; or

(b) the protection of national security, public order, or public health or morals.

(3) The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

(4) Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

(5) Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Guidelines on Freedom of Association and Assembly in Africa:

77. Speech addressing matters of public concern, public interest or political or policy affairs, including criticism of the state or state officials, including as exercised in the context of an assembly, is given maximum protection under the right to freedom of expression.

The *Arab Charter of Human Rights* Article 32 states:

32. (1) The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.

(2) Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such

limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.

The *ASEAN Human Rights Declaration*, articles 22 and 23 provide:

22. Every person has the right to freedom of thought, conscience and religion. All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.

23. Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.

The legal framework for protection of the right to freedom of expression under the inter-American human rights system⁶⁰ is thought to provide the greatest scope to and the broadest guarantees of the right to freedom of thought and expression, with more limited restrictions to the free circulation of information, opinions and ideas to those found in comparable provisions the UN and European human rights systems.⁶¹ The right to freedom of thought and expression under the *ACHR*, which shall not be subject to prior censorship, includes the right to “seek information”.

The rights to peaceful assembly and freedom of association

Through the exercise of freedom of assembly and association, HRDs have the right individually and in association with others, at the national and international levels, to, *inter alia*, share opinions, express their positions on human rights, and coordinate action plans, including at assemblies or public demonstrations; to form, join and participate in non-governmental organizations, associations or groups; and, to communicate with non-

⁶⁰ This includes Article 13 of the *ACHR*, Article IV of the *American Declaration of the Rights and Duties of Man* and Article 4 of the *Inter-American Democratic Charter*.

⁶¹ Office of the SR for Freedom of Expression of the IACHR, “The Inter-American Legal Framework regarding the Right to Freedom of Expression”, OEA Ser.L/V/II, Doc. 51 (Chapter III), December 30, 2009, paras. 3-5, available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/informe%20Anual%202009%202%20ENG.pdf>.

governmental or intergovernmental organizations.

The rights of everyone to freedom of assembly and association are guaranteed by the UDHR (art. 20 (1)) and ICCPR (art. 21 and 22). These rights are also reflected in the ICESCR (art. 8) and other international instruments,⁶² including the Declaration on Human Rights Defenders (art. 5). Regional human rights treaties and instruments guaranteeing rights to association and assembly include the: Banjul Charter (art. 11); ACHR (art. 15 and 16); *Arab Charter of Human Rights* (art. 24); *ASEAN Human Rights Declaration* (art. 21); and the *ECHR* (art. 11).

The UDHR article 20 (1), provides,

20. (1) Everyone has the right to freedom of peaceful assembly and association.

The ICCPR articles 21 and 22 state:

21. The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

22. (1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

(2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

The Declaration on Human Rights Defenders Article 32 provides:

⁶² See CEDAW (art. 7(c); and the International Labour Organization (ILO) Convention No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise.

5. For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) To meet or assemble peacefully; ...

(b) To form, join and participate in non-governmental organizations, associations or groups;

The ECHR Article 11 provides:

11. (1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

The Banjul Charter article 11 does not include the word “peaceful”:

11. Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

ACHPR Guidelines on Freedom of Association and Assembly:

94. States shall ensure the protection of all assemblies, public and private, from interference, harassment, intimidation and attacks by third parties and non-state actors.

(a) Authorities shall take particular care to ensure that marginalized and discriminated-against communities can assemble and voice their concerns free from interference, harassment, intimidation or attacks.

(b) Where third parties aim to interfere, harass, intimidate or attack

a peaceful assembly, the response of the authorities shall not be to ban or disperse the peaceful assembly, but rather to take measures to protect the assembly and to allow it to proceed.

99. States shall not impose criminal sanctions in the context of laws governing assemblies. All criminal sanctions shall be specified within the penal code and not elsewhere. Assemblies shall not be governed by provisions of criminal law different from the generally applicable provisions of the penal code.

100. Sanctions shall be applied only in narrow and lawfully prescribed circumstances, on the basis of generally applicable civil and criminal law, shall be strictly proportionate to the gravity of the misconduct in question, and shall only be applied by an impartial, independent and regularly constituted court, following a full trial and appeal process.

The *ASEAN Human Rights Declaration* article 21 provides:

24. Every person has the right to freedom of peaceful assembly.

The right to access and communicate with international bodies

The right to seek the effective protection of domestic and international provisions to protect human rights and oppose activities that cause or risk violations involves the right of HRDs, individually and in association with others, to have access to and communicate with international bodies that protect human rights and monitor compliance with international treaties, without interference or reprisal.

The right of individuals to be free from reprisals as a consequence of communications or cooperation with UN human rights monitoring bodies or authorities is also explicitly protected under Optional Protocols to *International Covenant on Economic, Social and Cultural Rights* (ICESCR), *Convention on the Rights of the Child* (CRC) and *Convention on the Elimination of Discrimination against Women* (CEDAW)⁶³, as well as the

⁶³ *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, Article 13; *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, Article 4; *Optional Protocol to the Convention on the Elimination*

Declaration on Human Rights Defenders (art. 5(c)).⁶⁴

Article 5(c) of the Declaration on Human Rights Defenders:

5. For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: ...

(c) To communicate with non-governmental or intergovernmental organizations.

The right to develop and discuss new human rights ideas

As an aspect of the rights to freedom of expression and freedom of association and peaceful assembly, HRDs have the right, individually and in association with others, to debate and develop new principles and ideas on human rights, and to promote their acceptance.

Article 7 of the Declaration on Human Rights Defenders:

7. Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

The right to offer and provide professionally qualified legal assistance or other advice and assistance in defense of human rights

In carrying out their work, HRDs have the right to offer and provide professional legal counsel or other advice and assistance relevant to the defense of the human rights and fundamental freedoms of third persons. In addition, this right includes the possibility of engaging in activities of representation, accompaniment, self-management, and search for recognition of communities and individuals who have been victims of human rights violations and other acts of discrimination and exclusion.

of *All Forms of Discrimination against Women*, Article 11.

64 See also Human Rights Council resolutions [12/2](#), [24/24](#) and [36/21](#).

Article 9(3) of the Declaration on Human Rights Defenders:

9. (3) ...everyone has the right, individually and in association with others, *inter alia*: ...

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

The UN *Basic Principles on the Role of Lawyers*, Principle 16 states:

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

The right to participate in public affairs

For the purpose of promoting and protecting human rights, HRDs have the right to participate in the conduct of the public affairs of their countries, including participating in public hearings, procedures, and public trials to form an opinion regarding the implementation of both domestic legal provisions and international obligations and to make criticisms and proposals to improve the functioning of the state and to seek to call attention to any obstacle or impediment to the promotion and attainment of any human rights.

The right to participate in public affairs is guaranteed by the UDHR (art. 21); ICCPR (art. 25); and Declaration on Human Rights Defenders (art. 8), as well as a number of other international instruments. At the regional level, equal political rights are protected in several instruments, including the: Protocol No. 1 to the ECHR (art. 3); ACHR (art. 23)); Banjul Charter (art. 13); Arab Charter on Human Rights (art. 33); and the *ASEAN Human Rights Declaration* (art. 25).

The UDHR Article 21 (1) provides that

21. (1) Everyone has the right to take part in the government of his

country, directly or through freely chosen representatives.

The ICCPR Article 25(a) of states:

25. Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

The Declaration on Human Rights Defenders Articles 8 and 9 (3) provide:

8. (1) Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

(2) This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

9. (3) ...everyone has the right, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments; ...

The ASEAN Human Rights Declaration article 25(1) provides:

25. (1) Every person who is a citizen of his or her country has the

right to participate in the government of his or her country, either directly or indirectly through democratically elected representatives, in accordance with national law.

The right to protest

HRDs have the right to protest the laws and the rules, policies, and practices of public officials and private actors that violate human rights and to advocate for remedies and reform.

The international human right of individuals and groups to engage in peaceful protest to express their dissent, individually and collectively, involves a number of internationally-protected rights, including rights to freedoms of expression, opinion and belief, association and assembly; the right to participate in public affairs; and an effective remedy for all human rights violations. States have an obligation to ensure all persons enjoy these fundamental rights equally and without discrimination of any kind.

Articles 8 and 12 of the Declaration on Human Rights Defenders:

8. (1). Everyone has the right, individually and in association with others, to have effective access, on a non- discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

(2). This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

12. (1). Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

(2). The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary

action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

(3). In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

The right to access funding

The right to access funding protects the ability of HRDs to raise funds from domestic and international sources and underscores that even legitimate aims of States, such as combating money-laundering and terrorism, cannot be used as pretexts to silence or reduce the activities of HRDs.⁶⁵

Article 13 of the Declaration on Human Rights Defenders:

13. Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

The right to an effective remedy

In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, HRDs have the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

The UDHR Article 8 provides:

8. Everyone has the right to an effective remedy by the competent

⁶⁵ UN General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 22, available at: <https://undocs.org/A/73/215>.

national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

The ICCPR article 2(3) states:

2. (3) Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

The Declaration on Human Rights Defenders Article 9 provides:

9. (1). In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

(2). To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

(3). To the same end, everyone has the right, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials

and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

(4). To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

(5). The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

The background of the image is a blurred photograph of a book's pages. A solid blue rectangular box is superimposed over the center of the image, containing white text. The text is a quote from the Inter-American Commission on Human Rights. The quote is preceded by a large white opening quotation mark. The background text on the book pages is mostly illegible due to the blur, but some words like "TM" and "1971" are visible on the left side.

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In a State in which the reporting of human rights violations is criminalized in order to protect the honor of public officials or where the research and criticism of governance is punishable through its most powerful tool, criminal law, citizens lose an essential tool in the fight for the protection and promotion of rights, especially those from historically marginalized and discriminated sectors, thus greatly affecting the democratic system.

Inter-American Commission on Human Rights, Criminalization of the Work of Human Rights Defenders, para. 101.

HOW THE CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS VIOLATES INTERNATIONAL LAW

States have special obligations to ensure protection of HRDs

Under IHRL, States have the primary responsibility to promote and protect the human rights and fundamental freedoms of all persons subject to their jurisdiction. As the observance of human rights is a matter of universal concern, States must guarantee that persons under their jurisdiction may exercise the right to promote and protect any or all human rights domestically and internationally, including new rights, whose formulation may still be a matter of debate.⁶⁶

In recognition of the “important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law as an essential component of ensuring their protection”⁶⁷, States have special obligations to protect HRDs and ensure their ability to carry out their work freely.⁶⁸ The obligations to protect HRDs requires that States:

- refrain from committing violations against HRDs exercising their legitimate rights to promote and defend human rights;
- protect HRDs exercising these rights from abuses committed by non-State actors; and
- fulfil the right of HRDs by taking positive measures to prevent any violations from occurring, and to ensure that HRDs can freely and

⁶⁶ IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 36, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

⁶⁷ UN HRC, *Protecting human rights defenders: resolution/adopted by the HRC*, 21 March 2013, A/HRC/RES/22/6, para. 5 at <https://www.refworld.org/docid/53bfa8564.html> [accessed 18 November 2019.]

⁶⁸ IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 30, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

effectively exercise such rights.⁶⁹

When violations occur, States have an obligation to thoroughly investigate such acts and provide effective remedy to victims.

States have positive duties to foster an enabling environment

The duty to protect HRDs requires that States “foster an environment that is supportive of the human rights that are fundamental to the activities and safety of defenders, including the freedom of peaceful assembly and association and freedom of opinion and expression, and their right to protest, access funding and develop and discuss new human rights ideas, as well as their right to be protected and to effective remedy”.⁷⁰ A key element of an enabling environment necessary for the work of HRDs is the existence of laws and provisions at all levels “that reflect these rights, that protect, support and empower defenders, and that are in compliance with international human rights law and standards”.⁷¹ Under article 2(2) of the Declaration on Human Rights Defenders, States are required to adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the Declaration are effectively guaranteed. States must also ensure that legislation affecting the activities of HRDs and the Declaration’s application are consistent with IHRL including the ICCPR and ICESCR, and guided by the Declaration on Human Rights Defenders.⁷²

69 See Maina Kiai, “Summary of the Human Rights Council panel discussion on the promotion and protection of human rights in the context of peaceful protests prepared by the Office of the United Nations High Commissioner for Human Rights”, UN doc. A/HRC/19/40, 19 December 2011, para. 14, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/174/57/PDF/G1117457.pdf?OpenElement>.

70 UN General Assembly, *Situation of human rights defenders*, 19 July 2017, A/72/170, para. 34 available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/220/75/PDF/N1722075.pdf?OpenElement>.

71 *Ibid.*

72 UN HRC, *Protecting human rights defenders: resolution/adopted by the HRC*, 21 March 2013, A/HRC/RES/22/6, para. 3 at <https://www.refworld.org/docid/53bfa8564.html> [accessed 18 November 2019]; *Declaration on Human Rights Defenders*, art. 3 and 17.

Restricted ability to limit activities of HRDs

Under article 17 of the Declaration on Human Rights Defenders, HRDs, acting individually and in association with others,

shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Given the critical role of HRDs in “safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes”, outlined in article 18 of the Declaration on Human Rights Defenders, HRDs may be subject to limitations only with regard to statements or actions that, by definition, are incompatible with the status of human rights defender.⁷³ When a State limits the rights of HRDs, it is not only a restriction of the exercise of a particular right, but also an obstruction of the work of promoting and defending human rights.⁷⁴

According to UN SR Hina Jilani,

derogations from and exceptions to applicable human rights standards, including the Declaration [on Human Rights Defenders], **should be required to meet a higher standard when they are applied to human rights defenders. This should be the case with regard to security legislation. It should be even more rigorously the case in the context of emergencies during which the most atrocious and large-scale human rights violations are committed. At these times of great risk to human rights, it is essential that there be some form of independent monitoring and accounting of the actions of the protagonists in the context of threats to security and emergencies.** The Special Representative considers that it would be contrary to the spirit of

73 UN General Assembly, *Human Rights Defenders*, 18 Sept. 2003, A/58/380, para. 67 available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N03/525/13/PDF/N0352513.pdf?OpenElement>.

74 IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 69, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

international human rights standards to argue that at these same moments of greater risk the right to defend human rights can be legally stifled".⁷⁵ [emphasis added]

In Resolution 22/6, the HRC condemns the imposition of any limitations on the work and activities of HRDs enforced in contravention of IHRL and

Calls upon States to ensure that all legal provisions and their application affecting human rights defenders are **clearly defined, determinable and non-retroactive in order to avoid potential abuse to the detriment of fundamental freedoms and human rights**, and specifically to ensure that:

- (a) **The promotion and the protection of human rights are not criminalized**, and that human rights defenders are not prevented from enjoying universal human rights owing to their work, whether they operate individually or in association with others, while emphasizing that everyone shall respect the human rights of others;
- (b) **The judiciary is independent, impartial and competent** to review effectively legislation and its application affecting the work and activities of human rights defenders;
- (c) **Procedural safeguards, including in criminal cases against human rights defenders, are in place in accordance with international human rights law** in order to avoid the use of unreliable evidence, unwarranted investigations and procedural delays, thereby effectively contributing to the expeditious closing of all unsubstantiated cases, with individuals being afforded the opportunity to lodge complaints directly with the appropriate authority;
- (d) **Any provision or decision that may interfere with the enjoyment of human rights** must respect fundamental principles enshrined in international law so that they are **lawful, proportionate, non-discriminatory and necessary in a democratic society**;

⁷⁵ UN General Assembly, *Human Rights Defenders*, 18 Sept. 2003, A/58/380, para. 66, available at: <https://undocs.org/A/58/380>.

- (e) **Information held by public authorities is proactively disclosed, 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;
- (f) **Restrictions are not invoked on access to information regarding grave violations of human rights**;
- (g) That **provisions do not prevent public officials from being held accountable, and that penalties for defamation are limited** in order to ensure proportionality and reparation commensurate to the harm done;
- (h) **Legislation aimed at preserving public morals is compatible with international human rights law**;
- (i) **Legislation does not target activities of individuals and associations defending the rights of persons belonging to minorities or espousing minority beliefs**;
- (j) **Dissenting views may be expressed peacefully**; [emphasis added]⁷⁶

As UN SR Michel Forst notes, however, such regulatory frameworks remain essentially absent or deficient across the globe.⁷⁷ In fact, the UN SR finds that many States employ criminal and administrative law powers to deliberately prevent HRDs from carrying out their activities, including:

laws governing the registration, functioning and funding of associations; defamation and blasphemy legislation that stifles the freedom of expression and opinion; labour and employment laws restricting the activities of trade unions and the enjoyment of other fundamental rights at work; restrictions on access to information of public interest; laws relating to the Internet and other information

⁷⁶ UN HRC, *Protecting human rights defenders: resolution/adopted by the HRC*, 21 March 2013, A/HRC/RES/22/6, paras. 3, 11 at <https://www.refworld.org/docid/53bfa8564.html> [accessed 18 November 2019].

⁷⁷ UN General Assembly, *Situation of human rights defenders*, 19 July 2017, A/72/170, para. 35, available at: <https://www.refworld.org/docid/59ad61304.html> [accessed 18 November 2019].



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The right to be protected requires States both to refrain from violating the human rights of defenders and to act with due diligence to prevent, investigate and punish any violation of rights.

Michel Forst, Special Rapporteur on the situation of human rights defenders, Situation of human rights defenders, 23 July 2018, A/73/215, para. 20.

and communications technology services; laws on public morale; and anti-terrorism and national security legislation⁷⁸.

Violation of the right to be protected

State actions to discredit, undermine or impede HRDs through criminalization of their legitimate activities violate not only the legitimate exercise of any right that has been improperly restricted through the inappropriate use of the criminal system, such as personal freedom, freedom of expression or assembly, but may also violate the rights of HRDs to life, liberty and security of the person; privacy; dignity and honour; presumption of innocence; freedom from arbitrary arrest and detention; and freedom of movement.

As criminal law is the most restrictive and severe means available to the State for establishing liability for unlawful conduct⁷⁹, its manipulation and misuse by State and non-State actors has severe consequences for the personal safety, liberty and well-being of HRDs, as well as for their ability to carry out their work defending human rights. This is of particular concern with the use of laws purporting to protect national security and combat terrorism, features of which commonly allow for, *inter alia*, arrest and detention without warrant or notice of charges; pro-longed detention without independent judicial oversight and due process; collection of personal data through warrantless surveillance and searches; less stringent procedural guarantees; limited powers of judicial review and opportunities for independent monitoring.⁸⁰

The IACHR reports

that in the case of defenders who are the victims of criminalization processes, prosecutors often accentuate the accusations in order to charge them for more serious crimes with a sentence of imprisonment.

⁷⁸ Ibid.

⁷⁹ See, for example, IACtHR, *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004 (Merits, Reparations and Costs), para. 104, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_111_ing.pdf; IACtHR, *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005 (Merits, Reparations and Costs), para. 79, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_135_ing.pdf.

⁸⁰ UN General Assembly, *Human Rights Defenders*, 18 Sept. 2003, A/58/380, paras. 26-36, available at: <https://undocs.org/A/58/380>.

This is done in order to justify the application of pretrial detention and thus deprive defenders of freedom from the beginning of the process. For example, the [IACHR] has received information regarding defenders who have been charged with political crimes or crimes against national security, which are serious criminal offenses punishable with imprisonment. Additionally, vague or ambiguous definitions of criminal offenses are used, which make it difficult to perceive what behaviors are punishable, thereby contributing to the margin of discretion with which justice operators prosecute human rights defenders, such as those involved in social protests. In this regard, civil society organizations informed the Commission that defenders are frequently accused of crimes that are not susceptible of bail or more serious crimes or offenses to facilitate the imposition of pretrial detentions.⁸¹

Violation of the principle of legality

The arrest and prosecution of HRDs for criminal offences that are vaguely worded or ambiguous or that run contrary to democratic standards constitutes a violation of the principle of legality. Subjecting HRDs to unwarranted criminal prosecution based on a law that does not meet the principle of legality also produces a violation with respect to the activity of defending human rights and, consequently, with respect to the free exercise of the right to defend those rights.⁸²

One of the fundamental guarantees of due process is the principle of legality - the requirement that public power be authorized by law - including the principle of *nullum crimen, nulla poena sine lege certa* – “no crime, nor punishment without clear law”. This principle ensures that no defendant may be punished arbitrarily or retroactively by the State. In criminal law, the principle of legality is violated if an individual is arrested or detained on grounds that are not clearly established in domestic legislation in place

81 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 200, available at <http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>.

82 IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66 31, December 2011, para. 96, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

at the time of the arrest or detention.⁸³ A person cannot be convicted of a crime that was not publicly accessible; nor can they be charged under a law that is overly broad or excessively unclear or convicted under a penal law that is passed retroactively to criminalize a previous act or omission.⁸⁴ On the other hand, an accused shall benefit from any subsequent change to the law providing for a lighter penalty than the one that was in effect at the time of the offence. IHRL does not permit any derogation from the principle of legality.⁸⁵

The principle of legality is enshrined in UDHR article 11(2); ICCPR article 15, *Additional Protocol I to the 1949 Geneva Conventions* article 75(4)(c)(1977); *Additional Protocol II to the 1949 Geneva Conventions* article 6(2)(c)(1977); *African (Banjul) Charter on Human and Peoples' Rights* article 7(2); ACHR article 9; *American Declaration* article 26; *ASEAN Declaration of Human Rights* article 20(2); and ECHR article 7.

UDHR article 11(2):

11. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

ICCPR article 15:

15. (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the

83 HR Committee, *McLawrence v. Jamaica*, Communication No. 702/1996, Views adopted on 18 July 1997, para. 5.5, available at: <http://hrlibrary.umn.edu/undocs/702-1996.html>.

84 HRC Working Group on Arbitrary Detention, Opinion No. 20/2017 concerning Musallam Mohamed Hamad al-Barrak (Kuwait), 19-28 April 2017, A/HRC/WGAD/2017/20, para. 49, available at: <https://www.ohchr.org/EN/Issues/Detention/Pages/Opinions78thSession.aspx>.

85 ICCPR article 4(2); ACHR article 27(2); ECHR article 15(2). *The Banjul Charter does not contain a derogation clause.*

imposition of a lighter penalty, the offender shall benefit thereby.

(2) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

The principle of legality is restated in the *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 2:

2. Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Legislation must conform with principle of legality

To comply with the legality principle under ICCPR article 15(1), all laws must meet basic criteria – they must be clearly defined, objectively determinable and non-retrospective. They must provide notice to the public of the nature of the conduct declared to constitute a criminal offence and the corresponding penalties, and stipulate achievable limits on conduct so that individuals may regulate their behaviour accordingly.⁸⁶ Legislation defining criminal offences must be promulgated democratically, meaning that, prior to its adoption, it should be subject to broad consultations with individuals and associations concerned, including civil society. Such laws may not confer unfettered discretion and must also be compatible with the provisions, aims and objectives of the ICCPR.⁸⁷ Once adopted, the law must be publicized using the appropriate channels to ensure that the public is aware of what constitutes punishable behaviour.⁸⁸

Under the ACHR, the principle of legality, protected by ACHR article 9 and article XXVI of the *American Declaration*, requires that “any measure

⁸⁶ UN, General Assembly, *Situation of human rights defenders*, 10 August 2012, A/67/292, para. 64, available at: <https://undocs.org/A/67/292>.

⁸⁷ HR Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, paras. 25-26, available at: <https://www.refworld.org/docid/4ed34b562.html> [accessed 18 November 2019].

⁸⁸ UN, General Assembly, *Situation of human rights defenders*, 10 August 2012, A/67/292, para. 65, available at: <https://undocs.org/A/67/292>.

restricting or limiting a right through the use of a definition of a crime must meet the requirements provided for by law, both in the formal and material sense, and must have been formulated previously, in an express, accurate, and restrictive manner”⁸⁹. The IACHR stresses that, in codifying crimes,

States must use precise and unambiguous language that narrowly defines the punishable offense, thus giving full meaning to the principle of legality in criminal law. As the Inter-American Court has indicated, this means a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offenses or are punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power.⁹⁰

As the IACtHR has affirmed, when a crime is described in vague and ambiguous language and does not specify clearly the elements of the offence, it can lead to broad interpretations, allowing and requiring the prosecution, courts or an injured party to subjectively determine the existence of the crime even in where there is “no intent to injure, offend or disparage”.⁹¹

The ECtHR has stated that the principle of legality enshrined in ECHR article 7

which is an essential element of the rule of law, occupies a prominent place in the [ECHR] system of protection, as is underlined by the fact that no derogation from it is permissible under [ECHR] Article 15...in time of war or other public emergency. It should be construed and applied, as follows from its object and purpose, in such a way as to provide effective safeguards against arbitrary prosecution, conviction

89 IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66 31, December 2011, para. 89, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>. IACtHR, *Case of Kimel v. Argentina*, Judgment of May 2, 2008 (Merits, Reparations and Costs), para. 63, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf.

90 *Second Report on the Situation of Human Rights Defenders In the Americas*, *ibid.*, para. 90.

91 IACtHR, *Case of Usón Ramírez v. Venezuela*, Judgment of November 20, 2009 (Preliminary Objection, Merits, Reparations and Costs), para 56, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_207_ing.pdf.

and punishment.⁹²

ECHR article 7 is not confined to prohibiting the retrospective application of the criminal law to an accused's disadvantage but also embodies the principles that "only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*)" and that "the criminal law must not be extensively construed to an accused's detriment, for instance by analogy".⁹³ The requirement flowing from these principles, that the offence must be clearly defined by a law properly passed for a proper purpose, is satisfied "where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable".⁹⁴

Concept of "law"

The term "law" in ECHR article 7, consistent with its use elsewhere in the ECHR, refers to the provision in force as competent courts have interpreted statutes, including subordinate legislation, case law and unwritten law.⁹⁵ The law must comply with qualitative requirements, including those of accessibility and foreseeability.⁹⁶ These qualitative requirements must be satisfied as regards both the definition of an offence and the penalty the offence in question carries.⁹⁷ The Court must have regard to the domestic law "as a whole" and to the way it was applied at the material time. State practice incompatible with the written law in force cannot be considered as "law" within the meaning of ECHR article 7.⁹⁸

92 ECtHR, *Case of S.W. v. the United Kingdom*, App. no. 20166/92, Judgment of 22 November 1995, para. 34, available at: <http://hudoc.echr.coe.int/eng?i=001-57965>.

93 *Ibid.*, para. 35. See also *Case of C.R. v. the United Kingdom*, App. no. 20190/92, Judgment of 22 November 1995, para. 49; *Case of Del Río Prada v. Spain*, App. no. 42750/09, Judgment of 21 October 2013, para. 78, available at: <http://hudoc.echr.coe.int/eng?i=001-112108>; *Case of Vasiliauskas v. Lithuania*, App. no. 35343/05, Judgment of 20 October 2015, para. 154, available at: <http://hudoc.echr.coe.int/eng?i=001-158290>.

94 *Case of S.W. v. the United Kingdom*, *ibid.*

95 ECtHR, *Case of Kafkaris v. Cyprus*, App. no. 21906/04, Judgment of 12 February 2008, para. 139, available at: <http://hudoc.echr.coe.int/eng?i=001-85019>.

96 *Ibid.*, para. 140.

97 *Ibid.*

98 ECtHR, *Case of Streletz, Kessler and Krenz v. Germany*, App. nos. 34044/96, 35532/97 and 44801/98, Judgment of 22 March 2001, paras. 67-87,

In *Canese v. Paraguay*, the IACtHR ruled that a restriction on leaving the country, imposed as a precautionary measure in relation to the criminal proceedings filed against Mr. Canese, was not regulated by law, and therefore failed to comply with the requirement of legality necessary for the restriction to be compatible with ACHR article 22(3).⁹⁹

The reference in ICCPR 15(1) to international law is intended to ensure that no one shall escape punishment for a criminal offence under international law by pleading that the impugned act was legal under national law.¹⁰⁰ The concept of “international law” set out in ECHR article 7(1) refers to the international treaties ratified by the State in question, as well as customary international law, even where the corresponding law has never been formally published.¹⁰¹

Law must be accessible and formulated with sufficient precision to ensure foreseeability

The law must be published¹⁰² and framed in such a way that it is adequately accessible, that is, an individual must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case.¹⁰³

available at: <http://hudoc.echr.coe.int/eng?i=001-59353>; ECtHR, *Case of Polednová v. the Czech Republic*, App. no. 2615/10, Judgment of 21 June 2011, available at: <http://hudoc.echr.coe.int/eng?i=001-105985>.

99 IACtHR, *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004 ((*Merits, Reparations and Costs*), para. 128, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_111_ing.pdf).

100 UN, General Assembly, Annotations on the Text of the Draft International Covenants on Human Rights, Chapter VI — Civil and Political Rights, UN Doc. A/2929, 1 July 1955, para. 94, available at: https://www2.ohchr.org/english/issues/opinion/articles1920_iccpr/docs/A-2929.pdf.

101 ECtHR, *Guide on Article 7 of the European Convention on Human Rights, No punishment without law: the principle that only the law can define a crime and prescribe a penalty*, updated on 31 December 2018, para. 10, available at: https://www.echr.coe.int/Documents/Guide_Art_7_ENG.pdf.

102 ECtHR, *Case of Kokkinakis v. Greece*, Application no. 14307/88, Judgment of 25 May 1993, para. 40, available at: <http://hudoc.echr.coe.int/eng?i=001-57827>. For accessibility of an “executive order”, see ECtHR, *Case of Custers, Deveaux and Turk v. Denmark*, App. nos. 11843/03, 11847/03 and 11849/03, Final Judgment of 03 August 2007, available at: <http://hudoc.echr.coe.int/eng?i=001-80460>.

103 ECtHR, *Case of the Sunday Times v. the United Kingdom*, App. no. 6538/74, Judgment

Secondly, the law must be formulated with sufficient precision to enable the individual to regulate their conduct. The individual must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.¹⁰⁴ Overly broad or arbitrary interpretation or application of penal laws must be avoided to ensure compliance with the principle of legality.

In *Andrei Sannikov v. Belarus*, the HR Committee found that an interference with the right to peaceful assembly was not provided for by law, since the provisions of article 293 of the Criminal Code were too vague and broad to enable a person to foresee the legal consequences of his/her actions without a definition of what constitutes “mass disorder” in domestic law.¹⁰⁵ Commenting on the situation in Honduras, the HR Committee expressed concern with the broad wording of article 332 of the Criminal Code, which established the offence of “unlawful association”, on the basis of which large numbers of juveniles have reportedly been detained, along with human rights activists and homosexuals, in violation of ICCPR articles 9 and 26.¹⁰⁶

UN SR Martin Scheinin found that Peru’s criminalization of “collaboration with terrorism” indicated that sharing goals with a terrorist organization without a genuine connection to the perpetration of terrorist acts or with the organization itself would be reason enough to accuse and convict a person for collaboration with terrorism. The fact that “[a]ny reference to goals per se in the context of the criminalization of terrorism can be erroneously applied” has serious consequences for the exercise of freedom of opinion and expression and related rights to freedom of association and of peaceful assembly, as enshrined in ICCPR articles 19, 21 and 22.¹⁰⁷

of 26 April 1979, para. 49, available at: <http://hudoc.echr.coe.int/rus/?i=001-57584>.

104 *Ibid.*

105 *HR Committee*, Communication No. 2212/2012, *Andrei Sannikov v. Belarus*, Views adopted on 6 April 2018, para 6.12, available at: <https://undocs.org/en/CCPR/C/122/D/2212/2012>.

106 *HR Committee*, CCPR/C/HND/CO/1, Concluding observations of the Human Rights Committee on the initial report of Honduras as adopted at its 2414th meeting, 27 October 2006, para. 13, available at: <https://undocs.org/CCPR/C/HND/CO/1>.

107 *UN Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Addendum : Mission to Peru, 15 December 2010, A/HRC/16/51/Add.3, paras. 26-27,*

Under the ACHR, when codifying crimes States must use precise and unambiguous language that narrowly defines the punishable offense, thus giving full meaning to the principle of legality in criminal law.¹⁰⁸ This means a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offenses or are punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power.¹⁰⁹

In *Kimel v. Argentina*, the IACtHR found a violation of ACHR articles 9 (freedom from ex post facto laws) and 13(1) (freedom of thought and expression) where the definition of “crimes against the honor”, which “dishonour” and “discredit” another person, did not describe a particular conduct and were extremely vague and ambiguous, in contradiction of the principle of strict legality.¹¹⁰ The IACtHR reiterated that:

in the formulation of criminal definitions it is necessary to use restrictive and univocal terms, which clearly limit the punishable conducts, thus making the *nullum crimen nulla poena sine lege praevia* criminal principle effective. This implies an accurate definition of the criminalized conduct, which sets its elements and allows it to be delimited and distinguishable from non-punishable acts or illegal acts punishable with sanctions other than criminal. Ambiguity in the formulation of criminal definitions generates doubts and opens the door to the discretion of the authorities, particularly undesirable where the criminal liability of a person is to be determined and punished with sanctions which severely affect fundamental rights, such as life or freedom. Rules such as the ones applied in the instant case, which do not strictly delimit the criminal conducts, are in violation of the *nullum*

available at: <https://www.refworld.org/docid/4d8341c12.html> [accessed 18 November 2019].

108 IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66 31, December 2011, para. 90, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

109 *Castillo Petruzzi et al. Case*, Inter-American Court of Human Rights (IACrTHR), 30 May 1999, para. 121, available at: <https://www.refworld.org/cases,IACRTHR,44e494cb4.html> [accessed 18 November 2019]

110 IACtHR, *Case of Kimel v. Argentina*, Judgment of May 2, 2008 (Merits, Reparations and Costs), para. 67, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf.

crimen nulla poena sine lege praevia principle.¹¹¹

In *Castillo Petruzzi et al.*, the IACtHR found a violation of ACHR article 9 where the claimants were convicted of treason and sentenced to life imprisonment under a Peruvian law, which contained open-ended criminal classifications “couched in vague language”, referred to actions not strictly defined, was open to broad interpretation and which removed prosecution from the jurisdiction of the competent, independent and impartial tribunal previously established by law, to the military court, with fewer guarantees.¹¹²

The IACHR has highlighted that where legal provisions are unclear, they should be clarified or, where appropriate, interpreted in favour of those exercising the right to freedom of peaceful assembly.¹¹³

In *Altuğ Taner Akçam v. Turkey*, the ECtHR found that the crime of “denigrating Turkishness” under Article 301 of the Turkish Criminal Code did not meet the quality of “law” within the meaning of ECHR article 10 as it was too wide and vague to enable individuals to regulate their conduct or to foresee the consequences of their acts and thus constituted a continuing threat to the exercise of the right to freedom of expression under ECHR article 10.¹¹⁴ In *Oleksiy Vyerentsov v. Ukraine*, the ECtHR held that the offence of a breach of the procedure for holding demonstrations was not established in the domestic law with sufficient precision required to meet the requirements of accessibility and foreseeability under ECHR article 7.¹¹⁵

The OSCE Guidelines on the Protection of Human Rights Defenders, para. 25 states:

¹¹¹ *Ibid.*, para. 63.

¹¹² *Castillo Petruzzi et al. Case*, Inter-American Court of Human Rights (IACtHR), 30 May 1999, paras. 119, 122, available at: <https://www.refworld.org/cases,IACRTHR,44e494cb4.html> [accessed 18 November 2019].

¹¹³ IACHR ‘IACHR and Special Rapporteurship on Freedom of Expression express deep concern over decision to declare protests illegal in Nicaragua’ (2018), available at: http://www.oas.org/en/iachr/media_center/PReleases/2018/222.asp.

¹¹⁴ ECtHR, *Case of Altuğ Taner Akçam v. Turkey*, App. no. 27520/07, Judgment of 25 January 2012 (Final), para. 96, available at: <http://hudoc.echr.coe.int/eng?i=001-107206>.

¹¹⁵ ECtHR, *Case of Vyerentsov V. Ukraine*, App. no. 20372/11, Judgment of 11 July 2013 (Final), para. 67, available at: <http://hudoc.echr.coe.int/eng?i=001-118393>.

25. Legal provisions with vague and ambiguous definitions, which lend themselves to broad interpretation and are or could be abused to prosecute human rights defenders for their work, should be amended or repealed. Full due process protections, in line with international fair trial standards, must be ensured.

Contemporaneous legal basis for conviction

IHRL prohibits convictions based on law(s) enacted after the act or omission was committed (*ex post facto*). The prohibition of convictions based on *ex post facto* laws under IHRL requires that at the time an accused person performed the alleged act or omission which led to being prosecuted and convicted, the act or omission must have been a criminal offence. This prohibition also requires that the punishment imposed cannot exceed that which was set out by law at the time of commission. If, subsequent to the commission of the offence, provision is made by law for a lighter penalty, the offender is entitled to benefit from the lighter penalty.

There are two exceptions to the principle of non-retroactivity: the principle is not violated when an act, even though it was not punishable under national criminal law at the time when it was performed, was nevertheless criminalized either (i) under international law, or (ii) according to the general principles of law recognized by the community of the nations.¹¹⁶

In *Hicks v. Australia*, an Australian citizen had been captured by U.S. armed forces in Afghanistan and transferred to the Guantanamo Bay prison where he was detained from January 2002 to March 2007. He was convicted by the Guantanamo Bay military tribunal on 31 March 2007 of “providing material support for terrorism” and sentenced to seven years of imprisonment under U.S. statute, para. 950v (25) of the Military Commissions Act. The applicable law had come into effect on 17 October 2006, five years after the accused allegedly committed the relevant conduct, i.e. from December 2000 to December 2001. In a bilateral prisoner transfer arrangement between the U.S. and Australia, Mr. Hicks was returned to Australia on 20 May 2007, where he served seven months of his sentence. The HR Committee held that, by virtue of the prisoner transfer, Australia had participated directly in the retrospective punishment and imprisonment of Mr. Hicks, in violation of

116 ICCPR (art. 15); ECHR (art. 7).

the ICCPR Art. 15 (1) which prohibits conviction and sentence based on ex post facto law. The HR Committee's views were that:

The ordinary meaning of “held guilty” [in ICCPR article 15(1)] encompasses not only the moment of judgement and conviction before a criminal court, but also the enforcement of any sentence of punishment that follows from the conviction. Such interpretation is supported by the safeguards elsewhere in paragraph 1 concerning the application of penalties and in paragraph 2 concerning trial and punishment, which indicate that the scope of the protection extends to whatever punishment follows from a conviction. Furthermore, the protection of [ICCPR] article 15 must extend to wherever enforcement of a sentence takes place, including where a sentence is enforced by another State in its own territory. Otherwise, one State would be free to enforce retroactive penalties imposed by another State's courts without itself violating [ICCPR] article 15. This would create an incentive to “contract out” the enforcement of sentences to other States whose imprisonment of an offender could not be challenged in the second State for retroactivity.¹¹⁷

In *Casafranca de Gomez v. Peru*, the HR Committee found a violation of ICCPR article 15(1) where the accused was convicted under an existing anti-terrorist law and sentenced to a minimum of 25 years imprisonment, pursuant to penalties amended imposing a higher minimum sentence, after the alleged conduct was said to have occurred.¹¹⁸

Law must not be construed to accused's detriment

While the principle of legality prohibits in particular extending the scope of existing offences to acts which previously were not criminal offences, the criminal law must not be extensively construed to an accused's detriment,

¹¹⁷ HR Committee, Communication No. 2005/2010, *Hicks v. Australia*, Views adopted on 5 November 2015, CCPR/C/115/D/2005/2010, Annex II, para. 10, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F115%2FD%2F2005%2F2010&Lang=en.

¹¹⁸ *Teófila Casafranca de Gómez v. Peru*, CCPR/C/78/D/981/2001, HR Committee, 19 September 2003, para. 7.4, available at: <https://www.refworld.org/cases/HRC,4282299bc.html> [accessed 20 November 2019].

for instance by analogy.¹¹⁹

The IACtHR has ruled that,

when applying criminal legislation, the judge of the criminal court is obliged to adhere strictly to its provisions and observe the greatest rigor to ensure that the behavior of the defendant corresponds to a specific category of crime, so that he does not punish acts that are not punishable by law¹²⁰

“Penalty”

The concept of “penalty” in ECHR article 7 is, “like the notions of “civil right and obligations” and “criminal charge” in [ECHR article 6(1)], autonomous in scope”.¹²¹ In order for the protection afforded by ECHR article 7 to be rendered effective, “the Court must remain free to go behind appearances and assess for itself whether a particular measure amounts in substance to a “penalty” within the meaning of this provision.”¹²² In assessing the existence of a penalty under ECHR article 7(1), the court will consider whether the measure in question is imposed following conviction for a “criminal offence”; the nature and purpose of the measure in question; its characterisation under national law; the procedures involved in the making and implementation of the measure; and its severity.¹²³

119 ECtHR, *Case of Coëme and Others v. Belgium*, App. nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, Judgment of 18 October 2000 (Final), para. 146, available at: <http://hudoc.echr.coe.int/eng?i=001-59194>.

120 IACtHR, *Case of De la Cruz Flores v. Peru*, Judgment of November 18, 2004 (Merits, Reparations and Costs), para. 82, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_115_ing.pdf; IACtHR, *Case of García Asto and Ramírez Rojas v. Peru*, Judgment of November 25, 2005 (Preliminary Objection, Merits, Reparations and Costs), para. 190, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_137_ing.pdf.

121 ECtHR, *Case of Kafkaris v. Cyprus*, App. no. 21906/04, Judgment of 12 February 2008, para. 142, available at: <http://hudoc.echr.coe.int/eng?i=001-85019>.

122 *Ibid.*

123 *Ibid.*

An accused shall benefit from any subsequent change to the law providing for a lighter penalty

In *Case of Ricardo Canese v. Paraguay* the IACtHR found that the State's failure to reduce sanctions imposed over four years in light of more favourable norms that came into force during that period was a violation of ACHR article 9.¹²⁴ The IACtHR stated that the principle of retroactivity of the most favourable penal norm

should be interpreted in good faith, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of the object and purpose of the [ACHR], which is the effective protection of the individual...and also by an evolving interpretation of the international instruments for the protection of human rights.

In this respect, both the law establishing a lighter punishment for offenses, and the one encompassing norms such as those that decriminalize a behavior which was previously considered an offense, or create a new motive for justification or innocence, or an impediment to the effectiveness of a penalty, should be interpreted as the most favorable penal norm. The foregoing is not a closed list of cases that merit the application of the principle of the retroactivity of the most favorable penal norm. It is worth emphasizing that the principle of retroactivity is applicable to laws enacted before the judgment was delivered and during its execution, because the [ACHR] does not establish a limit in this respect.¹²⁵

Laws must be of general application and not discriminatory

Laws must be of general application, without targeting particular groups. The ACHPR ruled in *Constitutional Rights Project and Others v Nigeria*, that *ad hominem* legislation, i.e., laws made to apply specifically to one individual or legal entity "raise the acute danger of discrimination and lack of equal treatment before the law guaranteed by [Banjul Charter] Article 2",

¹²⁴ IACtHR, *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004 (Merits, Reparations and Costs), para. 187, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_111_ing.pdf.

¹²⁵ *Ibid.*, paras. 178-179.

thus constituting a violation of Banjul Charter article 9.¹²⁶

Baseless criminal investigations and unfounded charges

Under article 12(2) of the Declaration on Human Rights Defenders, States are obligated to “take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any... pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”. Based on that, States must refrain from arbitrary or abusive pressure and actions that could restrict the legitimate exercise of the right to defend human rights, including the right not to be subjected to baseless or illegitimate criminal proceedings. According to the IACHR, opening groundless criminal investigations or judicial actions against HRDs “not only has a chilling effect on their work but it can also paralyze their efforts to defend human rights, since their time, resources, and energy must be dedicated to their own defense”.¹²⁷

The initiation of baseless criminal proceedings may violate rights to personal integrity, judicial protection, and judicial guarantees, as well as the honor and dignity of HRDs.¹²⁸ Women HRDs face false accusations such as violating public morality laws and engaging in adultery or prostitution.¹²⁹ Indigenous peoples have been charged with ill-founded crimes such as trespassing, usurpation, conspiracy, kidnapping, coercion disturbance of public order and incitement of crime.¹³⁰

The IACHR reports that the use of unwarranted criminal proceedings as a tool of harassment of HRDs results in violations of HRDs’ rights to mental and

126 ACHPR, *Constitutional Rights Project and Others v Nigeria*, Communication No 102/93 (1998) para. 59, available at: <https://www.achpr.org/sessions/descions?id=100>.

127 IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66 31, December 2011, para. 76 at <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

128 *Ibid.*, para. 81.

129 UN HRC, *Situation of women human rights defenders: Report of the Special Rapporteur on the situation of human rights defenders*, 10 January 2019, A/HRC/40/60, para. 47, available at: <https://undocs.org/en/A/HRC/40/60>.

130 UN HRC, *Report of the Special Rapporteur on the rights of indigenous peoples*, 10 August 2018, A/HRC/39/17, para. 48, available at: <https://undocs.org/en/A/HRC/39/17>.

moral integrity, in violation of ACHR article 5.¹³¹ Where criminal proceedings are manipulated for the purpose of publicly accusing or identifying HRDs as “enemies of the State”, HRDs risk not only violations of their rights to physical security but also to their right to life, when they become targets of State security forces and/or members of paramilitary groups.¹³²

Misuse of counter-terrorism laws and other laws relating to national security

Between September 11, 2001 and 2018, over 140 governments have adopted counterterrorism legislation.¹³³ At the same time, civil society space has been shrinking to the point where civic space is “closed, repressed or obstructed in 111 countries across the world”.¹³⁴ UN SR Fionnuala Ni Aoláin, reports that 66% of all relevant communications sent by the SR’s mandate related to the use of counter-terrorism.¹³⁵ She states that “targeting civil society is [far from] a random or incidental aspect of counter-terrorism law and practice” but rather, “It suggests the hard-wiring of misuse into the use of counter-terrorism measures by states around the globe”.¹³⁶

No region of the globe is immune from this trend. Indeed, in many parts of the world, broadly worded charges and accusations are used to criminalize any lawful criticism. As observed by the SR on the promotion and protection of human rights while countering terrorism,

any form of expression that articulates a view contrary to the official

131 IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66 31, December 2011, para. 119, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

132 *Ibid.*, para. 121.

133 Center for Strategic and International Studies (CSIS), *Counterterrorism Measures and Civil Society: Changing the Will, Finding the Way*, March 2018, p. 3, available at: https://csis-prod.s3.amazonaws.com/s3fs-public/publication/180322_CounterterrorismMeasures.pdf.

134 HRC, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders*, 18 February 2019, A/HRC/40/52, para. 2, available at: <https://undocs.org/A/HRC/40/52>.

135 *Ibid.*, para. 4.

136 *Ibid.*

position of the state, addresses human rights violations and opines on ways to do things better in accordance with international human rights obligations, constitutes a form of terrorist activity, violent extremism, or a very broad “threat to national security”, which often encompasses both terrorism and extremism.¹³⁷

Anti-terrorism criminal laws that do not precisely define the prohibited behaviour are, in the opinion of the SR on the promotion and protection of human rights while countering terrorism, “the source of the most egregious human rights violations and central to the challenges faced today by civil society.”¹³⁸ Measures used by States to “silence and even choke civil society” justified by security imperatives include:

- overly broad and vague anti-terrorism criminal laws “against human rights defenders, journalists, minority groups, labour activists, indigenous peoples and members of the political opposition;”¹³⁹
- anti incitement to terrorism criminal laws that allow conviction on the basis of the content of the speech without reference to intent or consequent harm;
- legislative restrictions on the legitimate exercise of fundamental freedoms, such as freedom of expression and opinion and freedom association and assembly;
- legislation strictly regulating the existence of civil society, including the right to access funding;
- measures that limit activities seen as providing support to terrorism, including promoting right to development or assistance to migrants;
- indiscriminate legislation choking civil society;
- cumulative and sustained forms of harassment;
- media campaigns to delegitimize civil society and tarnish their reputation; physical and judicial harassment; and,

¹³⁷ *Ibid.*, para. 8.

¹³⁸ *Ibid.*, para. 19.

¹³⁹ *Ibid.*, para. 34.

- group prosecution.¹⁴⁰

The SR notes that there is no evidence that restrictions on civil society reduce terrorist attacks and therefore “such measures would fail wholesale at any proportionality and necessity tests”.¹⁴¹

Derogation of rights must be exceptional, strictly limited and proportionate

Under the ICCPR, States may temporarily suspend certain rights, including the right to freedom of expression, provided restriction or suspension is: strictly necessary; consistent with other IHRL obligations; and, non-discriminatory. ICCPR article 4(1) provides:

4. (1) In times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

Any derogation of rights must be in accordance with ICCPR article 4. Article 4 (2) prohibits any derogation of some rights under any circumstances. Commenting on the interpretation of ICCPR article 4 (1), the HR Committee notes that “[m]easures derogating from the provisions of the [ICCPR] must be of an exceptional and temporary nature”¹⁴², are allowed “only if and to the extent that the situation constitutes a threat to the life of the nation”¹⁴³ and must be a proportionate response to the threat.¹⁴⁴ A state of emergency is invalid under ICCPR article 4 if it is declared for the sole aim of restricting freedom of expression and preventing criticism of those who hold power.¹⁴⁵

¹⁴⁰ Ibid., paras. 33-58.

¹⁴¹ Ibid., para. 10.

¹⁴² HR Committee, *CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency*, 31 August 2001, CCPR/C/21/Rev.1/Add.11, para. 2, available at: <https://www.refworld.org/docid/453883fd1f.html> [accessed 20 November 2019].

¹⁴³ Ibid., para. 3.

¹⁴⁴ Ibid., para. 4.

¹⁴⁵ UN HRC, *Report of the Special Rapporteur on the promotion and protection of the*

States need to provide careful justification not only for their decision to proclaim a state of emergency but also for any suspension of rights based on such a proclamation. To assess whether a specific measure suspending or restricting a protected right not identified in Article 4 (2) is consistent with the “exigencies of the situation” the “duration, geographical coverage and material scope,” must be tailored to a particular situation.¹⁴⁶

Anti-terrorist laws must be in compliance with IHRL, including the right to a fair trial

Even where a derogation of rights is justified - exceptional, temporary, proportionate, threat to the life of the nation - no measures may derogate procedural rights to the extent that would impair the protection of non-derogable rights, such as the right to life; prohibition of torture or cruel, inhuman or degrading treatment; the principle of legality; or freedom of thought, conscience or religion.¹⁴⁷

Under the Banjul Charter, which does not permit derogations, the ACHPR has stressed that

African States should ensure that the measures taken to combat terrorism fully comply with their obligations under the [Banjul Charter] and other international human rights treaties, including the right to life, the prohibition of arbitrary arrests and detention the right to a fair hearing, the prohibition of torture and other cruel, inhuman and degrading penalties and treatment and the right to seek asylum.¹⁴⁸

Prohibition of terrorism must be “prescribed by law”

A defining trend in domestic implementation of counter-terrorism strategies is the global emergence of overly broad and vague references to

right to freedom of opinion and expression, Frank La Rue, 20 April 2010, A/HRC/14/23, para. 79(j), available at: <https://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.pdf>.

146 HR Committee, CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11, para. 5, available at: <https://www.refworld.org/docid/453883fd1f.html> [accessed 20 November 2019].

147 *Ibid.*, para. 15.

148 ACHPR, 88: Resolution on the Protection of Human Rights and the Rule of Law in the Fight against Terrorism, ACHPR/Res.88 (XXXVIII)05, para. 2, available at: <https://www.achpr.org/sessions/resolutions?id=222>.

terrorism and terrorist activities in criminal laws.¹⁴⁹ This trend is seen also in legislation to curb “violent extremism”, “extremism”, extremist activity”¹⁵⁰ or even “extremification”¹⁵¹. UN SR Fionnuala Ni Aoláin notes that the core concept of “extremism” is context-dependant and conceptually weaker than that of “terrorism”, which has an identifiable core, allowing the definition of “extremism” to be easily challenged and manipulated, and likely to criminalize legitimate expression.¹⁵²

While there is no universal, comprehensive and precise definition of ‘terrorism’¹⁵³ at international law, IHRL and the rule of law impose certain requirements that help counter some of the negative consequences of the lack of an agreed definition, specifically, ICCPR article 15(1), which requires that the prohibition of terrorism be prescribed by law. Terrorism offences must plainly set out what elements of the crime make it a terrorist crime. Similarly, where any offences are linked to “terrorist acts”, there must be a

149 HRC, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders*, 18 February 2019, A/HRC/40/52, para. 34, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement>.

150 *Ibid.*, para. 35.

151 See Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Communication with China, 12 November 2018, OL CHN 21/2018, available at: https://www.ishr.ch/sites/default/files/article/files/jol_de-extremification.pdf.

152 HRC, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders*, 18 February 2019, A/HRC/40/52, para. 35, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement>.

153 See the African Union’s definition of “terrorism” in the Protocol to the Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, Article 28G, available at: https://au.int/sites/default/files/treaties/36398-treaty-0045_-_protocol_on_amendments_to_the_protocol_on_the_statute_of_the_african_court_of_justice_and_human_rights_e.pdf.

clear definition of what constitutes such acts.¹⁵⁴

International treaty bodies have also provided some guidance in responding to and evaluating terrorist violence. UN General Assembly Resolution 49/60 refers to:

Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them;¹⁵⁵ (emphasis added)

The IACHR found that the UN working definition in the above quoted resolution (A/49/60) and other authorities suggests that characteristics common to incidents of terrorism may be described in terms of: (a) the nature and identity of the perpetrators of terrorism; (b) the nature and identity of the victims of terrorism; (c) the objectives of terrorism; and (d) the means employed to perpetrate terror violence.¹⁵⁶

Anti-terrorist laws must respect presumption of innocence and principle of legality

In adopting anti-terrorist laws, States are obligated to respect the presumption of innocence and the principle of legality for criminal offences including the *non-bis-in-idem* (freedom from double jeopardy) principle, and the *nullem crimen sine lege* (freedom from conviction for ex post facto offences) and *nulla poena sine lege* (freedom from punishment except according to law) principles, as well as the precept that no one should be

¹⁵⁴ ECOSOC, *Promotion and protection of human rights: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*,

Martin Scheinin, 28 December 2005 E/CN.4/2006/98, paras. 45-46, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/168/84/PDF/G0516884.pdf?OpenElement>.

¹⁵⁵ UN General Assembly, *Measures to eliminate international terrorism*, 9 December 1994, A/RES/49/60, Annex, para. 3, available at: <https://www.ilsa.org/Jessup/Jessup08/basicmats/ga4960.pdf>.

¹⁵⁶ IACHR, *Report on Terrorism and Human Rights*, OAS/Ser.L/V/II.116, Doc. 5 rev. 1 corr., Introduction, October 22, 2002, para. 17, available at: <http://www.cidh.org/Terrorism/Eng/intro.htm>.

convicted of a criminal offence except on the basis of individual criminal responsibility.¹⁵⁷

The principle of legality is one of the guiding principles under the ACHPR Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa:

K. Principle of Legality: No one may be condemned for an act or omission which did not constitute a legally punishable offence under national or international law, as defined by clear and precise provisions in the law, at the time it was committed. Such offenses must be made accessible to the public and non-discriminatory. Punishment is personal and can be imposed only on the offender in respect to his or her own conduct. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.¹⁵⁸

The IACtHR has indicated that the principle of legality requires that anti-terrorism offenses be defined with sufficient precision so they can be distinguished from ordinary offences:

the principle of legality requires that a necessary distinction be made between such offenses and ordinary offenses, so that every individual and also the criminal judge have sufficient legal elements to know whether an action is penalized under one or the other offense. This is especially important with regard to terrorist offenses because they merit harsher prison sentences, and ancillary penalties and disqualifications with major effects on the exercise of other fundamental rights are usually established... In addition, the investigation of terrorist offenses has procedural consequences that...may include the restriction of certain rights during the investigation and prosecution stages.¹⁵⁹

157 IACHR, *Report on Terrorism and Human Rights*, OAS/Ser.L/V/II.116, Doc. 5 rev. 1 corr., Part I, October 22, 2002, para. 222, available at: <http://www.cidh.org/Terrorism/Eng/part.i.htm>.

158 ACHPR, *Principles and Guidelines on Human and Peoples' Rights While Countering Terrorism in Africa*, adopted in Banjul, The Gambia, 56th ordinary session, May 2015, Part 1, para. K, available at: https://www.achpr.org/public/Document/file/English/principles_and_guidelines_on_human_and_peoples_rights_while_countering_terrorism_in_africa.pdf.

159 IACtHR, *Case of Norín Catrimán et al. v. Chile*, Judgment of May 29, 2014 (Merits, Reparations And Costs), para. 163, available at: <http://www.corteidh.or.cr/docs/casos/>

In a 2017 opinion concerning Turkey, the HRC Working Group on Arbitrary Detention found that the investigation and prosecution of 10 individuals associated with the newspaper *Cumhuriyet*, under anti-terrorist law, Act No. 3713, for “aiding terrorist organizations, in accordance with the organizational aims of these organizations, without being a member”, violated the principle of legality due to the vagueness of the provision.¹⁶⁰ The Working Group warned that

Vaguely and broadly worded laws have a chilling effect on the exercise of the right to freedom of expression with its potentials for abuse as they violate the principle of legality as codified in article 11 (2) of the Universal Declaration of Human Rights and [ICCPR] article 15 (1)....

[and that] anti-terrorism laws ‘by using an extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike and thereby increase the risk of arbitrary detention’ with the consequence that ‘[I]legitimate democratic opposition, as distinct from violent opposition, becomes a victim in the application of such laws’.¹⁶¹

In its Concluding Observations on the initial report of Bangladesh, the HR Committee expressed concern about the use of “unclear terminology in counter-terrorism legislation”, which grants the State broad powers of arrest and detention and the broad definition of “terrorist act” in the Anti-Terrorism Act, 2009, “which can lend itself to arbitrary and abusive implementation”, particularly in light of a 2012 amendment which allowed for a maximum punishment of the death penalty for financing terrorism.¹⁶² The HR Committee was further concerned by reports that these laws are

[articulos/seriec_279_ing.pdf](#).

¹⁶⁰ HRC, Working Group on Arbitrary Detention, Opinion No. 41/2017 concerning 10 individuals associated with the newspaper *Cumhuriyet* (Turkey), 26 July 2017, A/HRC/WGAD/2017/41, para. 101, available at: <https://www.ohchr.org/EN/Issues/Detention/Pages/Opinions78thSession.aspx>.

¹⁶¹ *Ibid.*, paras. 98-99. See also, HRC Working Group on Arbitrary Detention, Opinion No. 20/2017 concerning Musallam Mohamed Hamad al-Barrak (Kuwait), 19-28 April 2017, A/HRC/WGAD/2017/20, paras. 50-51, available at: <https://www.ohchr.org/EN/Issues/Detention/Pages/Opinions78thSession.aspx>.

¹⁶² UN, HR Committee, *Concluding observations on the initial report of Bangladesh, adopted 22 March 2017*, CCPR/C/BGD/CO/1M, para. 9, available at: <https://undocs.org/en/CCPR/C/BGD/CO/1>.

being used to stifle speech of journalists and HRDs.¹⁶³

In *Hicks v. Australia*, the HR Committee found the scope of an offence of providing material support for terrorism too vague and uncertain to satisfy the principle of legality.¹⁶⁴ In particular, the requirement that the accused's conduct intends to "influence or affect the conduct of government or civilian population by intimidation or coercion" was indeterminate and overbroad and captures conduct that may not be unlawful under international law. Furthermore, the HR Committee found that the allegations did not identify which instances of the provision of "material support or resources" are said to have been committed by the accused, making it difficult to answer the charge against him.¹⁶⁵

In its Concluding observations of a report submitted by Estonia under ICCPR article 40, the HR Committee expressed concern

that the relatively broad definition of the crime of terrorism and of membership of a terrorist group under the State party's Criminal Code may have adverse consequences for the protection of rights under article 15 of the [ICCPR], a provision which significantly is non-derogable under [ICCPR] article 4, paragraph 2. The State party is requested to ensure that counter-terrorism measures, whether taken in connection with Security Council resolution 1373 (2001) or otherwise, are in full conformity with the [ICCPR].¹⁶⁶

In its concluding observations on the third periodic report of Kuwait, the HR Committee, urged the Government to "clarify the vague, broad and open-ended definition of key terms" in laws containing provisions restricting the right to freedom of expression and opinion, among other acts and "ensure

¹⁶³ *Ibid.*

¹⁶⁴ HR Committee, Communication No. 2005/2010, *Hicks v. Australia*, Views adopted on 5 November 2015, CCPR/C/115/D/2005/2010, Annex II, para. 8, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F115%2FD%2F2005%2F2010&Lang=en.

¹⁶⁵ *Ibid.*

¹⁶⁶ HR Committee, *UN Human Rights Committee: Concluding Observations: Estonia*, 15 April 2003, CCPR/CO/77/EST, para. 8, available at: <https://www.refworld.org/docid/3f25a0787.html> [accessed 21 November 2019]. See also CCPR/CO/75/NZL, para. 11 (2002); CCPR/CO/75/MDA, para. 8 (2002); CCPR/CO/75/YEM, para. 18 (2002); CCPR/CO/73/UK, para. 6 (2001).

that they are not used as tools to curtail freedom of expression beyond the narrow restrictions permitted by [ICCPR], article 19 (3) of the Covenant”.¹⁶⁷

In a joint communication to Canada in 2015, UN SRs expressed concern with an “overly broad and vague” formulation of the offence of promoting terrorism in proposed amendments to the Criminal Code.¹⁶⁸ The SRs found that vague law “would seem to fail to provide precise and effective guidance on what “communications”, or “statements”, may, in fact, be prohibited” and that the “knowledge” and “recklessness” requirements “may leave authorities with arbitrary powers to interpret what conduct would or would not fall into the definition of the offence, thus potentially resulting in undue limitations of freedom of expression”.¹⁶⁹

Non-derogable rights must always be protected by procedural rights

The risk that limitations placed on legal proceedings by anti-terrorism and security legislation may jeopardize procedural safeguards, including the right of access to a lawyer, the maximum period of pre-charge detention and the right to habeas corpus was highlighted in 2012 by SR Margaret Sekaggya, who warned that

[t]he principles of legality and the rule of law, which, according to the Human Rights Committee in paragraph 6 of its general comment No. 32, on [ICCPR] article 14, are non-derogable under the [ICCPR], require procedural safeguards to be respected for persons tried under legislation relating to national security. The Special Rapporteur therefore urges States to abide by those principles and also to ensure

¹⁶⁷ HR Committee, *Concluding observations on the third periodic report of Kuwait*, 11 August 2016, CCPR/C/KWT/CO/3, para. 41, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fKWT%2fCO%2f3&Lang=en. See also HRC Working Group on Arbitrary Detention, Opinion No. 20/2017 concerning Musallam Mohamed Hamad al-Barrak (Kuwait), 19-28 April 2017, A/HRC/WGAD/2017/20, para. 52, available at: <https://www.ohchr.org/EN/Issues/Detention/Pages/Opinions78thSession.aspx>.

¹⁶⁸ OHCHR, Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Communication to Canada: JAL CAN 1/2015, 27 Apr 2015, p. 4, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=14575>.

¹⁶⁹ *Ibid.*, pp. 4-5.

that the principles elaborated by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism...are respected when trying human rights defenders or their clients under legislation relating to national security.

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The following is a summary of basic principles proposed by UN SR Martin Scheinin as elements of best practice in securing the right to a fair trial in terrorism cases for all persons, regardless of nationality or statelessness¹⁷¹:

- timely access to an independent, impartial and competent court for determination of criminal charges or obligations in a suit of law, status, pre-trial release, the legality of detention and treatment, and of appeal;
- avoidance of use of military courts for non-military persons;
- court proceeding in open court;
- exclusion of information obtained by torture or other cruel, inhuman or degrading treatment or punishments or other breach of rights or from a prisoner secretly or arbitrarily detained;
- Strict compliance with procedural safeguards including equality of arms;
- Full disclosure of exculpatory information and evidence; and
- Timely and confidential access to legal counsel of choice with no restrictions that could prejudice preparation of a defense or timely access to judicial oversight.

Prohibition of terrorism must respect principle of non-discrimination and equality and non-retrospectivity

Further, any legal prescription must respect the principle of non-

170 UN General Assembly, *Situation of human rights defenders*, 10 August 2012, A/67/292, para. 27, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/459/42/PDF/N1245942.pdf?OpenElement>.

171 UN, General Assembly, *Protection of human rights and fundamental freedoms while countering terrorism*, 6 August 2008, A/63/223 para. 45, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/451/82/PDF/N0845182.pdf?OpenElement>.

discrimination and equality before the law (ICCPR article 26)¹⁷² and any provision defining a crime must not criminalize conduct that occurred prior to its entry into force as applicable law (ICCPR article 15(1)). Likewise, any penalties are to be limited to those applicable at the time that any offence was committed and, if the law has subsequently provided for the imposition of a lighter penalty, the offender must be given the benefit of the lighter penalty (article 15(1)).¹⁷³

Prohibition of terrorism must be limited to countering terrorism

Noting the potential for deliberate misuse as well as unintended human rights abuses caused by the adoption of overly broad definitions of terrorism, SR Martin Scheinin warned in his 2010 report, that counter-terrorism laws, policies and practices must be limited to countering terrorism, as properly defined:

Failure to restrict counter-terrorism laws and implementing measures to the countering of conduct which is truly terrorist in nature also pose the risk that, where such laws and measures restrict the enjoyment of rights and freedoms, they will offend the principles of necessity and proportionality that govern the permissibility of any restriction on human rights.¹⁷⁴

Transparent and foreseeable criteria for defining terrorism

In 2010, the HRC called upon States to ensure that measures to combat terrorism and preserve national security clearly identify which offenses qualify as terrorist acts by defining “transparent and foreseeable criteria”¹⁷⁵,

172 ECOSOC, *Promotion and protection of human rights: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*,

Martin Scheinin, 28 December 2005, E/CN.4/2006/98, para. 48, available at:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/168/84/PDF/G0516884.pdf?OpenElement>.

173 *Ibid.*, para. 49.

174 HRC, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, Martin Scheinin, 22 December 2010, A/HRC/16/51, para. 26, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/178/98/PDF/G1017898.pdf?OpenElement>.

175 UN Human Rights Council, *Protecting human rights defenders: resolution/adopted by the Human Rights Council*, 12 April 2013, A/HRC/RES/22/6, para. 10, available at: <https://>

A photograph of a prison corridor. The corridor is long and narrow, with a polished floor that reflects light from windows on the left. On the right, there are metal bars for cell doors. The ceiling is high with exposed pipes and a single light fixture. A blue rectangular box is overlaid on the left side of the image, containing white text.

“

Both the right to life and the right to physical integrity constitute essential minimums for the exercise of any activity, including that of defending human rights.

IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II. Doc. 66 31, December 2011, para. 23.

including those formulated by SR Martin Scheinin in 2006:

“Terrorist offences” should be confined to instances where the following three conditions cumulatively meet: (a) acts committed with the intention of causing death or serious bodily injury, or the taking of hostages; (b) for the purpose of provoking a state of terror, intimidating a population, or compelling a Government or international organization to do or abstain from doing any act; and (c) constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism. Similarly, any criminalization of conduct in support of terrorist offences should be restricted to conduct in support of offences having all the above characteristics. In the prohibition of terrorist conduct, it is important for States to ensure that prescriptions to that effect are accessible, formulated with precision, applicable to counterterrorism alone, nondiscriminatory, and non-retroactive.¹⁷⁶

Violation of rights to life, liberty and security of the person

Under IHRL, everyone has the inherent right to life, liberty and security of the person, including the right to freedom from torture or cruel, inhuman or degrading treatment or punishment (UDHR, articles 3 and 5).

The right to life must be protected by law. No one may be arbitrarily deprived of their right to life (ICCPR, article 6(1) or to their liberty (ICCPR article 9). All persons lawfully deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person (ICCPR article 10).

States have the duty under IHRL to protect HRDs from violations by State and non-State actors of the rights to life, liberty and security of the person. A state is responsible under IHRL for violations when private groups act as

www.refworld.org/docid/53bfa8564.html [accessed 21 November 2019].

¹⁷⁶ ECOSOC, *Promotion and protection of human rights: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*,

Martin Scheinin, 28 December 2005 E/CN.4/2006/98, para. 50, available at:

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/168/84/PDF/G0516884.pdf?OpenElement>.

state agents, or act with the approval, acquiescence, or tolerance of state agents.¹⁷⁷

Violation of the right to life and the right to protection of life

The right to not be arbitrarily deprived of life is the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies which threatens the life of the nation.¹⁷⁸ The right not to be arbitrarily deprived of one's life is recognised as part of customary international law and the general principles of law, and is also recognised as a *jus cogens* norm, universally binding at all times.¹⁷⁹ When the right to life is not respected, all other rights lack meaning.¹⁸⁰

The right to life concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.¹⁸¹ It lays the foundation for the obligation of States parties to respect and to ensure the right to life, to give effect to it through legislative and other measures, and to provide effective remedies and reparation to all victims of violations of the right to life.¹⁸²

IHRL requires States to ensure laws to protect the right not to be arbitrarily deprived of life and remedies for violations. The deprivation of life that

177 IAHCR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, para. 127, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

178 ICCPR article 4(2); ACHR article 27(2); ECHR article 15(2). The Banjul Charter does not contain a non-derogation clause. HR Committee, *General Comment No. 36, Article 6: Right to life*, CCPR/C/GC/36, 30 October 2018, para. 2, available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

179 ACHPR, *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)(2015)*, para. A5, available at: <https://www.achpr.org/legalinstruments/detail?id=10>.

180 IACtHR, *Case of The Brothers Gómez Paquiyauri*, Judgment of July 8, 2004 (*Merits, Reparations and Costs*), para. 128, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_110_ing.pdf.

181 HR Committee, *General Comment No. 36, Article 6: Right to life*, CCPR/C/GC/36, 30 October 2018, para. 3, available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

182 *Ibid.*, para. 4.

lacks a legal basis or is otherwise inconsistent with life-protecting laws and procedures is, as a rule, arbitrary in nature. “For example, a death sentence issued following legal proceedings conducted in violation of domestic laws governing criminal procedure or evidence will generally be both unlawful and arbitrary.”¹⁸³

With respect to HRDs, threats and attacks on their lives and personal integrity, as well as the impunity enjoyed by those responsible for such acts, have a multiplier effect, extending beyond the victim(s), to instil fear in all others connected to the defence and promotion of human rights, thereby directly inhibiting their work.¹⁸⁴ Such attacks are particularly grave, in the opinion of the IACtHR,

because they have not only individual, but also collective effects, inasmuch as society is prevented from learning the truth concerning the observance or the violation of the rights of those subject to the jurisdiction of a specific State.¹⁸⁵

Duty of States to offer adequate protection to HRDs

States must respect the right to life and have the duty to refrain from engaging in conduct resulting in arbitrary deprivation of life. States must also ensure the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities, whose conduct is not attributable to the State. The obligation of States to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of ICCPR article 6 even if such threats and situations do not result in loss of life.¹⁸⁶

¹⁸³ *Ibid.*, para. 11.

¹⁸⁴ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OAS/Ser.L/V/II.Doc. 66, December 31, 2011, para. 25, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>; IACtHR, *Case of Kawas-Fernández v. Honduras*. Judgment of April 3, 2009 (Merits, Reparations and Costs), para. 153, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf.

¹⁸⁵ IACtHR, *Case of Valle-Jaramillo et al. v. Colombia*, Judgment of November 27, 2008 (Merits, Reparations, and Costs), para. 96, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_192_ing.pdf.

¹⁸⁶ HR Committee, *General HR Committee, General Comment No. 36, Article 6: Right to life*, CCPR/C/GC/36, 30 October 2018, para. 7, available at: <https://tbinternet.ohchr.org/>

The protection of the right to life, in accordance with the State's obligation to guarantee human rights, implies not only negative obligations but also positive ones. In addition to an absolute prohibition on arbitrary executions and forced disappearances, States have a special obligation to carry out positive actions to ensure the absence of environments incompatible with or dangerous to the protection of human rights, as well as the establishment of conditions for eradicating violations by State agents or private persons, so that HRDs can freely carry out their activities.¹⁸⁷

The duty to protect the right to life requires States to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence, including HRDs.¹⁸⁸ The HR Committee observes that ICCPR article 6 reinforces the obligations of States parties under the ICCPR and the Optional Protocol to protect individuals against reprisals for promoting and striving to protect and realize human rights, including through cooperation or communication with the HR Committee.¹⁸⁹ States parties must take the necessary measures to respond to death threats and to provide adequate protection to human rights defenders, including the creation and maintenance of a safe and enabling environment for defending human rights.¹⁹⁰

The IACTHR finds that "when there is a pattern of human rights violations, including extra-legal executions fostered or tolerated by the State, contrary to the jus cogens, this generates a climate that is incompatible with effective

[Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf](#)

187 IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OAS/Ser.L/V/II.Doc. 66, December 31, 2011, para. 24, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

188 HR Committee, *General HR Committee, General Comment No. 36, Article 6: Right to life*, CCPR/C/GC/36, 30 October 2018, para. 23, available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf
 . ACHPR, *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)(2015)*, para. A11, available at: <https://www.achpr.org/legalinstruments/detail?id=10>.

189 HR Committee, *General HR Committee, General Comment No. 36, Article 6: Right to life*, CCPR/C/GC/36, 30 October 2018, para. 53, available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

190 *Ibid.*

protection of the right to life”.¹⁹¹

Extreme forms of arbitrary detention that are themselves life-threatening violate the rights to personal liberty and personal security as well as the right to protection of life, in particular enforced disappearances.¹⁹² A violation of the right to life also occurs where a State or its agent has: a/ attempted unlawfully to kill a person, but that person survives; b/ unlawfully threatened the life of a person; or c/ forcibly caused a person to disappear and that person’s fate remains unknown.¹⁹³

Deprivation of life arbitrary when inconsistent with domestic or international law

A deprivation of life is arbitrary if it is impermissible under IHRL, or under more protective domestic law provisions.¹⁹⁴ Arbitrariness should be interpreted with reference to considerations such as appropriateness, justice, predictability, due process of law, reasonableness, necessity and proportionality.¹⁹⁵

Any deprivation of life resulting from a violation of the procedural or substantive safeguards in the Banjul Charter, including on discriminatory grounds or practices, is arbitrary and as a result unlawful.¹⁹⁶

191 IACtHR, *The Brothers Gómez Paquiyauri Case*. Judgment of July 8, 2004, para. 128, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_110_ing.pdf.

192 HR Committee, *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para. 55, available at: <https://www.refworld.org/docid/553e0f984.html> [accessed 21 November 2019].

193 ACHPR, *General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4)(2015)*, para. A8, available at: <https://www.achpr.org/legalinstruments/detail?id=10>.

194 HR Committee, *General Comment No. 36, Article 6: Right to life*, CCPR/C/GC/36, 30 October 2018, para. 12, available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

; *General Comment No. 3 on the African Charter on Human and Peoples’ Rights*, *ibid.*, para. B12.

195 CCPR *General Comment No. 36, ibid.*, para. 12; *General Comment No. 3 on the African Charter on Human and Peoples’ Rights*, *ibid.*, para. B12.

196 *General Comment No. 3 on the African Charter on Human and Peoples’ Rights*, *ibid.*

Loss of life occurring in custody creates a presumption of arbitrary deprivation of life

By arresting and detaining individuals, States take responsibility to care for their life and personal integrity.¹⁹⁷

In *Khadzhiyev and Muradova v. Turkmenistan*¹⁹⁸, the complainant's sister, Ms. Muradova, died in custody after she was arbitrarily arrested and detained for her human rights activities and journalism. Finding that the State failed to provide any evidence to rebut the allegations that Ms. Muradova died from a result of torture and ill-treatment while in custody, the HR Committee found a violation of her rights under ICCPR articles 6 (1) and 7. The HR Committee reiterated that

Loss of life occurring in custody, especially when accompanied by reliable reports of a potentially unlawful death, create a presumption of arbitrary deprivation of life by State authorities, which can only be rebutted on the basis of a proper investigation that establishes the State's compliance with its obligations under [ICCPR] article 6. footnotes omitted].¹⁹⁹

Duty of States to promptly investigate and sanction violations

An important aspect of the State's duty to prevent violations of the right to life is to take effective measures to investigate threats "immediately, exhaustively, seriously, and impartially" and, where appropriate, punish those responsible, with the aim of trying to prevent the threats from being carried out.²⁰⁰ A State can be held responsible for killings by non-State actors if it approves, supports or acquiesces in those acts or if it fails to exercise

197 HR Committee, General Comment No. 36, Article 6: Right to life, CCPR/C/GC/36, 30 October 2018, para. 25, available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

198 HR Committee, Communication No. 2252/2013, *Annadurdy Khadzhiyev and Ogulsapar Muradova v. Turkmenistan*, Views adopted on 6 April 2018, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F122%2FD%2F2252%2F2013&Lang=en.

199 Ibid., para. 7.3.

200 IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 45, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

due diligence to prevent such killings or to ensure proper investigation and accountability.²⁰¹

Where an apparently unlawful death occurs States must conduct prompt, impartial, thorough and transparent investigations to determine the cause of death and when the death is considered a homicide, to identify suspected perpetrators. The State is then obliged to hold such other proceedings as are necessary to determine and hold accountable those responsible. IHRL requires states to ensure effective remedies, including reparation, for victims of unlawful death and immediate family and dependents.²⁰² States should cooperate with international mechanisms so as to ensure accountability.²⁰³

In *Mahmut Kaya v. Turkey*, the ECtHR stated:

[T]he general legal prohibition on arbitrary killing by agents of the State contained in Article 2 of the [ECHR] would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities. The obligation to protect the right to life under [ECHR] Article 2, read in conjunction with the State's general duty under [ECHR] Article 1 of the [ECHR] to "secure to everyone within their jurisdiction the rights and freedoms in [the ECHR]", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alios*, agents of the State...

The Court observes that the procedural protection of the right to life inherent in Article 2 of the [ECHR] secures the accountability of agents of the State for their use of lethal force by subjecting their actions to some form of independent and public scrutiny capable of leading to a determination of whether the force used was or was not justified in a particular set of circumstances.²⁰⁴

Failure to investigate a violation of IHRL

²⁰¹ ACHPR, *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)*(2015), para. A9, available at: <https://www.achpr.org/legalinstruments/detail?id=10>.

²⁰² *Ibid.*, para. A7.

²⁰³ *Ibid.*, para. C17.

²⁰⁴ ECtHR, *Case of Kaya v. Turkey*, App. no, 158/1996/777/978, Judgment of 19 February 1998, paras. 86-87, available at: <http://hudoc.echr.coe.int/eng?i=001-58138>.

The failure of the State to investigate suspicious deaths and all killings involving the acts or omissions of State agents and non-state actors and to identify and hold accountable those responsible for violations of the right to life, itself constitutes a violation by the State of that right.²⁰⁵ The ACHPR emphasises that this is even more the case where there is tolerance of a culture of impunity.²⁰⁶

Failure to bring those responsible to justice a violation of IHRL

Where the investigations reveal violations of protected rights, such as the right to life and to humane treatment, states must ensure that those responsible are brought to justice.²⁰⁷ The HR Committee has indicated that, “[a]s with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the [ICCPR]”.²⁰⁸

Under the Banjul Charter,

accountability requires investigation and, where appropriate criminal prosecution. In certain circumstances, independent, impartial and properly constituted commissions of inquiry or truth commissions can play a role, as long as they do not grant or result in impunity for international crimes.²⁰⁹

State duty to provide reparation

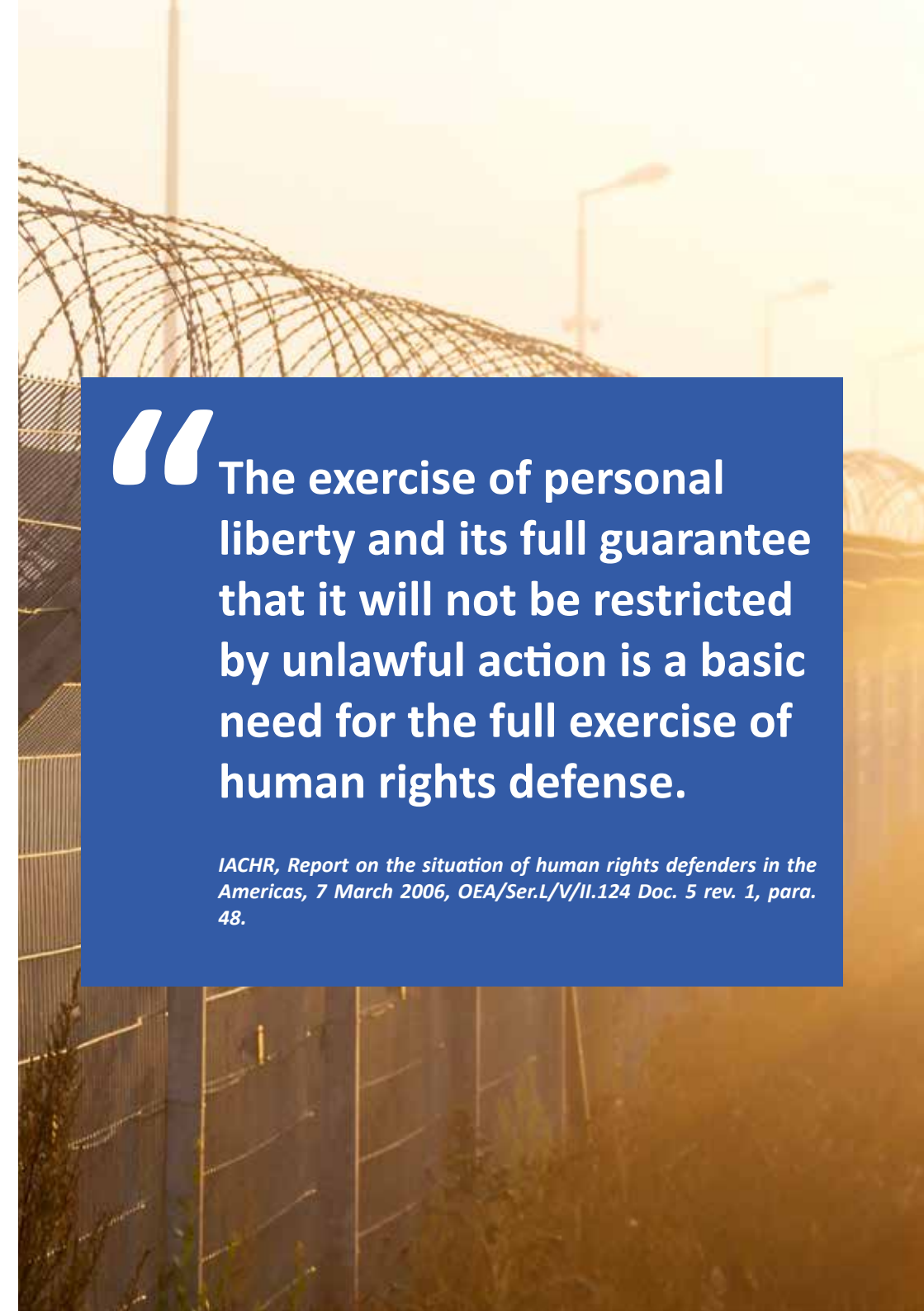
205 ACHPR, *General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4)(2015)*, para. C15, available at: <https://www.achpr.org/legalinstruments/detail?id=10>. HR Committee, *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 15, available at: <https://www.refworld.org/docid/478b26ae2.html>[accessed 22 November 2019].

206 *General Comment No. 3 on the African Charter on Human and Peoples’ Rights*, *ibid.*

207 HR Committee, *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 18, available at: <https://www.refworld.org/docid/478b26ae2.html>[accessed 22 November 2019].

208 *Ibid.* See also ACHPR, *General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4)(2015)*, para. C15, available at: <https://www.achpr.org/legalinstruments/detail?id=10>.

209 *General Comment No. 3 on the African Charter on Human and Peoples’ Rights*, *ibid.*, para. C17.



“The exercise of personal liberty and its full guarantee that it will not be restricted by unlawful action is a basic need for the full exercise of human rights defense.

IACHR, Report on the situation of human rights defenders in the Americas, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 48.

Accountability also encompasses measures such as reparation, ensuring non-repetition, disciplinary action, making the truth known, institutional review and, where applicable, reform.²¹⁰

In *Khadzhiyev and Muradova v. Turkmenistan*, the HR Committee found that, in accordance with ICCPR article 2(3), the State party is under an obligation to provide individuals whose [ICCPR] rights have been violated with an effective remedy in the form of full reparation. Accordingly,

the State party is obligated to, inter alia, take appropriate steps to: (a) conduct a thorough, prompt and impartial investigation into Ms. Muradova's arbitrary arrest and detention, torture and death in custody, including, if necessary, by creating an independent commission of inquiry; (b) provide full redress to the author and other family members of Ms. Muradova, including adequate compensation and other measures of satisfaction, including rehabilitation for the name of Ms. Muradova, for the violations of her rights; and (c) provide all information regarding the investigation, including the findings of the autopsy, if one was conducted, and copies of trial transcripts and the court judgment to her lawyer and the family members. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.²¹¹

Violation of the rights to liberty and security of person²¹²

The misuse of the legal system to arrest and detain HRDs as means of preventing lawful human rights advocacy violates a panoply of internationally protected rights and contravenes the duty of UN member states to promote universal non-discriminatory respect for and observance of human rights and fundamental freedoms (See Charter of the UN, Article 55 (c)).

²¹⁰ Ibid.

²¹¹ HR Committee, Communication No. 2252/2013, *Annadurdy Khadzhiyev and Ogulsapar Muradova v. Turkmenistan*, Views adopted on 6 April 2018, para. 9, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2012%2FD%2F2252%2F2013&Lang=en.

²¹² For a more in-depth treatment, see Lois Leslie, *Pre-Trial Release and the Right to be Presumed Innocent: A Handbook on Pre-Trial Release at International Law*, LRWC, 2013, available at: <https://www.lrwc.org/library/know-your-rights-index/right-to-pre-trial-release/>.

Liberty of the person concerns freedom from confinement of the body.²¹³ Deprivation of liberty involves more severe restriction of motion within a narrower space than mere interference with liberty of movement.²¹⁴ Security of person concerns freedom from injury to the body and the mind, or to impairment of bodily and mental integrity.²¹⁵ As the HR Committee underscores, liberty and security of person are precious for their own sake, and also because the deprivation of liberty and security of the person have historically been principal means for impairing the enjoyment of other rights.”²¹⁶

Presumption of innocence

The presumption of innocence is a principle that is fundamental to the protection of human rights and imposes on the prosecution the burden of proving the charge. It guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, and ensures that the accused has the benefit of the doubt. Persons accused of a criminal act must be treated in accordance with this principle.²¹⁷ All public authorities must refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused.²¹⁸

In *Khadzhiyev and Muradova v. Turkmenistan*, the HR Committee found a violation of the right to be presumed innocent, as guaranteed by ICCPR article 14(2), in regard to Ms. Muradova and her co-defendants where she and several of her colleagues were branded as traitors who should be condemned by then-President Niyazov a day after her arrest. The whole trial lasted only two hours, and Ms. Muradova was not able to present her case.²¹⁹

²¹³ HR Committee, *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para. 3, available at: <https://www.refworld.org/docid/553e0f984.html> [accessed 22 November 2019].

²¹⁴ *Ibid.*, para. 5.

²¹⁵ *Ibid.*, para. 3.

²¹⁶ *Ibid.*, para. 2.

²¹⁷ HR Committee, *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, para. 30, available at: <https://www.refworld.org/docid/478b2b2f2.html> [accessed 22 November 2019].

²¹⁸ *Ibid.*

²¹⁹ HR Committee, Communication No. 2252/2013, *Annadurdy Khadzhiyev and*

In the view of the IACHR, not only is the right to be presumed innocent expressly violated when someone is pronounced guilty before the end of a trial, but it may also be tacitly violated when the context of the actions of state agents betray a pattern of unmistakable hounding and harassment that prejudice the individual as guilty.²²⁰

Unlawful detention

In order to meet the principle of legality, the grounds for arrest and detention must be clearly established by pre-existing domestic legislation and made in accordance with that law.²²¹ With respect to the ECHR, the arrest and detention must be made for the purposes enumerated in article 5. Applicable laws must be sufficiently precise to enable an individual to reasonably understand the consequences of a course of action. Such laws must accord with applicable IHRL.

Under ACHR article 7, no person may be deprived of his or her personal freedom

except for reasons, cases or circumstances expressly defined by law (material aspect) and, furthermore, subject to strict adherence to the procedures objectively set forth in that law (formal aspect). The second provision addresses the issue that no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they

Ogulsapar Muradova v. Turkmenistan, Views adopted on 6 April 2018, para. 7.10, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2F122%2FD%2F2252%2F2013&Lang=en.

220 *Gallardo Rodríguez v. Mexico*, Case 11.430, Report No. 43/96, Inter-Am.C.H.R./OEA/Ser.L/V/II.95 Doc. 7 rev. at 485 (1997). REPORT N° 43/96 CASE 11.430 EXICO October 15, 1996, Inter-American Commission on Human Rights (IACHR), 15 October 1996, para. 10, available at: <https://www.refworld.org/cases,IACHR,3ae6b61d10.html> [accessed 22 November 2019].

221 HR Committee, Communication No. 702/1996, *Clifford McLawrence v. Jamaica*, Views adopted on 18 July 1997, para. 5.5, available at: <http://hrlibrary.umn.edu/undocs/702-1996.html>; HR Committee, Communication No. 770/1997, *Dimitry L. Gridin v. Russian Federation*, Views adopted on 18 July 2000, at para. 8.1, available at: <https://juris.ohchr.org/en/Search/Details/378>.

are unreasonable, unforeseeable or lacking in proportionality.²²²

As the HR Committee finds, the two prohibitions overlap, in that arrests or detentions may be in violation of the applicable law but not arbitrary, or legally permitted but arbitrary, or both arbitrary and unlawful.²²³

Arbitrary detention

An arbitrary detention includes elements of inappropriateness, injustice, lack of predictability and due process of law, as well as lack of reasonableness, necessity and proportionality.²²⁴

The WGAD regards deprivation of liberty arbitrary in the following cases:

- When it is not possible to legally justify the detention (Category I);
- When the deprivation of liberty results from the exercise of rights protected by the UDHR articles 7, 13, 14, 18, 19, 20 and 21, or ICCPR articles 12, 18, 19, 21, 22, 25, 26 and 27(Category II);
- When the partial or total non-observance of fair trial rights protected by the UDHR and other instruments is of such gravity as to render the detention arbitrary (category III); ...and
- When the detention is a violation of IHRL for reasons of prohibited discrimination (category V).²²⁵

In accordance with Inter-American standards, a detention is arbitrary and unlawful when: a/ done outside the grounds and the formalities prescribed by law; b/executed without observing the procedures that the law

²²² IACtHR, *Case of Gangaram Pandey v. Suriname*, Judgment of January 21, 1994 (Merits, Reparations and Costs), at para. 47, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_16_ing.pdf.

²²³ HR Committee, *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para. 11, available at: <https://www.refworld.org/docid/553e0f984.html> [accessed 22 November 2019].

²²⁴ *Ibid.*, para. 12.

²²⁵ UN HRC Working Group on Arbitrary Detention, *Opinion No. 41/2017 concerning 10 individuals associated with the newspaper Cumhuriyet (Turkey)*, para. 3, available at: <https://www.ohchr.org/EN/Issues/Detention/Pages/Opinions78thSession.aspx>.

prescribes; c/ there has been an abuse of the powers of arrest; or d/ when the arrest is made for purposes other than those that the law prescribes and requires.²²⁶ The IACHR has established that the term “arbitrary” is synonymous with irregular, abusive, or contrary to law.²²⁷

Under the ACHR, regardless of the legality of a detention, in order for a detention to not be considered arbitrary and therefore contrary to ACHR article 7(3), each of the following criteria must be met:

- the purpose of measures that deprive or restrict a person’s liberty is compatible with the ACHR;
- the measures adopted are appropriate for complying with the intended purpose;
- the measures are necessary, in the sense that they are absolutely indispensable for achieving the intended purpose and that no other measure less onerous exists, in relation to the right involved, to achieve the intended purpose; and
- the measures are strictly proportionate.²²⁸

The right to personal liberty includes the right to be informed of the reasons for arrest and detention and to be notified without delay, of the charges²²⁹, to be brought promptly before a judge or other officer authorized by law to exercise judicial oversight, to pre-trial release; and to trial within a reasonable time. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear before the court as directed, not interfere with evidence and be of good behaviour. Anyone deprived of liberty by arrest or detention shall be entitled to take proceedings before a competent court, in order that

226 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 187, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

227 IACHR, Report No. 35/08, Case 12.019, Admissibility and Merits, *Antonio Ferreira Braga v. Brazil*, July 18, 2008, para. 68, available at: <https://www.cidh.oas.org/annualrep/2008eng/Brazil12019eng.htm>.

228 IACtHR, *Case of Vélez Loor v. Panama*, Judgment of November 23, 2010 (Preliminary Objections, Merits, Reparations and Costs), para. 166, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_218_ing.pdf.

229 UN *Body Of Principles for the Protection of all Persons under any Form of Detention or Imprisonment*, Principle 12(1).

that court may decide without delay on the lawfulness of the detention or treatment and order release if the detention is not lawful.²³⁰ The necessity for ongoing detention and the imposition of non-custodial measures must be kept under judicial review.²³¹

Pre-trial detention is to be used exceptionally

Under international law, pre-trial detention is to be used only when strictly necessary and for as short as possible²³², and only if there are reasonable grounds to believe that the accused has been involved in the commission of the alleged offence and there has been established a risk by the defendant of either flight, commission of further serious offences, or interference with the course of justice.²³³ The presumption in favour of pre-trial release is a safeguard to protect arbitrary interference with the right to be presumed innocent; the right to liberty and security of the person; the right to a fair trial; and the right to full equality before the law. The burden is on the State to show why the defendant cannot be released and why alternatives to detention are not appropriate to the public interest.²³⁴

This means, for example, that remand in custody pursuant to arrest must not only be lawful but reasonable in all the circumstances. Further, remand in custody must be necessary in all the circumstances to prevent established risks of flight, interference with evidence or the recurrence of crime.²³⁵

Arrest orders and pre-trial detention must be precautionary and not punitive

230 ICCPR article 9; ACHR article 7; ECHR article 5; Banjul Charter article 7; also, ACHPR, Communication No. 224/98, *Media Rights Agenda v. Nigeria*, 23 October to 6 November 2000, para. 43, available at: <http://hrlibrary.umn.edu/africa/comcases/224-98.html>.

231 Eur. Comm HR, *Case of Assenov and Others V. Bulgaria*, Application No. 24760/94, 10 July 1997, para. 165, available at: <http://hudoc.echr.coe.int/eng?i=001-58261>.

232 HR Committee, *CCPR General Comment No. 8: Article 9 (Right to Liberty and Security of Persons)*, 30 June 1982, No. 8, para. 3, available at: <https://www.refworld.org/docid/4538840110.html> [accessed 22 November 2019].

233 ICCPR, article 9(3); ACHR article 7(5); ECHR article 5(1); *Principles And Guidelines on The Right to a Fair Trial and Legal Assistance in Africa*, para. M(1)(e).

234 ECtHR, *Case Of Ilijkov V. Bulgaria*, App. no. 33977/96, Judgment of 26 July 2001, para. 85, available at: <http://hudoc.echr.coe.int/eng?i=001-59613>.

235 HR Committee, *Communication No. 1502/2006, Mikhail Marinich v. Belarus*, Views adopted on 16 July 2010, para. 10.4, available at: <http://hrlibrary.umn.edu/undocs/1502-2006.html>.

The IACHR states that the application of arrest orders and pre-trial detention must be precautionary and not punitive. They must be aimed at legitimate purposes and reasonably related to the ongoing criminal proceedings and cannot become penalties before trial.²³⁶ The use of preventive detention “constitutes the most severe measure that can be applied to someone charged with a crime and thus its application must be an exception, limited by the principles of legality, presumption of innocence, need, and proportionality that are essential in a democratic society”²³⁷.

States must give special consideration to negative effects of detention on work of HRDs

Where a HRD is involved, States must accord special consideration to the negative effects that could derive from the imposition of pre-trial detention on the HRD’s defense work, in the framework of their right to defend rights, as well as the right of the victims they represent to obtain justice.²³⁸

The right to challenge legality of detention non-derogable

The right to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention and to obtain appropriate and accessible remedies is a rule of customary international law which has acquired the status of *jus cogens*, which does not permit derogations.²³⁹

Arrest or detention arbitrary when lacks any legal basis

236 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 202, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

237 IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OAS/Ser.L/V/II.Doc. 66, December 31, 2011, para. 116, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

238 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 290, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

239 IACtHR, *Advisory Opinion, Judicial Guarantees in States of Emergency* (articles 27.2, 25, 8 ACHR), OC 9/87 (1987), para. 41(1), available at: http://www.corteidh.or.cr/docs/opiniones/seriea_09_ing.pdf; UN, HRC, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social And Cultural Rights, including the Right to Development: Report of The Working Group on Arbitrary Detention*, 10 January 2008, A/HRC/7/4, paras. 67, 82(a), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/100/91/PDF/G0810091.pdf?OpenElement>; UN *Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, Principle 4(22).

Arrest or detention that lacks any legal basis is unlawful and arbitrary.²⁴⁰ Detention pursuant to proceedings that are incompatible with ICCPR article 15 are necessarily arbitrary within the meaning of ICCPR article 9 (1).²⁴¹ Unauthorized confinement of prisoners beyond the length of their sentences is arbitrary as well as unlawful²⁴²; the same is true for unauthorized extension of other forms of detention.²⁴³ Continued confinement of detainees in defiance of a judicial order for their release is arbitrary as well as unlawful.²⁴⁴ Aside from judicially imposed sentences for a fixed period of time, the decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention.²⁴⁵

Detention arbitrary when imposed for the exercise of guaranteed rights and freedoms

An arrest or detention is arbitrary when used as a punishment for the legitimate exercise of the rights guaranteed by the UDHR, ICCPR or other treaty, including rights to freedom of opinion and expression, assembly, association, and religion, and the right to privacy.²⁴⁶

240 HR Committee, Communication No. 414/1990, *Mika Miha v. Equatorial Guinea*, Views adopted on 8 July 1994, para. 6.5, available at: <http://hrlibrary.umn.edu/undocs/html/vws414.htm>.

241 HR Committee, Communication No. 1629/2007, *Fardon v. Australia*, Views adopted on 18 March 2010, para. 7.4 (2), available at: <http://hrlibrary.umn.edu/undocs/1629-2007.html>.

242 See HR Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights : concluding observations of the Human Rights Committee : Brazil*, 1 December 2005, CCPR/C/BRA/CO/2, para. 16, available at: <https://www.refworld.org/docid/4537779f0.html> [accessed 22 November 2019].

243 See, for example, HR Committee, Communication No. 856/1999, *Chambala v. Zambia*, Views adopted on 8 July 1994, para. 7.3, available at: <http://hrlibrary.umn.edu/undocs/856-1999.html>; HR Committee, Communication No. 138/1981, *Mpandanjila et al. v. Zaire*, Views adopted on 26 March 1986, para. 10, available at: <http://hrlibrary.umn.edu/undocs/session41/138-1983.htm>.

244 *Chambala v. Zambia*, *ibid.*

245 HR Committee, *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para. 12, available at: <https://www.refworld.org/docid/553e0f984.html> [accessed 22 November 2019].

246 *Ibid.*, para. 17.

In *Khadzhiyev and Muradova v. Turkmenistan*, the HR Committee found that a series of actions taken by the State party leading up to and including her arrest were aimed at intimidating and silencing her, explicitly targeting her activities as a HRD and journalist. The HR Committee noted the televised statements of the then-President Niyazov and high officials and their call for the condemnation of Ms. Muradova for her human rights and journalistic work and found that Ms. Muradova was arbitrarily arrested and detained for her journalistic and human rights work, in violation of her rights under ICCPR articles 9 (1) and 19.²⁴⁷

In the view of UN SR on the Promotion and Protection of the Right to Freedom of Opinion and Expression Frank La Rue, imprisoning individuals for seeking, receiving and imparting information and ideas can rarely be justified as a proportionate measure to achieve one of the aims identified under ICCPR article 19(3).²⁴⁸

The IACHR considers that States must guarantee that no HRD will be subjected to detention or imprisonment for causes and by methods which, even if considered legal, may be incompatible with respect for the fundamental rights of the person for being, among other things, unreasonable, unforeseeable, or lacking proportionality.²⁴⁹ In this regard, a detention based exclusively on the activity of human rights advocacy does not meet the requirements of reasonability and proportionality established by international standards.²⁵⁰

Indefinite detention without due process is arbitrary

The IACHR, the WGAD, the UN SRs and the OHCHR have all considered that

247 HR Committee, Communication No. 2252/2013, *Annadurdy Khadzhiyev and Ogulsapar Muradova v. Turkmenistan*, Views adopted on 6 April 2018, para. 7.7, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F122%2FD%2F2252%2F2013&Lang=en.

248 UN HRC, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, 16 May 2011, A/HRC/17/27, para. 36, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/132/01/PDF/G1113201.pdf?OpenElement>.

249 IACHR, Report on the situation of human rights defenders in the Americas, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 49, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

250 *Ibid.*

continued and indefinite detention of individuals without due process is arbitrary and constitutes a clear violation of international law.²⁵¹

The HR Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by ICCPR article 7.²⁵²

Torture and inhumane treatment

The right to personal security protects interests in bodily and mental integrity that are also protected by ICCPR article 7 (freedom from torture and inhumane treatment).²⁵³ The aim of the provisions of ICCPR article 7 is to protect both the dignity and the physical and mental integrity of the individual. In the HR Committee's view, the prohibition against torture and inhumane treatment under ICCPR article 7 extends to corporal punishment and includes excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.²⁵⁴

It is not sufficient for the implementation of ICCPR article 7 to prohibit such treatment or punishment or to make it a crime. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by ICCPR article

251 IACHR, WGAD, UN Rapporteur on Torture, UN Rapporteur on Human Rights and Counter-Terrorism, and UN Rapporteur on Health Reiterate Need to End the Indefinite Detention of Individuals at Guantánamo Naval Base in Light of Current Human Rights Crisis, May 1, 2013, available at: https://www.oas.org/en/iachr/media_center/PReleases/2013/029.asp; and the Working Group on Arbitrary Detention, *Opinions adopted by the Working Group on Arbitrary Detention at its 66th session (April 29 – May 3, 2013)*, A/HRC/WGAD/2013/10, July 25, 2013, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/159/26/PDF/G1315926.pdf?OpenElement>.

252 HR Committee, CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 6, available at: <https://www.refworld.org/docid/453883fb0.html> [accessed 25 November 2019].

253 HR Committee, General comment no. 35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35, para. 56, available at: <https://www.refworld.org/docid/553e0f984.html> [accessed 22 November 2019].

254 HR Committee, CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para. 5, available at: <https://www.refworld.org/docid/453883fb0.html> [accessed 25 November 2019].

7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.²⁵⁵ The prohibition in article 7 is complemented by the positive requirements of ICCPR article 10(1), which stipulates that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

In the view of IACHR, the State’s obligation to ensure freedom from inhumane treatment is not limited to providing material measures to protect life and personal integrity, but entails the obligation to act to address the structural causes that have a detrimental impact on the security of the persons threatened.²⁵⁶ The IACHR considers that, in contexts of aggression and systematic acts of harassment of HRDs, the obligation to efficiently and effectively investigate and punish the persons responsible “is essential to ensure that the risk these persons run is identified and eradicated”.²⁵⁷

No derogation permitted from right to freedom from torture or inhumane treatment

The right to freedom from torture and inhumane treatment permits no limitation, even in times of public emergency.²⁵⁸

Prolonged incommunicado detention violation of rights to security of person and fair trial

Arbitrary detention creates risks of torture and ill-treatment, and several of the procedural guarantees in ICCPR article 9 serve to reduce the likelihood of such risks.²⁵⁹ Prolonged incommunicado detention violates article 9 and

255 Ibid., para. 2.

256 IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, Doc. 5 rev. 1, 7 March 2006, para. 47, available at: <http://www.cidh.org/countryrep/Defenders/defenderschap1-4.htm#IV>.

257 Ibid.

258 ICCPR article 4(2); ACHR article 27(2); ECHR article 15(2). *The Banjul Charter does not contain a derogation clause.*

259 HR Committee, *General comment No. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/35, para. 56, available at: <https://www.refworld.org/docid/553e0f984.html> [accessed 22 November 2019]; HR Committee, *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, para. 2, available at: <https://www.refworld.org/docid/453883fb0.html> [accessed 25 November 2019].

The background of the entire page is a photograph of police officers in riot gear. They are wearing helmets with visors and holding black batons. The image is slightly out of focus, emphasizing the text overlay.

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The primary duty of law enforcement officials – meaning any actor officially tasked with exercising a law enforcement function, including police, gendarmerie, military or private security personnel – is to protect the safety of the public.

ACHPR, General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)(2015), para. E27.

would generally be regarded as a violation of ICCPR article 7.²⁶⁰

Violation of right to timely information regarding death in custody of family member

The prohibition in ICCPR article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.²⁶¹

In *Khadzhiyev and Muradova v. Turkmenistan*, the HR Committee found that the anguish and mental stress caused by the State's failure to provide the author with any information regarding the circumstances surrounding the death in custody of his sister amounted to a violation of ICCPR article 7.²⁶²

Duty to prevent excessive use of force by State agents

Where undue force is used against HRDs by state security forces or in cases of police response to social protest, criminalization of HRDs may result when these actions result in arrests, criminal investigations or prosecutions of HRDs. HRDs are also at risk of threats to personal security while being detained.

The right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained.²⁶³ Under the *UN Code of Conduct for Law Enforcement Officials*, paragraphs 2 and 3, "law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons" and "may use force only when strictly necessary and to the extent required for the performance of their duty".

260 CCPR General Comment No. 35, *ibid.*, para. 56.

261 HR Committee, CCPR General Comment No. 20: Article 7 (*Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment*), 10 March 1992, para. 5, available at: <https://www.refworld.org/docid/453883fb0.html> [accessed 25 November 2019].

262 HR Committee, Communication No. 2252/2013, *Annadurdy Khadzhiyev and Ogulsapar Muradova v. Turkmenistan*, Views adopted on 6 April 2018, para. 7.6, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F122%2FD%2F2252%2F2013&Lang=en.

263 HR Committee, UN Human Rights Committee (HRC), General comment no. 35, Article 9 (*Liberty and security of person*), 16 December 2014, CCPR/C/GC/35, para. 9, available at: <https://www.refworld.org/docid/553e0f984.html> [accessed 22 November 2019].

The State has a duty to take all reasonable precautionary steps to protect life and prevent excessive use of force by its agents. Under the Banjul Charter, this duty includes, but is not limited to: the provision of appropriate equipment and training; careful planning of individual operations; and the adoption of a clear legislative framework for the use of force by law-enforcement and other actors that complies with international standards, including the principles of necessity and proportionality.²⁶⁴

The use of potentially lethal force for law enforcement purposes is an extreme measure²⁶⁵, which should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat²⁶⁶. It cannot be used, for example, in order to prevent the escape from custody of a suspected criminal or a convict who does not pose a serious and imminent threat to the lives or bodily integrity of others. The intentional taking of life by any means is permissible only if it is strictly necessary in order to protect life from an imminent threat.²⁶⁷

The use of force at public demonstrations must be an exception and strictly limited²⁶⁸

When warranted to protect the public, a State may disperse an assembly that turns violent, provided that such limits are governed by the principles of legality, necessity, and proportionality and authorities use only those measures that are safest and least harmful to the demonstrators.²⁶⁹ The

264 ACHPR, *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)(2015)*, para. E27, available at: <https://www.achpr.org/legalinstruments/detail?id=10>.

265 Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 Dec. 1979),
Commentary to Article 3.

266 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, para. 9; HR Committee, *General Comment No. 36, Article 6: Right to life*, CCPR/C/GC/36, 30 October 2018, para. 12, available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf

267 *General Comment No. 36*, *ibid.*, para. 12.

268 See Lois Leslie, *The Right to Dissent: International law obligations to respect, protect and fulfill the right to participate in public affairs by engaging in criticism, opposition and dissent*, LRWC, April 2017, available at: <https://www.lrwc.org/library/know-your-rights-index/right-to-dissent/>.

269 UN SR on the Protection and Promotion of the Right to Freedom of Opinion and

use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.²⁷⁰

Even if acts of violence occur while persons are exercising rights to freedom of peaceful assembly, participants retain their rights to bodily integrity and other rights, and force may not be used except in accordance with the principles of necessity and proportionality. Firearms may never be used simply to disperse an assembly.²⁷¹

The IACHR has held that States should establish administrative controls to ensure that, in public protests, force is used only on an exceptional basis and that measures for planning, prevention and investigation of cases in which abuse of force may have occurred should be adopted.²⁷² Among others, the proposed administrative controls include:

- a) implementation of mechanisms to prohibit, in an effective manner, the use of lethal force as a recourse in public demonstrations;
- b) implementation of an ammunition registration and control system;
- c) implementation of a communications records system to monitor operational orders, those responsible for them, and those carrying them out;²⁷³

Expression and SR for Freedom of Expression of the OAS IACHR, *Joint declaration on violence against journalists and media workers in the context of protests*, September 13, 2013,

available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artiD=951&IID=1>.

270 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,

paras. 13-14. UN HRC, *Report of the United Nations High Commissioner for Human Rights on Effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests*, 21 January 2013, A/HRC/22/28, para. 13, available at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.28.pdf>.

271 ACHPR, *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)*(2015), para. E28, available at: <https://www.achpr.org/legalinstruments/detail?id=10>.

272 IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V.II.124, Doc. 5 rev. 1, 7 March 2006, para. 68, available at: <http://www.cidh.org/countryrep/Defenders/defenderschap1-4.htm>.

273 Ibid. See also, UN, *General Assembly, Human rights defenders*, 5 September 2006, A/61/312, para. 98, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/488/07/PDF/N0648807.pdf?OpenElement>.

A low-angle photograph of a bronze statue of Lady Justice, looking upwards against a blue sky with scattered white clouds. The statue's face is in the upper right, and its hand holding a sword is visible in the lower left. A dark blue rectangular box is overlaid on the left side of the image, containing white text and a large white quotation mark.

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One of the major and systematic concerns raised by defenders in relation to violations committed by non-State actors is the question of impunity... ending impunity is a sine qua non condition for ensuring the security of defenders.

UN General Assembly, Human rights defenders, 4 August 2010, A/65/223, para. 42.

Impunity in investigations related to violations of the rights of HRDs

Failure by a State to investigate attacks on HRDs by state and non-state actors violates the rights to life and personal integrity of HRDs and fosters a climate of fear and intimidation among HRDs, impeding the human rights advocacy. The obligation of States to conduct a prompt and impartial investigation or inquiry whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction is affirmed in article 3(5) of the Declaration on Human Rights Defenders. Failure by a State Party to investigate allegations of violations could in itself give rise to a separate breach of ICCPR article 2(3).

The IACtHR defines impunity as “the failure to investigate, prosecute, take into custody, try and convict those responsible for violations of rights protected by the [ACHR]”.²⁷⁴ Under the ACHR, a State has the obligation to use all the legal means at its disposal to combat impunity, which fosters an environment of repeated human rights violations and leaves victims and their relatives defenceless.²⁷⁵

In *Case of Kawas Fernández v. Honduras*, the IACtHR found that the wrongful death of Ms. Kawas-Fernández caused by State agents in retaliation for her work in defence of the environment had an intimidating effect on other HRDs and that the intimidating effect is “reinforced and exacerbated by the fact that the crime remains unpunished”.²⁷⁶

In 2016, the HRC called upon States to combat impunity

by investigating and pursuing accountability for all attacks and threats by State and non-State actors against any individual, group or organ of society that is defending human rights, including against family members, associates and legal representatives, and by condemning publically all cases of violence, discrimination, intimidation and

²⁷⁴ IACtHR, *Case of Loayza-Tamayo v. Peru*, Judgment of November 27, 1998 (Reparations and Costs), para. 170, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_42_ing.pdf.

²⁷⁵ *Ibid.*

²⁷⁶ IACtHR, *Case of Kawas-Fernández v. Honduras*, Judgment of April 3, 2009 (Merits, Reparations and Costs), paras. 152-153, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf.

reprisals against them;²⁷⁷

The state is responsible internationally for human rights violations when private groups act as state agents, or with the approval, acquiescence, or tolerance of state agents.²⁷⁸ Where officers of the state security forces are investigated for violations against HRDs, they should not be investigated or tried by military tribunals, “for they are not service-related activities”.²⁷⁹

Protracted criminal proceedings

Further violations of HRD rights occur when States employ tactics designed to delay and extend the illegitimate criminal processes brought against HRDs, for example, through inordinately long investigations, numerous applications to the court or failure of judges to appear. Such tactics further violate rights to personal integrity as well as rights to a fair hearing within a reasonable time.

Even when a criminal case does not lead to conviction and punishment, the IACHR has found that the mere fact of being subjected to protracted proceedings based on ambiguous or vague definition of a crime can constitute violation of the principle of legality.²⁸⁰

In *Case of Jose Francisco Gallardo v. Mexico*, the IACHR found that an extensive series of investigations, prosecutions and trials against General Gallardo over a period of seven years, where he had been acquitted in each case and was still in custody, established a violation of rights to be presumed innocent, a fair trial and judicial protection, as guaranteed by the ACHR Articles 8 (fair trial rights) and 25 (right to judicial protection).²⁸¹

277 UN HRC, *Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights*: resolution /adopted by the HRC, 24 March 2016, A/HRC/RES/31/32, para. 6, available at: <https://undocs.org/A/HRC/RES/31/32>.

278 IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 127, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

279 *Ibid.*, para. 111.

280 IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66 31, December 2011, para. 95, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

281 IACHR, *Gallardo Rodríguez v. Mexico*, Case 11.430, Report No. 43/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 485 (1997). REPORT N° 43/96 CASE 11.430 EXICO October 15, 1996, Inter-American Commission on Human Rights (IACHR), 15 October

In another case involving criminal defamation, the IACtHR found a violation of ACHR Article 8(1) guarantee of trial within a reasonable time when the length of the proceedings (almost nine years) was not caused by the defendant or required by the complexity of the case.²⁸²

In determining a reasonable time for the purposes of the right to a hearing under ACHR article 8(1), the following elements must be considered:

- a) the complexity of the matter,
- b) the procedural activity of the defendant(s),
- c) the conduct of judicial authorities, and
- d) the impairment to the legal situation of the defendant(s).²⁸³

With regard to the final element, the IACtHR has determined that criminal or disciplinary proceedings against HRDs generate effects that extend to family and the wider community and create a chilling effect that discourages others from engaging in the defense of rights.²⁸⁴ The IACHR believes that the condition of being a HRD is particularly important to determine whether a process has respected the guarantee of a reasonable timeframe, given that “prolonged criminal proceedings particularly affect the defender and generate a deterrent effect on the exercise of the right to defend human rights”²⁸⁵ In addition to being a basic element of the right to a fair trial, the guarantee that no one may be subject to a criminal proceeding indefinitely, is “essential to prevent unwarranted criminal proceedings from preventing HRDs from doing their work”²⁸⁶.

1996, paras 62-63, available at: <https://www.refworld.org/cases,IACHR,3ae6b61d10.html> [accessed 25 November 2019].

282 IACtHR, *Case of Kimel v. Argentina*, Judgment of May 2, 2008 (Merits, Reparations and Costs), para. 97, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf.

283 IACtHR, *Case of Kawas-Fernández v. Honduras*, Judgment of April 3, 2009 (Merits, Reparations and Costs), para. 112, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf.

284 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 178, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

285 *Ibid.*, para. 179.

286 IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66 31, December 2011, para. 111, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

Illegitimate use of other precautionary measures

The use of detention or other measures within criminal proceedings to disrupt human rights work violates rights of HRDs, including the presumption of innocence, when they constitute a punishment imposed before final judgment.²⁸⁷ Among the measures wrongly imposed on HRDs, the IACHR has identified the imposition of bonds as a condition of release where HRDs cannot afford to pay them, leaving them no choice but to accept detention or other restrictions on their freedom which may include prohibitions on protest, contact with certain people, attendance at certain places, and leaving the country, and reporting requirements.²⁸⁸

Precautionary measures must be imposed in accordance with the principles of legality, necessity and proportionality

Alternative or substitute detention measures must take into account IHRL standards, including the negative impact such measures would have on the legitimate right to defend human rights and obtain justice for victims.²⁸⁹ Such measures should aim to secure the process and must be used only when there is a risk of flight, obstruction of justice or reoccurrence. Detention should not be used as a barrier to prevent or restrict the promotion and protection of human rights by HRDs. Since they restrict the enjoyment of other rights, such as rights to freedom of movement, freedom of association and peaceful assembly and right to protest, they must be in accordance with the principles of legality, necessity and proportionality.²⁹⁰

The IACHR advises that, before applying precautionary measures to HRDs, such as the use of bonds, restrictions on movement or reporting requirements, in the framework of a criminal investigations, States must:

- Ensure that such measures meet the standards of the [ACHR] and the American Declaration, in particular the principles of legality, the

²⁸⁷ IACHR, *Report on the use of pretrial detention in the Americas*, OAS/Ser.L/V/II.Doc.46/13, adopted on December 30, 2013, para. 171, available at: <https://www.oas.org/en/iachr/pdl/reports/pdfs/Report-PD-2013-en.pdf>.

²⁸⁸ IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, paras. 207-208, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

²⁸⁹ *Ibid.*, para. 211-212.

²⁹⁰ *Ibid.*, para. 211.

presumption of innocence and need, and that it is not arbitrary. In considering these elements where a HRD is involved, the State must accord special consideration to the negative effects that could derive from this imposition on the HRD's defense work, in the framework of their right to defend rights, as well as the right of the victims they represent to obtain justice;

- Only issue clear and succinct arrest warrants, only related to the specific facts that have been impartially investigated;
- Apply pretrial detention only exceptionally and only in instances in which there is an established risk of flight or obstruction of justice, and in accordance with the principles of legality, presumption of innocence, necessity and proportionality;
- Ensure that the application of bail responds to the criteria of material equality;
- Avoid applying alternative measures that directly interfere with the HRD's right to defend human rights; and
- Adequately regulate the use and application of the precautionary measures and prevent these from being used to hinder the work developed by HRDs.²⁹¹

Attacks on privacy, honour and dignity of HRDs

To do their work freely, HRDs need adequate protection to prevent arbitrary interference with their private lives and attacks on their honour and dignity.²⁹² This right includes an entitlement to state protection from harassment and intimidation, assaults, surveillance, interference with correspondence and telephone and electronic communications, and illegal intelligence activities.²⁹³

Stigmatizing statements

Stigmatizing statements made or condoned by State authorities

²⁹¹ *Ibid.*, para. 290.

²⁹² IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 94, available at:

<http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

²⁹³ *Ibid.*

discrediting the work, credibility or integrity of HRDs may be an aspect of the criminalization process. Some examples reported are HRDs described as “terrorists”, “enemies of the State”, “political opponents”, “criminals”, “defenders of criminals”, conspirators”, “enemies of development”, “eco-terrorists”, and “counter-revolutionaries.”²⁹⁴ Women HRDs are vulnerable to insinuations about their sexuality, sexual orientation and reproductive or marital status.²⁹⁵ Indigenous peoples defending their rights and their leaders and communities are accused of being “anti-development” and acting against the national interest.²⁹⁶ Online, troll networks are reported to have expanded their tactics to include full-blown misinformation campaigns to discredit and stigmatize HRDs.²⁹⁷

Stigmatisation may also be directed at the activities of HRDs or portray the causes they promote as criminal, subversive or treacherous. Such actions can serve as a justification for ungrounded criminal proceedings against HRDs, while the detention and prosecution to which HRDs are subjected can also cause stigmatisation. The arrest, detention and prosecution of many HRDs also contributes to their stigmatization, and to their being perceived as troublemakers.²⁹⁸ Criminal prosecutions can have the effect of stigmatizing HRDs regardless of whether they are convicted.

Such stigmatizing statements are most frequently directed at HRDs in vulnerable situations, e.g., women HRDs operating in rural communities who are slandered and subject to rumours regarding their sexual or emotional lives; organizations that promote the rights of the LGBTI population accused of undermining the family, morality or traditional values; or HRDs working

294 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 80, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

295 UN HRC, *Situation of women human rights defenders: Report of the Special Rapporteur on the situation of human rights defenders*, 10 January 2019, A/HRC/40/60, para. 38, available at: <https://undocs.org/en/A/HRC/40/60>.

296 UN HRC, *Report of the Special Rapporteur on the rights of indigenous peoples*, 10 August 2018, A/HRC/39/17, para. 47, available at: <https://undocs.org/en/A/HRC/39/17>.

297 Amnesty International, *Human Rights Defenders under Threat: A Shrinking Space for Civil Society*, 2017, p. 16, available at: <https://www.amnesty.org/en/documents/act30/6011/2017/en/>.

298 UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders*, Margaret, 30 December 2009, A/HRC/13/22, para. 32, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/13/22.

on environmental, land and climate crisis issues accused of irresponsibly opposing development or acting as “destabilizing elements”.²⁹⁹

Accusations by state actors can also dissuade others from speaking out in defense of human, environmental and land rights, in fear or criminal sanctions. Similarly, accusations by high-ranking state authorities may encourage attack on HRDs by state and non-state actors or initiation of unfounded criminal proceedings against HRDs.³⁰⁰

Stigmatizing statements can violate the rights of HRDs to humane treatment, honour and dignity, and the presumption of innocence. The repetition of stigmatizing statements may contribute to a climate in which the rights of HRDs to life and security of the person are threatened where public officials or segments of society interpret such statements as authorizing or supporting the commission of attacks on HRDs.³⁰¹ Such a climate further reduces the ability of all HRDs to carry out their work.

In *Case of Jose Francisco Gallardo v. Mexico*, the IACHR found that statements made by the Mexican government and communiqués issued in which General Gallardo was blamed for deeds not proven, demonstrated that he had been subjected to public harassment, resulting in injury to his good name and reputation and attacks on his honour and dignity, in violation of ACHR Article 11.³⁰²

Interference with the right to privacy - Information gathering and intelligence

Amnesty International reports that targeted surveillance of HRDs is

299 *Protection International, Criminalisation of Human Rights Defenders: Categorisation of the Problem and Measures in Response (Brussels, 2015)*, p. 6, available at: https://www.protectioninternational.org/wp-content/uploads/2012/02/ProtectionInternational_English_Update.pdf.

300 *Ibid.*, p. 8.

301 IACtHR, *Ríos et al v. Venezuela*, Judgment of January 28, 2009 (Preliminary Objection, Merits, Reparations and Costs), para. 143, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf.

302 IACHR, *Gallardo Rodríguez v. Mexico*, Case 11.430, Report No. 43/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 485 (1997). REPORT Nº 43/96 CASE 11.430 EXICO October 15, 1996, Inter-American Commission on Human Rights (IACHR), 15 October 1996, para. 76, available at: <https://www.refworld.org/cases,IACHR,3ae6b61d10.html> [accessed 26 November 2019].

commonplace in countries all over the world.³⁰³ Actions taken by States to control or intimidate HRDs through surveillance and the gathering of data on them or their families can lead to the initiation of criminal proceedings against HRDs. For example, the SR on the rights of Indigenous peoples reports that Indigenous institutions and organizations have been subject to illegal surveillance, registration and confiscations under various pretexts, such as the control of foreign donor funding.³⁰⁴

States have also enacted legislation to prevent people from gaining access to and use of encryption tools and services to protect their private communications from surveillance.³⁰⁵ Front Line Defenders reports that in 2018 digital security attacks on HRDs were widespread, including social media attacks, trolling and hacking or blocking of social media accounts, phone and email surveillance (frequently targeting higher risk groups including LGBTI defenders, women HRDs and environmental activists).³⁰⁶ The report indicates that China “continued to lead the way in its digital surveillance of citizens and in 2018 it expanded its surveillance capabilities” to include high precision facial recognition software “aided by integration with the country’s increasingly comprehensive database of information on Chinese citizens”.³⁰⁷

Even where targeted surveillance of HRDs cannot be proven, the fact of living under the constant threat of possible surveillance causes HRDs to self-censor out of fear and may constitute a human rights violation.³⁰⁸

303 Amnesty International, *Human Rights Defenders under Threat: A Shrinking Space for Civil Society*, 2017, p. 19, available at: <https://www.amnesty.org/en/documents/act30/6011/2017/en/>.

304 UN HRC, *Report of the Special Rapporteur on the rights of indigenous peoples*, 10 August 2018, A/HRC/39/17, para. 51, available at: <https://undocs.org/en/A/HRC/39/17>.

305 Amnesty International, *Human Rights Defenders under Threat: A Shrinking Space for Civil Society*, 2017, p. 20, available at: <https://www.amnesty.org/en/documents/act30/6011/2017/en/>.

306 Front Line Defenders, *Front Line Defenders Global Analysis 2018* (2019), p.9, available at: https://www.frontlinedefenders.org/sites/default/files/global_analysis_2018.pdf.

307 *Ibid.*

308 Amnesty International, *Human Rights Defenders under Threat: A Shrinking Space for Civil Society*, 2017, p. 19, available at: <https://www.amnesty.org/en/documents/act30/6011/2017/en/>.

Under *ICCPR* Article 17(1), no one shall be subjected to “arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”. *ICCPR* Article 17(2) provides that everyone “has the right to the protection of the law against such interference or attacks”.

This right must be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons.³⁰⁹ The term “unlawful” means that no interference can take place except in cases envisaged by the law. Interference authorized by States can take place only on the basis of law, which itself must comply with the provisions, aims and objectives of the *ICCPR*.³¹⁰ According to the HR Committee, the expression “arbitrary interference” is also relevant to the protection of the right provided for in *ICCPR* Article 17 and can extend to interference provided for under law:

The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the [ICCPR] and should be, in any event, reasonable in the particular circumstances.³¹¹

Even with regard to interferences that conform to the *ICCPR*, legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis.³¹² *ICCPR* Article 17 “requires that the integrity and confidentiality of correspondence should be guaranteed de jure and de facto”. Surveillance should be prohibited.³¹³

The right to “private life” under *ECHR* Article 8(1) covers the physical and moral integrity of the person.³¹⁴ The right to privacy does not merely compel

309 HR Committee, *CCPR General Comment No. 16: Article 17 (Right to Privacy)*, *The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988, para. 1, available at: <https://www.refworld.org/docid/453883f922.html> [accessed 26 November 2019].

310 *Ibid.*, para. 3.

311 *Ibid.*, para. 4.

312 *Ibid.*, para. 8.

313 *Ibid.*

314 *ECtHR, Case of X and Y v. The Netherlands*, App. no. 8978/80, Judgment of 26 March

the State to abstain from arbitrary interference in one's private or family life, but also imposes positive obligations on the State to secure respect for private life even in the sphere of the relations of individuals between themselves.

Under the ACHR, the right to privacy implies the prohibition of all arbitrary or abusive interference in the private life of individuals, including the privacy of their families, their home, or their correspondence.³¹⁵

In a joint report on the proper management of assemblies, the UN SRs warn that States must guard against arbitrary or unlawful interferences with privacy in the collection and processing of personal information in relation to assemblies:

Legislation and policies regulating the collection and processing of information relating to assemblies or their organizers and participants must incorporate legality, necessity and proportionality tests. Given the intrusiveness of such methods, the threshold for these tests is especially high. Where they interfere with the exercise of rights, data collection and processing may represent a violation of the rights to freedom of peaceful assembly and expression.³¹⁶

Administrative and civil sanctions

States have also employed other branches of the law to attack, paralyse or obstruct the activities of HRDs prior to, parallel with or without criminal proceedings.

Violation of the right to freedom of movement

When acts of intimidation reach the point at which a HRD is forced to leave

1985, para. 22, available at: <http://hudoc.echr.coe.int/eng?i=001-57603>.

315 IACtHR, *Case of Escher et al. v. Brazil*, Judgment of July 6, 2009 (*Preliminary Objections, Merits, Reparations, and Costs*), para. 113, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_200_ing.pdf.

316 UN HRC, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, 4 February 2016, A/HRC/31/66, para. 74, available at: <https://www.refworld.org/docid/575135464.html> [accessed 27 November 2019].

the place where he or she is carrying out the work of defending human rights, the person's freedom of movement³¹⁷ may be infringed.

The IACtHR has found that the right to freedom of movement and residence may be violated when a HRD is a victim of threats or harassment and the State does not provide the guarantees necessary to allow the person to safely move freely and/or reside in the territory in question, even when those threats and acts of harassment are carried out by non-State actors.³¹⁸ A violation of the right to move freely restricts the ability of HRDs to engage in human rights advocacy, given the need to work closely with the victims they represent in order to better understand and respond to their problems.³¹⁹

State measures preventing a visit to a foreign country merely because a person is a HRD violate the spirit and intention of the system established by the OAS to support and strengthen the work of HRDs.³²⁰ Rather, the effective implementation of the right to promote and protect human rights requires States to ensure the permits and conditions necessary for HRDs to be able to develop their work in their territory, independent of a person's national origin, and facilitate visas for access to the jurisdiction for those cases in which defenders must travel to attend international meetings or similar events.³²¹

Criminalization of expression

The right to freedom of expression, includes rights to: a/ seek, obtain, receive and hold information about all human rights and fundamental freedoms; b/

317 UDR, article 13; ICCPR article 12; ACHR article 22; Banjul Charter article 12; ECHR article 2; Declaration on Human Rights Defenders articles 5 (c) and 9 (4)).

318 IACtHR, *Case of Valle-Jaramillo et al. v. Colombia*, Judgment of November 27, 2008 (Merits, Reparations and Costs), para. 139, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_192_ing.pdf.

319 IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OAS/Ser.L/V/II.Doc. 66, December 31, 2011, para. 47, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

320 IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 105, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

321 *Ibid.*

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Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a [condition] *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.

IACtHR, Advisory opinion oc-5/85 of November 13, 1985: Compulsory membership in an association prescribed by law for the practice of journalism (arts. 13 and 29 American Convention on Human Rights), para. 70

express views and opinions that offend, shock or disturb;³²² c/ information as to how those rights and freedoms are given effect in domestic legislative, judicial and administrative systems; and, d/ freely receive, impart or disseminate information and ideas. The full range of expression rights is vital to the work of HRDs, as reflected in articles 6 and 14 of the Declaration on Human Rights Defenders. As a component of these rights, the Declaration affirms the right to participate in public hearings, procedures and public trials to form an opinion regarding the implementation of both domestic legal provisions and international obligations (article 9), and the ability to make criticisms and proposals for improving the State's ability to promote, protect and ensure human rights and fundamental freedoms (article 8). Importantly, the Declaration also protects the right to develop and discuss new human rights ideas, "allowing all people to be part of the progressive development of human rights ideas and to be actively engaged in setting new directions for the human rights project".³²³

The right to freedom of opinion and expression, like all rights, imposes legal obligations on States: (a) to respect that right, or to refrain from interfering with the enjoyment of that right; (b) to protect that right or to exercise due diligence in order to prevent, punish, investigate and provide redress for harm caused by private persons or entities; and (c) to give effect to that right or to take positive or proactive measures to permit the realization of that right.³²⁴

When HRDs are restricted in the exercise of their rights to freedom of

322 See, for example, *HR Committee, Malcolm Ross v. Canada*, CCPR/C/70/D/736/1997, 26 October 2000, available at: <https://www.refworld.org/cases/HRC,3f588efc0.html> [accessed 26 November 2019]; Office of the SR for Freedom of Expression of the IACHR, "The Inter-American Legal Framework regarding the Right to Freedom of Expression", OEA Ser.L/V/II, December 30, 2009, paras. 30-31, available at: <http://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>; ECtHR, *Case of Perna v. Italy*, App. no. 48898/99, Judgment of 6 May 2003, para. 39, available at: <http://hudoc.echr.coe.int/eng?i=001-61075>.

323 UN General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 21, available at: <https://undocs.org/A/73/215>.

324 UN HRC, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 20 April 2010, A/HRC/14/23, para. 25, available at: <https://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.pdf>.

expression, the exercise of the right is restricted not only in its individual aspect but also in its social or collective aspect.³²⁵ The shutting down of internet and social media platforms, for example during social protests or contested elections, effectively prevents millions of individuals from being able to exercise their rights to freedom of expression and access to information.³²⁶

In resolution 32/13, the HRC, affirming that people have the same rights online as they do offline, condemns unequivocally

all human rights violations and abuses, such as torture, extrajudicial killings, enforced disappearances and arbitrary detention, expulsion, intimidation and harassment, as well as gender-based violence, committed against persons for exercising their human rights and fundamental freedoms on the Internet, and calls upon all States to ensure accountability in this regard;

Also condemns unequivocally measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law, and calls upon all States to refrain from and cease such measures;³²⁷

No restriction permitted on freedom of opinion

IHRL does not permit any restriction under any circumstances on the holding of an opinion or belief and prohibits coercion to adopt an opinion or belief contrary to one's own. HR Committee General Comment 34 provides:

Paragraph 1 of [ICCPR] article 19 requires protection of the right to

³²⁵ IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 79, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

³²⁶ See, ACHPR, *Press Release by the Special Rapporteur on Freedom of Expression and Access to Information in Africa on the Continuing Trend of Internet and Social Media Shutdowns in Africa*, Banjul, 29 January 2019, at: <https://www.achpr.org/pressrelease/detail?id=8>.

³²⁷ UN HRC, *The promotion, protection and enjoyment of human rights on the Internet: resolution/adopted by the HRC, 1 July 2016, A/HRC/RES/32/13*, paras. 1, 9-10, available at: <https://undocs.org/A/HRC/RES/32/13>.

hold opinions without interference. This is a right to which the [ICCPR] permits no exception or restriction. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights under the [ICCPR] on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion. The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of [ICCPR] article 19, paragraph 1.

Any form of effort to coerce the holding or not holding of any opinion is prohibited. Freedom to express one's opinion necessarily includes freedom not to express one's opinion. [footnotes omitted]³²⁸

Prohibition of speech that constitutes incitement to discrimination, hostility or violence

Under Article 20 of the ICCPR, States are required to prohibit by law any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Strict test for restrictions on freedom of expression

The blocking by States of information collected or communicated by HRDs that is sensitive or politically threatening is a violation of IHRL. For restrictions on freedom of expression to be legitimate, they must meet a strict tripartite test, which only allows restrictions that are:

- (1) defined in a precise and clear manner by a pre-existing law, in the formal and material sense;
- (2) directed at achieving objectives consistent with or authorized by the treaty; and

328 HR Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, paras. 9-10, available at: <https://www.refworld.org/docid/4ed34b562.html> [accessed 26 November 2019].

- (3) necessary in a democratic society to achieving the objective sought, proportionate to the aim pursued and appropriate to serve the said objective.³²⁹

The IACHR has stated that this test is applied with a special intensity when prohibitions are established through criminal law.³³⁰

The HR Committee adds that any law restricting freedom of expression must comply with the principles in the ICCPR as a whole, and not just ICCPR article 19. For example restrictions must not be discriminatory and the penalties for breaching the law should not violate the ICCPR.³³¹ Restrictions on freedom of expression “may not put in jeopardy the right itself.”³³²

Restrictions on reporting on human rights and other political expression not permitted

Restrictions on the following aspects of the right to freedom of expression under the ICCPR are not permissible:

- (i) Discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion

329 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 94, available at: <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>. See also UN HRC, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, Frank La Rue, 20 April 2010, A/HRC/14/23, para. 79, available at: <https://undocs.org/A/HRC/14/23>.

330 *Criminalization of the Work of Human Rights Defenders*, *ibid.*, para. 95, citing IACtHR, *Case of Ivcher Bronstein v. Peru*, Judgment of February 6, 2001 (Merits, Reparations and Costs); IACtHR, *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004 (Preliminary Objections, Merits, Reparations and Costs); IACtHR, *Case of Ricardo Canese v Paraguay*, Judgment of August 31, 2004 (Merits, Reparations and Costs); IACtHR, *Case of Palamara Iribarne v. Chile*, Judgment of November 22, 2005 (Merits, Reparations and Costs); IACtHR, *Case of Kimel v. Argentina*, Judgment of May 2, 2008 (Merits, Reparations and Costs); IACHR, *1994 Annual Report, Chapter V: Report On The Compatibility Of “Desacato” Laws With The American Convention On Human Rights*. OAS/Ser.L/V/II.88. doc. 9 rev. February 17, 1995.

331 HR Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, para. 26, available at: <https://www.refworld.org/docid/4ed34b562.html> [accessed 26 November 2019].

332 *Ibid.*, para 21.

and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups;

(ii) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship;

(iii) Access to or use of information and communication technologies, including radio, television and the Internet.³³³

The IACHR and IACtHR have established that the necessity test for restrictions should be applied more strictly when dealing with expressions referring to the State, public interest issues, public officials in the exercise of their functions, candidates running for public office, or private individuals voluntarily involved in public affairs, as well as political discourse and discussions.³³⁴

The criminalization of speech that criticizes State officials, public figures or on matters of public interest

Under IHRL, political speech, speech involving matters of public interest and speech regarding public officials in the exercise of their duties and candidates for public office, have been held by the courts and treaty bodies to warrant special protection.³³⁵ While the protection of an individual's reputation from false and malicious attacks is a legitimate reason for restricting freedom of expression³³⁶, where the person whose reputation

333 UN HRC, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, 20 April 2010, A/HRC/14/23, para. 81, available at: <https://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.pdf>.

334 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 95, available at: <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

335 See HR Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, para. 20, available at: <https://www.refworld.org/docid/4ed34b562.html> [accessed 27 November 2019]; Office of the SR for Freedom of Expression of the IACHR, "The Inter-American Legal Framework regarding the Right to Freedom of Expression", OEA Ser.L/V/II, December 30, 2009, para. 32, available at: <http://www.oas.org/en/iachr/expression/docs/publications/INTER-AMERICAN%20LEGAL%20FRAMEWORK%20OF%20THE%20RIGHT%20TO%20FREEDOM%20OF%20EXPRESSION%20FINAL%20PORTADA.pdf>.

336 UN, HRC, *Report of the Special Rapporteur on the promotion and protection of the*

is being protected is a public official, a public person, or a private person who has voluntarily become involved in matters of public interest, or where criticism is aimed at government, strong words and harsh criticism will be tolerated to a greater degree by the court.³³⁷

“Desacato laws”³³⁸ (contempt laws) and criminal offenses such as defamation, slander, and libel have been used by States to prosecute, punish, and silence HRDs for reporting alleged human rights violations by state actors or reporting or expressing critical opinions about acts of public officials or public figures on issues relating to the public interest or for the poor performance of their functions and for representing people or groups accused of these acts.

For the IACHR, such measures “constitute unnecessary and disproportionate measures on the exercise of freedom of expression with regard to matters of public interest, given their silencing effect that is incompatible with a democratic society”³³⁹.

In *Kimel v. Argentina* the IACHR had found that “crimes against the honor” laws were “clearly used to limit the criticism of the actions of public officials”, which, “given the threat of being subject to criminal and pecuniary sanctions, acts as a deterrent to criticism of the actions of public officials”.³⁴⁰

right to freedom of opinion and expression, *Frank La Rue*, 4 June 2012, A/HRC/20/17, para. 83, available at: <https://undocs.org/A/HRC/20/17>.

337 See, for example, ECtHR, *Case of Thorgeir Thorgeirson v. Iceland*, App. no. 13778/88, Judgment of 25 June 1992, available at: <http://hudoc.echr.coe.int/eng?i=001-57795>; ECtHR, *Case of Jersild v. Denmark*, App. no. 15890/89, Judgment of 23 September 1994, available at: <http://hudoc.echr.coe.int/eng?i=001-57891>.

338 “Desacato” laws are defined by the IACHR as “a class of legislation that criminalizes expression which offends, insults, or threatens a public official in the performance of his or her official duties”: IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 104, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

339 *Ibid.*, para. 107.

340 IACTHR, *Case of Kimel v. Argentina*, Judgment of May 2, 2008 (Merits, Reparations and Costs), para. 59, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf.

The protection of a person's reputation should only be guaranteed by civil sanctions

The IACHR has stated that the test for legitimate limitations to freedom of expression and thought under the ACHR is “applied with a special intensity when prohibitions are established through criminal law”.³⁴¹ Thus, under the ACHR, the protection of a person's reputation should only be guaranteed through civil sanctions, i.e. not criminal sanctions, in those cases in which the person offended is a public official, a public person, or a private person who has voluntarily become involved in matters of public interest.³⁴² For the IAHCRC, the use of criminal mechanisms to punish such expressions cannot be justified by any pressing social need and is “unnecessary and disproportionate, and constitutes a means of indirect censorship given its intimidating and inhibiting effect on the debate on matters of public interests and human rights defense.”³⁴³ In particular, “special dispositions or the aggravation of sentences in the Criminal Code in order to especially protect the reputation of public officials, generally known as “desacato laws” (contempt laws), restrict freedom of expression and the right to information and are *per se* incompatible with the [ACHR]”.³⁴⁴

In 2012, UN SR Margaret Sekaggya called for States to decriminalize defamation, noting that that criminal prosecution for defamation “inevitably leads to censorship and hinders expression of dissent, in contravention of the right to freedom of expression”.³⁴⁵

Obligation to facilitate public access to information held by public bodies and to promote and facilitate human rights education

States have a positive duty to facilitate a maximum level of public access to

341 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 95, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

342 *Ibid.*, para. 102.

343 *Ibid.*

344 *Ibid.*, para. 103.

345 UN General Assembly, *Situation of human rights defenders*, 10 August 2012, A/67/292, para. 57, available at: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/67/292.

information, in particular when such information is necessary in order to expose human rights violations.³⁴⁶ The HR Committee has emphasized that any limitations on public access to information must be applied in such a way that they do not jeopardize the right itself.³⁴⁷ Certain matters should be presumed to be in the public interest, including information about human rights violations and corruption.³⁴⁸

In addition, under the Declaration on Human Rights Defenders, States have an obligation to promote and facilitate human rights education. Human rights education includes “public statements and support of public discourses about human rights defenders that recognize them as legitimate and important voices within society.”³⁴⁹

Criminalization of expression and access to information under anti-terrorism laws

Despite protections under IHRL, the right to freedom of expression has suffered the most severe adverse impact of restrictions imposed by national security and anti-terrorism laws, with HRDs exposing human rights violations by the State insisting on transparency or demanding accountability among those particularly targeted.³⁵⁰

Must be intention to incite imminent violence

Under IHRL, protecting national security or countering terrorism cannot

346 UN General Assembly, *Situation of human rights defenders*, 19 July 2017, A/72/170, para. 39, available at: <https://www.refworld.org/docid/59ad61304.html> [accessed 27 November 2019].

347 HR Committee, *General comment no. 34, Article 19, Freedoms of opinion and expression*, 12 September 2011, CCPR/C/GC/34, para. 21, available at: <https://www.refworld.org/docid/4ed34b562.html> [accessed 27 November 2019].

348 UN General Assembly, *Situation of human rights defenders*, 19 July 2017, A/72/170, para. 39, available at: <https://www.refworld.org/docid/59ad61304.html> [accessed 27 November 2019].

349 UN General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 28, available at: <https://undocs.org/A/73/215>.

350 UN General Assembly, *Human rights defenders: Note by the Secretary-General*, 18 September 2003, A/58/380, paras. 17-18, available at: <https://www.refworld.org/docid/403b132c7.html> [accessed 27 November 2019].

be used to justify restricting the right to expression unless the State can demonstrate that: (a) the restricted expression is intended or likely to incite imminent violence; and (b) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.³⁵¹ In a joint Communication to Turkey concerning misuse of counter-terrorism legislation to criminalise legitimate exercise of the right to freedom of expression, UN SRs underlined that this principle should be interpreted narrowly, giving full weight to the intent, likeliness and imminence of any violence which may result, factors which are cumulative.³⁵² The IACHR SR for Freedom of Expression noted in her 2013 report that the criminalization of speech relating to terrorism should be restricted to instances of intentional incitement to terrorism, “understood as a direct call to engage in terrorism which is directly responsible for increasing the likelihood of a terrorist act occurring, or to actual participation in terrorist acts (for example by directing them)”.³⁵³ The IACHR has indicated that the same standard should apply to cases where there is an intention to accuse a person for offenses such as treason or rebellion, or the dissemination of ideas or uncomfortable information for government authorities.³⁵⁴

Restrictions must comply with principle of legality

In 2012, SR Margaret Sekaggya reported a number of cases in which HRDs had been convicted on terrorism charges, solely on the basis of evidence of articles, blog entries and/or tweets in which the defenders called for

351 Article 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, 1 October 1995, Principles 6 and 7, available at: <https://www.refworld.org/docid/4653fa1f2.html> [accessed 27 November 2019].

352 OHCHR, Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders, Communication to Turkey, *TUR 3/2019*, 4 March 2019, p. 3, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24362>.

353 IACHR, *Annual Report of the Inter-American Commission on human rights (2013), Volume II: Annual Report Of The Office Of The Special Rapporteur For Freedom Of Expression*, December 31, 2013 OEA/Ser.L/V/II.149 Doc. 50, p. 170, available at: <http://www.oas.org/en/iachr/docs/annual/2013/informes/LE2013-eng.pdf>.

354 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 144, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

human rights reforms.³⁵⁵ Similarly, provisions criminalizing expression that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country are overly broad and restrictive.³⁵⁶ In SR Sekaggya's view, not only do such provisions limit the ability of HRDs to express opinions on human rights issues, they prevent foreknowledge and avoidance of the prohibited acts.³⁵⁷

In a joint communication to Ethiopia, UN SRs expressed concerns over a state of emergency decree which provides for a wide range of repressive measures, particularly regarding rights to freedoms of expression, association and assembly which do not appear in compliance with ICCPR articles 19 and 21.³⁵⁸ The SRs noted that an emergency measures decree, which prohibits "any incitement and communication that could cause public disturbance and riots" was overly broad and vague, allowing authorities wide discretion in limiting legitimate expression as well as access to information. The SRs further noted that prohibiting exchanges via most communication channels is a disproportionate measure that goes beyond what is strictly required.³⁵⁹

Criminalization of association, peaceful assembly and protest³⁶⁰

355 UN General Assembly, *Situation of human rights defenders*, 10 August 2012, A/67/292, para. 16, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/459/42/PDF/N1245942.pdf?OpenElement>.

356 *Ibid.*, para. 24.

357 *Ibid.*

358 OHCHR, Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders, Communication to Ethiopia, *ETH 6/2016*, 14 December 2016, pp. 2-3, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22894>.

359 *Ibid.*, p. 2.

360 See Lois Leslie, *The Right to Dissent: International law obligations to respect, protect and fulfill the right to participate in public affairs by engaging in criticism, opposition and dissent*, LRWC, April 2017, available at: <https://www.lrwc.org/library/know-your-rights-index/right-to-dissent/>.

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The right to peaceful assembly is a fundamental pillar of democratic governance and open societies, through which individuals and groups are able to express their opinions about issues of public interest. By exercising this right, in an enabling environment, individuals and groups are able to shape public debate and improve overall governance.

SR Clément Voule, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 26 July 2018, A/HRC/38/34, para. 39.



The legitimacy of participation in peaceful activities to protest against alleged or potential violations of human rights and the importance of the rights to freedom of association and peaceful assembly as an element of the right to protest is acknowledged in article 5 of the Declaration on Human Rights Defenders. Article 12 (3) of the Declaration provides that everyone is entitled to effective protection under national law “in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms”. Under article 9(4) of the Declaration on Human Rights Defenders, HRDs have the right to “unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms”.

As UN SR Hina Jilani observes, the right to freedom of assembly is “vital for human rights defenders working locally, nationally and globally to promote and protect human rights” and exercising this right “in order to promote and protect human rights, by protesting against public policy or State action, or by protesting actions by non-State groups and demanding protection by the State, is an effective mode of participation in a democracy”.³⁶¹

Although an assembly has generally been understood as a physical gathering of people, it has been recognised that human rights protections, including for freedom of assembly, may apply to analogous interactions taking place online, or, for example, in the signing of a petition.³⁶² The right

361 UN General Assembly, *Human rights defenders: Note by the Secretary-General*, 6 September 2006, A/61/312, para. 76, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/488/07/PDF/N0648807.pdf?OpenElement>.

362 UN HRC, *Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies*, 4 February 2016, A/HRC/31/66, para. 10, available at: <https://www.refworld.org/docid/575135464.html> [accessed 27 November 2019]. OHCHR, *Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders*, Communication to Turkey, TUR 3/2019, 4 March 2019, p. 3, available at: <https://spcommreports.ohchr.org/>

of association should be understood not only as the right of HRDs to form an organization, but also the right to implement their internal structure, programs, and activities.³⁶³

The right to associate guaranteed by ACHR article 16 protects two dimensions.³⁶⁴ The first dimension encompasses the right and freedom of each individual to associate freely with other persons, without the intervention of the public authorities limiting or encumbering the exercise of this right. The second dimension recognizes and protects the right and the freedom of a group to seek the common attainment of a lawful purpose. In the view of IACHR, the two dimensions are indivisible, such that a limitation on the right to associate represents, directly and to the same extent, a restriction on the right of society to pursue certain purposes.³⁶⁵

In resolution 22/6 the HRC called upon States

to ensure that human rights defenders can perform their important role in the context of peaceful protests, in accordance with national legislation consistent with the Charter of the United Nations and international human rights law and, in this regard, to ensure that no one is subject to excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts;...

to respect, protect and ensure the right to freedom of association of human rights defenders and, in this regard, to ensure, where procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and

[TMResultsBase/DownloadPublicCommunicationFile?gId=24362](http://www.unhcr.org/refugees/results/24362.html).

363 IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 70, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

364 IACTHR, *Case of Huila Tecse v. Peru*, Judgment of March 3, 2005 (Merits, Reparations and Costs), paras. 69 -72, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_121_ing.pdf.

365 IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 72, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law;

[and] ... (a) To ensure that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy; (b) To ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration referred to in paragraph 3 above, other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto;³⁶⁶

Despite these protections, treaty monitoring bodies report a growing trend in some States to bring criminal charges against HRDs participating in peaceful social protest in order to punish and interfere with the work of HRDs.³⁶⁷ In 2018, UN SR Clément Voule identified eight global trends limiting rights to freedom of assembly and association:

- 1) Use of legislation to suppress the legitimate exercise of freedom of peaceful assembly and association;
- 2) Criminalization and the indiscriminate and excessive use of force to counter or repress peaceful protest;
- 3) Repression of social movements;
- 4) Stigmatization of and attacks against, civil society actors;

366 UN HRC, *Protecting human rights defenders: resolution/adopted by the HRC*, 21 March 2013, A/HRC/RES/22/6, paras. 6, 8-9, available at: <https://www.refworld.org/docid/53bfa8564.html> [accessed 16 July 2019].

367 See UN Commission on Human Rights, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen*, E/CN.4/2004/80, 26 January 2004, para. 44, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/105/28/PDF/G0410528.pdf?OpenElement>; IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 45, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>. As an example, according to the Cuban Observatory of Human Rights, between January and September 2014, nearly 6,500 arbitrary arrests of political dissidents were made in the context of peaceful demonstrations: IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 46.

- 5) Restrictions targeting particular groups;
- 6) Limitations of rights during electoral periods
- 7) Negative impact of rising populism and extremism; and
- 8) Obstructions encountered in the digital space.³⁶⁸

Criminalization of the rights to freedom of association and peaceful assembly occur when, for example, States require prior authorization with the failure to obtain leading to criminal sanctions.

The IACHR reports the misuse of criminal proceedings against HRDs involved in social protests. The IACHR noted charges under the pretext of protecting freedom of movement, traffic safety and transportation, for failing to obtain prior permission to hold a demonstration and charges based on vague offences such as “unlawful assembly or demonstration” or “illegal demonstration”; or under anti-terrorism laws or other criminal offences.³⁶⁹ The IACHR has found that systematic attacks on the life, physical integrity, and liberty of the members of a human rights organization, in an environment of hostility to their work, may entail a violation of the freedom of association³⁷⁰ as does the fact that a HRD must go into exile because of threats to his or her life made in retaliation for his or her work.³⁷¹

368 HRC, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, 26 July 2018, A/HRC/38/34, para. 19, available at: <https://undocs.org/A/HRC/38/34>.

369 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, paras. 117, 119, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

370 IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OAS/Ser.L/V/II.Doc. 66, December 31, 2011, para. 118, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

371 IACHR, *Dianna Ortiz v. Guatemala*, Case 10.526, Report No. 31/96, Inter-Am.C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 332 (1997). October 16, 1996, Inter-American Commission on Human Rights (IACHR), 16 October 1996, para. 119, available at: <https://www.refworld.org/cases,IACHR,3ae6b61c4.html> [accessed 27 November 2019]. See also IACHR, Report on the Merits No. 49/99, Case 11.610, Loren Laroye Riebe Star, Jorge Barón Guttlein, and Rodolfo Izal Elorz (Mexico), April 13, 1999, available at: <http://cidh.org/annualrep/98eng/Merits/Mexico%2011610.htm>.

States must take positive measures to protect rights of association and peaceful assembly

Protection of the rights of association and peaceful assembly entails both negative and positive obligations. States must both avoid interfering with the exercise of the rights of assembly or association, and also, in certain circumstances, take positive measures to ensure that non-state actors do not prevent the effective exercise of the rights. For example, States must protect the participants in a demonstration from the physical violence of those who might hold contrary views³⁷² and take the administrative and law enforcement steps necessary to enable HRDs to carry out their activities, which include positive steps such as detouring traffic and providing police protection for demonstrations and rallies, where necessary.³⁷³

Limited framework to justify any restriction on the rights of HRDs to assembly and association

As with the right to freedom of expression, the rights to freedom of assembly and association may only be restricted for the specific purposes enumerated in the treaties. Any restrictions imposed must be prescribed by law and be necessary in a democratic society. The HR Committee has indicated that the requirements for restrictions on freedom of expression also apply to restrictions on the exercise of freedom of assembly and association, that is, they must:

- conform to the strict tests of necessity and proportionality;
- be applied only for those purposes for which they were prescribed and
- be directly related to the specific need on which they are predicated.³⁷⁴

As one of nine key rights articulated in the Declaration on Human Rights Defenders, the right to social protest and mobilization is instrumental to the

³⁷² IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 50, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

³⁷³ *Ibid.*, para. 54.

³⁷⁴ HR Committee, *Communication No. 1790/2008, Govsha, Syritsa and Mezyak v. Belarus*, Views adopted on 27 July 2012, para. 9.4, available at: <http://hrlibrary.umn.edu/undocs/1790-2008.html>.

defence of human rights and any restrictions on the right to defend human rights must be held to a very high standard. UN SR Michel Forst points out that

[e]ven where some rights or freedoms are restricted in a situation of emergency or to protect public order, the right to associate, advocate and protest in relation to the restrictions, in effect to monitor and debate the restrictions, can neither be restricted nor suspended... in times of great peril, the need for a robust civil society and independent voices, for independent monitoring and accounting, is even greater.³⁷⁵

The IACHR finds that the rights of assembly and freedom of association are “fundamental for the defense of human rights, since they protect the means by which the grievances of both human rights defenders [and victims of violations] are expressed”.³⁷⁶ Restrictions on the exercise of these rights represent “serious obstacles to the people’s ability to vindicate their rights, make known their petitions, and foster the search for changes or solutions to the problems that affect them”.³⁷⁷

Freedom of association can only be exercised where fundamental rights respected

In *Case Kawas Fernández v. Honduras*, the IACtHR reaffirmed that

freedom of association can only be exercised in a situation in which fundamental human rights are fully guaranteed and respected, particularly those related to the life and safety of the individual. In this regard, the impairment of the right to life or to humane treatment attributable to the State may, in turn, give rise to a violation of Article 16(1) of the [ACHR] when such violation arises from the victim’s legitimate exercise of the right to freedom of association. [footnotes omitted]³⁷⁸

375 UN General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 24, available at: <https://undocs.org/A/73/215>.

376 IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 51, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

377 *Ibid.*

378 IACtHR, *Case of Kawas Fernández v. Honduras*, Judgment of April 3, 2009 (Merits,

Criminalization ‘per se’ of demonstrations is inadmissible when carried out in exercise of rights to freedom of expression and freedom of assembly

In principle, “criminalization *per se* of demonstrations in public thoroughfares is inadmissible [under the ACHR] when the demonstrations are carried out in exercise of the rights to freedom of expression and to freedom of assembly.”³⁷⁹ States may not invoke one of the lawful restrictions of freedom of expression, such as the maintenance of ‘public order,’ as a means to deny a right guaranteed by the ACHR or to impair its true content. If this occurs, the restriction is not lawful.³⁸⁰ It is necessary to examine whether the restriction (criminalization) satisfies “a pressing public interest necessary for the operation of a democratic society” and “whether the imposition of criminal sanctions is, in fact, the least harmful means to restrict the freedom of expression, exercised through the right of assembly in the form of a demonstration on a public road or in a public space”.³⁸¹

The right to hold and participate in a peaceful assembly should not be subject to previous authorization

The exercise of fundamental freedoms, including the right to peaceful assembly and protest should not be subject to previous authorization by the authorities, “but at the most to a prior notification procedure, whose rationale is to allow State authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take measures to protect public safety and order and the rights and freedoms of others”.³⁸² Such a notification

Reparations and Costs), para. 150, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf.

379 IACHR, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression: Annual Report of the Inter-American Commission on Human Rights*, 2017, vol. II, at p. 74 (and multiple subsequent references), available at: <http://www.oas.org/en/iachr/docs/annual/2017/docs/AnnexRELE.pdf>.

380 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 122, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>

381 *Ibid.*, para. 123.

382 UN HRC, *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, 21 May 2012, A/HRC/20/27, para. 28, available at: <https://www.refworld.org/docid/525fad894.html> [accessed 28 November 2019]. See also, OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly (2007, Warsaw, second ed.), p.63, available at: <https://www.osce.org/odihr/73405?download=true>; IACHR, Report on the

should be subject to a proportionality assessment, not unduly bureaucratic and be required a maximum of 48 hours prior to the day the assembly is planned to take place.³⁸³

Failure to notify authorities of an assembly does not render it unlawful, and consequently should not be used as a basis for dispersing the assembly.³⁸⁴ This applies equally in the case of spontaneous assemblies, where prior notice is otherwise impracticable or where no identifiable organiser exists.³⁸⁵ In the event of failure to notify authorities of a demonstration, the organisers should not be subject to criminal or administrative sanctions resulting in fines or imprisonment.³⁸⁶

The requirement of prior notification must not be confused with the requirement of prior authorisation granted as a matter of discretion, which must not be established in the law or practice of the administrative authorities, even when it comes to public spaces.³⁸⁷ In joint Communication 3/2019 to Brazil, three UN SRs concluded that the prior notification procedure outlined in a decree restricting the right to freedom of peaceful assembly had “been implemented in order to inhibit spontaneous or successive demonstrations and thus violates the right to freedom of peaceful assembly as guaranteed by article 21 ICCPR”.³⁸⁸

Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, para. 57, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

383 *A/HRC/20/27, ibid.*

384 *Ibid.*, para. 29.

385 *Ibid.*

386 *Ibid.*

387 IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66 31, December 2011, para. 137, available at: <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

388 OHCHR, Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur for freedom of expression of the Inter-American Commission on Human Rights, Communication to Brazil, *BRA 3/2019*, 25 March 2019, p. 3, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24395>.

Public demonstrations may only be restricted to prevent a serious and imminent threat from materializing

Public demonstrations may only be restricted to prevent a serious and imminent threat from materializing. Under the Inter-American system, a demonstration may not be prevented because it is considered likely to jeopardize the peace or public security or order, without taking into account whether it is possible to prevent the threat to peace or the risk of disorder by altering the original conditions of the demonstration (time, place, etc.). A future, generic danger would be insufficient.³⁸⁹

Misuse of security laws

In a joint Communication to Canada in 2015, three UN SRs expressed concern that a list of activities that may be considered as undermining the security of Canada in the proposed Security of Canada Information Sharing Act (CISA), could potentially include a significant range of legitimate activities, and thus be instrumentally used to target, journalists, bloggers, writers, investigators, human rights defenders, political activists, opposition representatives or religious or minority leaders and others for reasons un-related to terrorism.³⁹⁰ For example, it was “not clear how legitimate exercise of freedom of expression, of dissent or protest that fall outside the word “lawful” remain protected”.³⁹¹

389 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 130, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>

390 UN, OHCHR, Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Communication with Canada, JAL CAN 1/2015, 27 April 2015, p.4, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=14575>.

391 Ibid.

Criminalization of right to communicate with UN on human rights

The right of HRDs to unhindered access to, and communication with, international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms is reflected in article 9(4) of the Declaration on Human Rights Defenders. For their part, international and regional human rights mechanisms rely on input from HRDs in order to properly carry out their mandates.

The Commentary to the Declaration on Human Rights Defenders states that

travel restrictions imposed on defenders in order to prevent them from participating in assemblies of different kinds outside their country of residence is contrary to the spirit of the Declaration and the recognition in its preamble that individuals, groups and associations have the right to —promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels.³⁹²

In resolution 12/2, the HRC urged States to prevent and refrain from all acts of intimidation or reprisal against those who:

- (a) Seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights, or who have provided testimony or information to them;
- (b) Avail or have availed themselves of procedures established under the auspices of the United Nations for the protection of human rights and fundamental freedoms, and all those who have provided legal or other assistance to them for this purpose;
- (c) Submit or have submitted communications under procedures established by human rights instruments, and all those who have provided legal or other assistance to them for this purpose;

392 UN, OHCHR, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, July 2011, p. 53, available at: <https://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

(d) Are relatives of victims of human rights violations or of those who have provided legal or other assistance to victims;³⁹³

In resolution 22/6, the HRC, reaffirming the right of everyone, individually and in association with others, to unhindered access to and communication with international and regional human rights bodies, strongly called upon States:

(a) To refrain from, and ensure adequate protection from, any act of intimidation or reprisals against those who cooperate, have cooperated or seek to cooperate with international institutions, including their family members and associates;

(b) To fulfil the duty to end impunity for any such acts of intimidation or reprisals by bringing the perpetrators to justice and by providing an effective remedy for their victims;

(c) To avoid legislation that has the effect of undermining the right [to communicate with international bodies on human rights];³⁹⁴

In 2018, UN SR Michel Forst documented many serious violations of the right to communicate with international human rights bodies, including

disbarment, refusal of exit permits, travel bans, assault, threats against their families, intimidation, arrest and torture, enforced disappearance, exile and death also in relation to their cooperation with the United Nations on human rights. Even within United Nations human rights forums, Member States have silenced human rights defenders by raising unfounded security concerns about their participation, attempting to deregister non-governmental organizations associated with dissident voices, prohibiting State agents from cooperating with

393 UN HRC, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*: resolution/adopted by the HRC, 1 October 2009, A/HRC/RES/12/2, para. 1, available at: https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_12_2.pdf. See also UN HRC, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*: resolution/adopted by the HRC, 27 September 2013, A/HRC/RES/24/24, para. 3, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/180/27/PDF/G1318027.pdf?OpenElement>.

394 UN HRC, *Protecting human rights defenders*: resolution/adopted by the Human Rights Council, 12 April 2013, A/HRC/RES/22/6, paras. 13-14, available at: <https://www.refworld.org/docid/53bfa8564.html> [accessed 28 November 2019].

special procedures and otherwise reducing and objecting to the participation of human rights defenders in discussions.³⁹⁵

UN SR Forst urged that the safe and enabling environment being sought for HRDs must extend to the international human rights system itself.³⁹⁶

In a joint Communication to Saudi Arabia, UN SRs advised that an arbitrary imposition of travel bans against HRDs to prevent them from participating in activities outside their country of residence is contrary to: UN Declaration on Human Rights Defenders, specifically, articles 1, 2, 5 and 6; HRC Resolution 24/24, which calls on States to “ensure adequate protection from intimidation or reprisals for cooperation with the United Nations, its mechanism and representatives in the field of human rights”; and HRC resolution 22/6, which provides for the right to “unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms”.³⁹⁷

Criminalization of providing professionally-qualified legal advice and assistance

The initiation of criminal proceedings against a lawyer for defending human rights is an illegitimate pressure affecting the independence of the lawyer in both his or her capacity as legal counsel and as a HRD, in violation of paragraph 9(3)(c) of the Declaration on Human Rights Defenders.

The IAHR has indicated that the right of individuals and groups to offer and provide professional legal counsel or other advice and assistance relevant

³⁹⁵ UN General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 56, available at: <https://undocs.org/A/73/215>.

³⁹⁶ Ibid.

³⁹⁷ OHCHR, Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Communication to Saudia Arabia, *SAU 8/2018*, 25 June 2018, pp. 5-6, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23921>.

to the defense of the human rights and fundamental freedoms of third persons “includes the possibility of engaging in activities of representation, accompaniment, self-management, and search for recognition of communities and individuals who have been victims of human rights violations and other acts of discrimination and exclusion”.³⁹⁸

Under the UN *Basic Principles on the Role of Lawyers*:

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Lawyers shall not be identified with their clients causes

The UN *Basic Principles on the Role of Lawyers*, Principle 18 provides that lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions. To do so would undermine the right of everyone to have legal counsel of their own choice, as well as the right of lawyers to freely represent their clients.³⁹⁹

Under Principle 20, lawyers “shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority’.

Criminalization of pursuit of funding or support for HRD

³⁹⁸ IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, para. 39, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

³⁹⁹ IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 156, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

activities

The application of criminal offenses to criminalize organizations and HRDs who receive foreign funding or support for the achievement of their causes violates, among other rights, the right of HRDs to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, under article 13 of the Declaration on Human Rights Defenders. The ability of HRDs to solicit, receive and use funding is also an inherent element of the right to freedom of association.⁴⁰⁰ According to UN SR Michel Forst, the right of HRDs to access funding “underscores that even legitimate aims of the State cannot be used as pretexts to silence or reduce the activities of human rights defenders”.⁴⁰¹

According to the IACHR, the right of HRDs to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means includes

the possibility of going before the courts and seeking protection and justice for the victims of human rights violations; demanding the urgent intervention of the judiciary to protect fundamental rights at imminent risk; bringing cases against the state arguing the responsibility of state agents who have allegedly committed violations; appealing against abuses of power such as unjust confiscations, unjustified withdrawal of legal recognition of professional associations or trade unions, or the arbitrary removal of public officials; and participating as observers at trials and public hearings to verify the observance of due process standards.⁴⁰²

In the view of the IACHR, limitations on foreign funding “constitute an impediment for human rights defenders to perform their duties, since they

400 UN General Assembly, *Human rights defenders: note by the Secretary-General*, 4 August 2009, A/64/226, para. 22, available at: <https://www.refworld.org/docid/4aae4eeb.html> [accessed 28 November 2019].

401 UN General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 22, available at: <https://undocs.org/A/73/215>.

402 IACHR, *Report on the situation of human rights defenders in the Americas*, 7 March 2006, para. 112, available at: <http://www.icnl.org/research/resources/assembly/oas-human-rights-report.pdf>.

depend on these resources to develop their activities of promotion and protection of human rights due to lack of funds in their own country”.⁴⁰³

Various practices observed by SR Forst to infringe the right of HRDs to access funding include: heightened penalties in Egypt’s Law No. 70 of 2017, on non-governmental organizations; the “discriminatory approach to “transparency” adopted in Israel and the Russian Federation in respect of the disclosure of civil society funding”; and “bureaucratic processes that effectively restrict access to foreign funding in India”.⁴⁰⁴ Even where HRDs are legally able to receive foreign funding, they may be labelled as “foreign agents”, thus stigmatizing them and increasing the risks they face.⁴⁰⁵

Duty of States to promote and facilitate access of HRDs to funding

The Declaration on Human Rights Defenders requires States to adopt legislative, administrative or other measures to facilitate the effective exercise of the right to access funding. The CEDAW has gone further and recommended States to directly ensure financial resources are made available to civil society organizations.⁴⁰⁶

The IACHR finds that States have a duty stemming from the right to freedom of association “to promote and facilitate the access of human rights organizations to financial cooperation funds, both national and foreign, as well as to refrain from restricting their means of financing”.⁴⁰⁷ Additionally, States are under the duty to allow and facilitate access to foreign funds by

403 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 135, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

404 UN, General Assembly, *Situation of human rights defenders*, 23 July 2018, A/73/215, para. 22, available at: <https://undocs.org/A/73/215>.

405 Amnesty International, *Human Rights Defenders under Threat: A Shrinking Space for Civil Society*, 2017, p. 26, available at: <https://www.amnesty.org/en/documents/act30/6011/2017/en/>.

406 UN, OHCHR, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, July 2011, p. 96, available at: <https://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

407 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 137, available at <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

HRDs “in the context of international cooperation, in transparent conditions that take into account the leading role that human rights defenders have in the full achievement of the rule of law and strengthening of democracy.”⁴⁰⁸

Legislation governing the funding of HRDs must be transparent and non-discriminatory

Only domestic legislation that is consistent with IHRL norms can be considered an appropriate legal framework for the enjoyment of the right of access to funding.⁴⁰⁹ The only legitimate requirements imposed on HRDs regarding access to foreign funding should be those in the interest of transparency.⁴¹⁰

In Resolution 22/6, the HRC calls upon States

[t]o ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration [on Human Rights Defenders], other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto;⁴¹¹

The HR Committee recommends that States:

- Ensure access to funding by law, including from foreign sources, for the purpose of defending human rights;
- Establish a legal framework for the enjoyment of the right to access to funding, consistent with IHRL;

⁴⁰⁸ *Ibid.*

⁴⁰⁹ UN, OHCHR, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, July 2011, p. 97, available at: <https://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

⁴¹⁰ *Ibid.*, p. 96.

⁴¹¹ UN HRC, UN Human Rights Council, *Protecting human rights defenders: resolution/adopted by the Human Rights Council*, 12 April 2013, A/HRC/RES/22/6, para. 9(b), available at: <https://www.refworld.org/docid/53bfa8564.html> [accessed 28 November 2019].



“

Homosexuality is a crime in 78 jurisdictions worldwide. An estimated 2.9 billion people live in countries where consensual same-sex intimacy is punishable by imprisonment, corporal punishment or even death. Of that 2.9 billion approximately 174 million may identify as LGBT.

Human Dignity Trust and Commonwealth Lawyers Association, The Criminalisation of Consensual Same-Sex Sexual Relations across the Commonwealth – Developments and Opportunities, p.7

- Refrain from interference in the use of funding as long as they comply with the purposes expressly established in the Declaration on Human Rights Defenders;
- Not require prior governmental authorization to apply for or receive funding from abroad;
- Facilitate access to foreign funding;
- Allow NGOs to engage in all legally acceptable fund-raising activities under the same regulations that apply to other non-profit organizations in general; and
- Prohibit extensive scrutiny by tax authorities and abuse of fiscal procedures.⁴¹²

Criminalization of the defence of certain rights

Provisions penalizing the promotion and protection of certain rights, most commonly the rights of LGBTI persons, sexual and reproductive rights, and the criminalization of actions that are frequently carried out in defence of these human rights violate, among other rights, the rights of HRDs to freedom of expression, freedom of association and freedom of peaceful assembly, and to develop and discuss new human rights ideas and principles and to advocate their acceptance under article 7 of the Declaration on Human Rights Defenders.

The effect of criminalising HRDs for promoting and protecting such rights puts HRDs at a greater risk of discrimination and retaliation, generates a deterrent and chilling effect in defending these rights, and, undermines recognition of the rights of persons they are defending, imperils their rights and hinders democratic debate.⁴¹³

412 UN, OHCHR, *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, July 2011, pp. 99-100, available at: <https://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

413 IACHR, *Criminalization of the Work of Human Rights Defenders*, 31 December 2015, para. 166, available at: <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

The arrest and conviction of HRDs for defying a ban on public assemblies in favour of equal rights for LGBTQ people, or a denial or permission to hold pride marches and festivals, on the basis of the need to uphold public morals and the risk of counter-protests cannot be justified in light of the principle of non-discrimination.⁴¹⁴ If security risks are involved, it is the duty of the State to provide protection to those exercising their right to assemble peacefully, pursuant to article 12 (2) of the Declaration on Human Rights Defenders.⁴¹⁵

Violation of right to a remedy

Under IHRL, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of his or her human rights and fundamental freedoms, notwithstanding that the violation has been committed by persons acting in an official capacity. States therefore have a responsibility to ensure that HRDs whose rights have been violated have accessible and effective remedies. This obligation requires States to ensure a prompt and impartial investigation into the alleged violations, the prosecution of the perpetrators regardless of their status, and redress, including appropriate compensation to victims, as well as the enforcement of related decisions or judgments.⁴¹⁶

Duty to make reparations

The obligation to provide an effective remedy under ICCPR article 2(3) is not discharged without reparation to individuals whose ICCPR rights have been violated.⁴¹⁷ In addition to the explicit reparation required by ICCPR articles

414 UN, General Assembly, *Situation of human rights defenders*, 10 August 2012, A/67/292, para. 33, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/459/42/PDF/N1245942.pdf?OpenElement>.

415 Ibid.

416 UN General Assembly, *Human rights defenders: note by the Secretary-General*, 4 August 2010, A/65/223, para. 44, available at: <https://www.refworld.org/docid/4cc123442.html> [accessed 29 November 2019].

417 HR Committee, *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 16, available at: <https://www.refworld.org/docid/478b26ae2.html> [accessed 22 November 2019].

9(5) and 14(6), the HR Committee considers that the ICCPR generally entails appropriate compensation. Where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.⁴¹⁸

In *Khadzhiyev and Muradova v. Turkmenistan*, the HR Committee found that full reparation under ICCPR article 2(3) for the wrongful death of Ms. Muradova included:

- (a) a thorough, prompt and impartial investigation into Ms. Muradova's arbitrary arrest and detention, torture and death in custody, including, if necessary, by creating an independent commission of inquiry;
- (b) full redress to Mr. Khadzhiyev and family members, including adequate compensation and other measures of satisfaction, including rehabilitation for the name of Ms. Muradova, for the violations of her rights; and
- (c) the provision of all information regarding the investigation, including the findings of the autopsy, if one was conducted, and copies of trial transcripts and the court judgment to her lawyer and the family members.

The State party was also ordered to take all steps necessary to prevent similar violations from occurring in the future.⁴¹⁹

The IACtHR has ruled that

[r]eparation of harm brought about by the violation of an international obligation consists in full restitution (*restitutio in integrum*), which includes the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm.⁴²⁰

⁴¹⁸ *Ibid.*

⁴¹⁹ HR Committee, *Communication No. 2252/2013, Annadurdy Khadzhiyev and Ogulsapar Muradova v. Turkmenistan*, Views adopted on 6 April 2018, para. 9, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F122%2FD%2F2252%2F2013&Lang=en.

⁴²⁰ IACtHR, *Velasquez Rodriguez Case*, Compensatory Damages (Art. 63(1) American

In addition to compensation, reparations under the ACHR may include, *inter alia*, the acknowledgment and exercise of the right to know the truth, by way of a full, impartial and effective judicial investigation of the circumstances in which the violation occurred, and punishment of those responsible, where appropriate;⁴²¹ and State guarantees of non-repetition including, for example, publication of judicial proceedings, public acknowledgment of international responsibility, construction of a monument and mounting of signs at a national park, psychological and/or psychiatric care for the victim's next of kin, and an order that the State carry out a national campaign to create awareness and sensitivity regarding the importance of environmentalists' work and their contribution to the protection of human rights.⁴²²

MEASURES TO PROTECT THE RIGHTS OF HRDS

In order to guarantee a safe and enabling environment for the full and effective exercise of the promotion and defence of human rights, States must commit to adopting and enacting specific measures, as summarized below. While this section is confined to actions to be taken by States, any measures must involve an intersectional approach, including states, businesses, financial institutions, donors and intergovernmental organisations.⁴²³

Specific measures to safeguard and support HRDs

On the 20th anniversary of the adoption of the Declaration on Human Rights Defenders, UN human rights experts urged States to adopt specific measures to safeguard and support HRDs. In particular, the UN experts urged States to:

Convention on Human Rights), Judgment of July 21, 1989 Inter-Am.Ct.H.R. (Ser. C) No. 7 (1990), para. 26, available at: http://hrlibrary.umn.edu/iachr/b_11_12e.htm.

421 IACtHR, *Case of Kawas-Fernández v. Honduras*, Judgment of April 3, 2009 (Merits, Reparations and Costs), paras. 190-195, available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf.

422 *Ibid.*, 196-215.

423 See *Human Rights Defenders World Summit 2018, Action Plan*, available at: <https://hrdworldsummit.org/action-plan/>.

1. publicly recognize the importance and legitimacy of the work of human rights defenders, and reaffirm that no interference, intimidation, abuse, threat, violence or reprisal against them will be tolerated;
2. adopt laws and policies that specifically guarantee the protection of human rights defenders, with particular reference to the situation and protection needs of groups of human rights defenders in vulnerable situations, such as women human rights defenders and children human rights defenders;
3. adopt timely measures to prevent interference, intimidation, abuse, threats, violence, attacks or reprisals against human rights defenders, including by establishing a special mechanism for the protection of human rights defenders;
4. conduct prompt, thorough and impartial investigations into any interference, intimidation, abuse, threat, violence or reprisal against human rights defenders and ensure accountability for perpetrators;
5. amend or repeal any legislation that criminalizes or obstructs the work of human rights defenders, including vague and overbroad restrictions on fundamental freedoms (including freedom of expression, freedom of association, and right of peaceful assembly), as well as regulations that prohibit, limit or hinder them from soliciting, receiving and utilizing resources, including from domestic and international sources;
6. strengthen State institutions responsible for safeguarding and supporting the work of human rights defenders."⁴²⁴

424 UN, *OHCHR*, 20th anniversary of the UN Declaration on Human Rights Defenders: Joint statement by a group of Chairs, Vice-Chairs and members of the United Nations human rights Treaty Bodies and the UN Special Rapporteur on Human Rights Defenders (June 2018), available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23154&LangID=E>. See also Office of the Council of Europe Commissioner for Human Rights, *Human Rights Defenders in The Council Of Europe Area: Current Challenges And Possible Solutions*, Report of a Round-Table with human rights defenders held in Helsinki, 13-14 December 2018, 29 March 2019, pp 16-18 re Recommendations to Council of Europe member states, available at: <https://rm.coe.int/hr-defenders-in-the-coe-area-current-challenges-and-possible-solutions/168093aabf>.

Women HRDs

State actions recommended by UN SR Michel Forst, specifically in relation to women HRDs include measures to:

7. Protect the rights of women defenders, including by taking a public stand against all State and non-State actors who violate these rights, ceasing all attacks and threats against women defenders and investigating all that occur, ensuring that impunity does not prevail;
8. Ensure that women defenders enjoy a safe and enabling environment to exercise their rights, considering their specific and diverse needs. This includes addressing systemic and structural discrimination and violence that women defenders experience and enacting laws that recognize and protect the rights of all human rights defenders, with a specific focus on the needs of women defenders;
9. Ensure that non-State actors – including businesses, faith-based groups, the media and communities – meet their legal obligations to respect human rights. The Guiding Principles on Business and Human Rights are key for business enterprises;
10. Prioritize the protection of women defenders in online spaces and adopt laws, policies and practices that protect their right to privacy and protect them from libel and hate speech;
11. Dedicate part of their budget to strengthening the participation of women in human rights activities, ensuring that they are supported to respond meaningfully to issues in a sustainable manner;
12. Refrain from interfering with funding provided to women for human rights work and ensure that legal and administrative frameworks do not restrict access to funding for human rights activism;
13. Address barriers to the participation of women defenders in public life, including in regional and international human rights forums, such as travel bans, visa restrictions and their lack of identity or travel documents and resources;
14. Assess protection practices for women defenders against the seven principles underpinning good protection practices and examine ways

of strengthening those practices.⁴²⁵

Indigenous peoples

Recommendations by UN SR on the rights of indigenous peoples, Victoria Tauli-Corpuz, for State action to halt the trend of attacks, criminalization and impunity against Indigenous peoples defending their rights include:

15. All violent attacks against indigenous defenders must be promptly and impartially investigated and measures taken to provide for effective redress and reparation;
16. A zero-tolerance approach to the killing of and violence against indigenous human rights defenders must be adopted at the highest level of Government. All public officials must refrain from stigmatizing indigenous communities affected by large-scale development projects and those defending their rights, and recognize that their concerns are legitimate components in a process aimed at securing sustainable development;
17. States should ensure that legislation creates due diligence obligations for companies registered in their jurisdictions and those of their subsidiaries where there is a risk of human rights violations against indigenous peoples;
18. Addressing criminalization requires a comprehensive review of national laws, the adoption of laws to ensure due process and the revocation of laws and criminal procedures that violate the principle of legality and contradict international obligations. Legislation that criminalizes indigenous livelihoods such as rotational agriculture, hunting and gathering should be repealed;
19. Legislation and policies should be adopted to expressly support the protection of indigenous defenders and communities. Protection measures should ensure that both individual and collective protection aspects are addressed in practice, in close consultation with the

425 UN HRC, *Situation of women human rights defenders: Report of the Special Rapporteur on the situation of human rights defenders*, 10 January 2019, A/HRC/40/60, para. 108, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/004/97/PDF/G1900497.pdf?OpenElement>.

- indigenous peoples concerned. Indigenous-led protection initiatives should inform the design of all measures that are adopted by authorities in favour of indigenous communities at risk;
20. In order to address the root causes of attacks and criminalization, collective land rights of indigenous peoples need to be recognized. This requires, inter alia, accessible, prompt and effective procedures to adjudicate land titles; the review of laws on expropriation; adequate mechanisms to resolve land disputes; effective protection from encroachment, including through early warning systems and on-site monitoring systems; and the prohibition of forced evictions;
 21. Law enforcement officials and prosecutors should be trained on human rights standards and refrain from the criminalization of indigenous peoples who are peacefully defending their rights to lands and resources;
 22. In order to implement the right to consultation and to free, prior and informed consent, such processes need to be based on good faith. It is indispensable that indigenous peoples be afforded genuine participation and access to information in a culturally appropriate manner in a language they understand. This requires their involvement at all phases, including human rights impact assessments, project planning, implementation and monitoring.⁴²⁶

Model Law for the Recognition and Protection of HRDs

An important tool to guide and assist States and other actors in securing the protection of HRDs is the “Model Law for the Recognition and Protection of HRDs”⁴²⁷. Developed by the International Service for Human Rights (ISHR) in collaboration with over 500 HRDs from every region and settled and adopted in 2016 by 28 of the world’s leading human rights experts and

⁴²⁶ UN HRC, *Report of the Special Rapporteur on the rights of indigenous peoples*, 10 August 2018, A/HRC/39/17, para. 91, available at: <https://www.ohchr.org/Documents/Issues/IPeoples/SR/A.HRC.39.17.pdf>. The Model Law is available in [Arabic](#), [English](#), [French](#) and [Spanish](#).

⁴²⁷ International Service for Human Rights, *Model Law on the Recognition and Protection of Human Rights Defenders* (2016), available at: https://www.ishr.ch/sites/default/files/documents/model_law_english_january2017_screenversion.pdf.

jurists, the Model Law provides authoritative guidance to States for the enactment of legislation to ensure the full and effective implementation of the UN Declaration on Human Rights Defenders at the national level.⁴²⁸

The Model Law serves three primary objectives:

- to assist and provide technical guidance to States to develop laws, policies and institutions at the national level to support the work of defenders and protect them from reprisals and attacks;
- to provide a tool for defenders advocating for stronger legal recognition and protection of their important work; and
- to provide both States and defenders with a tool against which to measure and assess the coverage and effectiveness of existing laws and policies.⁴²⁹

The Model Law is intended to be used by:

- legislators and policy makers as a source of technical assistance to inform the development of a national law for the recognition and protection of human rights defenders or to review the scope and effectiveness of existing laws; and
- defenders and other civil society actors to inform and guide the development of proposals for a national law for the recognition and protection of human rights defenders and as a checklist and accountability tool for contributing to the development and review of such laws and policies.⁴³⁰

The Model Law seeks to address the current implementation gap between the UN Declaration on Human Rights Defenders and national laws and policies to support and protect defenders; as well as the proliferation of national laws which restrict and criminalise defenders' work.

To date, the Model Law has been used around the world in the development of legislation for the protection of human rights defenders, including in the

428 International Service for Human Rights, at: <https://www.ishr.ch/news/model-law>.

429 Model Law on the Recognition and Protection of Human Rights Defenders, p. i.

430 International Service for Human Rights, Model Law on the Recognition and Protection of Human Rights Defenders (2016), p. ii, available at: https://www.ishr.ch/sites/default/files/documents/model_law_english_january2017_screenversion.pdf.

passage of laws in Cote d'Ivoire⁴³¹, Mali⁴³² and Burkina Faso⁴³³. It is also currently being used in processes to develop laws in Niger, Sierra Leone, Mongolia, the Philippines and Iraq.⁴³⁴

431 *International Service for Human Rights*, "Côte d'Ivoire: New law will strengthen protection of human rights defenders", 16 June 2014, available at: <https://www.ishr.ch/news/cote-divoire-new-law-will-strengthen-protection-human-rights-defenders>.

432 *International Service for Human Rights*, "Mali | Groundbreaking new law strengthens legal protection of human rights defenders", 16 January 2018, available at: <https://www.ishr.ch/news/mali-groundbreaking-new-law-strengthens-legal-protection-human-rights-defenders>.

433 *International Service for Human Rights*, "Burkina Faso | Ensure full implementation of important new law on human rights defenders", 02 September 2017, available at: <https://www.ishr.ch/news/burkina-faso-ensure-full-implementation-important-new-law-human-rights-defenders>.

434 Information obtained from ISHR by email, dated 18 November 2019.

APPENDIX A: INTERNATIONAL STANDARDS

UN Instruments

UNIVERSAL DECLARATION ON HUMAN RIGHTS

2. *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.*

3. *Everyone has the right to life, liberty and security of person.*

7. *All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

8. *Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*

11. *(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*

- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*

12. *No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*

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18. *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*
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19. *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*
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20. *(1) Everyone has the right to freedom of peaceful assembly and association.*
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21. *(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*
(2) Everyone has the right of equal access to public service in his country.
(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.
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INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

2. *(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...*
- (3) Each State Party to the present Covenant undertakes:*
- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*
-

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

3. *The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.*

9. *(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

15. *(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.*

(2) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

17. *(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

(2) Everyone has the right to the protection of the law against such interference or attacks.

19. (1) *Everyone shall have the right to hold opinions without interference.*

(2) *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

(3) *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

(a) *For respect of the rights or reputations of others;*

(b) *For the protection of national security or of public order (ordre public), or of public health or morals.*

20. (1) *Any propaganda for war shall be prohibited by law.*

(2) *Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*

21. *The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.*

22. (1) *Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*

(2) *No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*

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24. *(1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.*
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25. *Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:*
- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*
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26. *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

2. *(1) Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*
- (2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
- (3) Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to nonnationals.*
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3. *The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.*

8. *The States Parties to the present Covenant undertake to ensure:*

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;...

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

15. *(1) The States Parties to the present Covenant recognize the right of everyone:*

(a) To take part in cultural life;

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

13. *A State Party shall take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.*

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

1. *For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

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2. *States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:*
- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;*
 - (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;*
 - (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*
 - (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*
 - (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*
 - (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*
 - (g) To repeal all national penal provisions which constitute discrimination against women.*
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3. *States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.*
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7. *States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:...*

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

8. *States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.*

OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

11. *A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.*

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (ICERD)

5. *In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:*

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:...

(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;...

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

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6. *States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.*

INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

7. *States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.*
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13. *(2) Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.*

(3) The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputation of others;

(b) For the protection of the national security of the States concerned or of public order (ordre public) or of public health or morals;

(c) For the purpose of preventing any propaganda for war;

(d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

16. *(1) Migrant workers and members of their families shall have the right to liberty and security of person.*

(2) Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

26. *(1) States Parties recognize the right of migrant workers and members of their families:*

(a) To take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

(b) To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned;...

(2) No restrictions may be placed on the exercise of these rights other than those that are prescribed by law and which are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

40. *(1) Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.*

(2) No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others.

41. *(1) Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin and to vote and to be elected at elections of that State, in accordance with its legislation.*

(2) The States concerned shall, as appropriate and in accordance with their legislation, facilitate the exercise of these rights.

42. *(2) States of employment shall facilitate, in accordance with their national legislation, the consultation or participation of migrant workers and members of their families in decisions concerning the life and administration of local communities.*

(3) Migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights.

83. *Each State Party to the present Convention undertakes:*

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

2. *(1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*

(2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

12. *(1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

13. *(1) The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*

(2) The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

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- 15.** *(1) States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.*

(2) No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON A COMMUNICATIONS PROCEDURE

- 4.** *(1) A State party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee pursuant to the present Protocol.*

UN CONVENTION RELATING TO THE STATUS OF REFUGEES

- 15.** *As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.*

UN CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

- 24.** *(7) Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.*

UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

- 4.** *(1) States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability...*
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- 21.** *States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:*
- a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;*
 - b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;*
 - c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;*
 - d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;*
 - e) Recognizing and promoting the use of sign languages.*
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- 29.** *States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:*
- (a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected...*

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

(i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;

(ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.

30. *(1) States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:*

a) Enjoy access to cultural materials in accessible formats;

b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

ILO CONVENTION 87, FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION

2. *Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.*

3. *(2) The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.*

UN DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (DECLARATION ON HUMAN RIGHTS DEFENDERS)

1. *Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.*
2. *(1) Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.*
(2) Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.
3. *Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.*
5. *For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:*
 - (a) To meet or assemble peacefully;*
 - (b) To form, join and participate in non-governmental organizations, associations or groups;*
 - (c) To communicate with non-governmental or intergovernmental organizations.*

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6. *Everyone has the right, individually and in association with others:*
- (a) *To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;*
- (b) *As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;*
- (c) *To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.*
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7. *Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.*
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8. *Everyone has the right, individually and in association with others, to have effective access, on a non- discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.*
- (2) *This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.*
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9. (1) *In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.*

(2) To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

(3) To the same end, everyone has the right, individually and in association with others, inter alia:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

(4) To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

(5) The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

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- 12.** *(1) Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.*
- (2) The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.*
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- (3) In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.*
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- 13.** *Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.*
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- 14.** *(1) The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.*
- (2) Such measures shall include, inter alia:*
- (a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;*
- (b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.*

(3) The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

17. *In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*

20. *Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.*

UN DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

6. *In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:...*

(a) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes;

7. *The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.*

UN DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

2. *(2) Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.*

(3) Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

(4) Persons belonging to minorities have the right to establish and maintain their own associations.

(5) Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

3. *(1) Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.*

4. *(1) States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.*

UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

1. *Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.*

 2. *Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.*
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3. *Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
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5. *Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.*
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7. 1. *Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.*
2. *Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.*
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8. 2. *States shall provide effective mechanisms for prevention of, and redress for:*
- (a) *Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;*
- (b) *Any action which has the aim or effect of dispossessing them of their lands, territories or resources;*
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13. 1. *Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.*
2. *States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.*
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18. *Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.*
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- 20.** *1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.*
- 2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.*
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- 25.** *Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.*
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- 26.** *Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*
- 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.*
- 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.*
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- 27.** *States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.*
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- 28.** *1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and in- formed consent.*
- 2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.*
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- 32.** *1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*
- 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the develop- ment, utilization or exploitation of mineral, water or other resources.*
- 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.*
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- 34.** *Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.*
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- 40.** *Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.*
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THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT (1992)

10. *Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*

THE PUBLIC'S RIGHT TO KNOW: UN PRINCIPLES ON FREEDOM OF INFORMATION LEGISLATION

7. *Freedom of information includes the public's right to know what the Government is doing on its behalf and to participate in decision-making processes...*

BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT

2. *Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.*

UN BASIC PRINCIPLES ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS

4. *Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.*
5. *Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:*
 - (a) *Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;*

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. *Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.*

7. *Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.*

8. *Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.*

9. *Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.*

12. *As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.*

13. *In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.*

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- 14.** *In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.*

UN CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS

- 2.** *In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.*
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- 3.** *Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.*
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- 5.** *No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.*

UN GUIDELINES FOR THE EFFECTIVE IMPLEMENTATION OF THE CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS

- I. A.** *(1) The principles embodied in the Code shall be reflected in national legislation and practice...*
- (4) Governments shall adopt the necessary measures to instruct, in basic training and all subsequent training and refresher courses, law enforcement officials in the provisions of national legislation connected with the Code as well as other basic texts on the issue of human rights.*
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- II. A.** *(2) Governments shall disseminate the Code and all domestic laws giving effect to it so as to ensure that the principles and rights contained therein become known to the public in general.*
- 3. In considering measures to promote the application of the Code, Governments shall organize symposia on the role and functions of law enforcement officials in the protection of human rights and the prevention of crime.*
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BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

2. *If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:*
 - (a) *Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;*
 - (b) *Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;*
 - (c) *Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;*
 - (d) *Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.*

3. *The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:*
 - (a) *Take appropriate legislative and administrative and other appropriate measures to prevent violations;*
 - (b) *Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;*
 - (c) *Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and*
 - (d) *Provide effective remedies to victims, including reparation, as described below.*

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4. *In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.*
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11. *Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:*
- (a) Equal and effective access to justice;*
 - (b) Adequate, effective and prompt reparation for harm suffered;*
 - (c) Access to relevant information concerning violations and reparation mechanisms.*
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15. *Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.*
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UN GUIDELINES ON THE ROLE OF PROSECUTORS

11. *Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.*
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12. *Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.*
 13. *In the performance of their duties, prosecutors shall:*
 - (a) *Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;*
 15. *Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.*
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UN BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY

2. *The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.*

UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGPS)

1. *States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.*
3. *In meeting their duty to protect, States should:*
 1. (a) *Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;*
 2. (b) *Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;*

3. (c) *Provide effective guidance to business enterprises on how to respect human rights throughout their operations;*
4. (d) *Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.*

4. *States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.*

5. *States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.*

11. *Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*

18. *In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:*

(a) Draw on internal and/or independent external human rights expertise;

(b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

25. *As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.*

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4. *Urges States to create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity;*

 7. *Urges States to ensure access to justice, and accountability, and to end impunity for human rights violations and abuses against civil society actors, including by putting in place, and where necessary reviewing and amending, relevant laws, policies, institutions and mechanisms to create and maintain a safe and enabling environment in which civil society can operate free from hindrance, insecurity and reprisals;*

 8. *Calls upon States to ensure that domestic provisions on funding to civil society actors are in compliance with their international human rights obligations and commitments and are not misused to hinder the work or endanger the safety of civil society actors, and underlines the importance of the ability to solicit, receive and utilize resources for their work;*

HRC RESOLUTION 31/32: PROTECTING HUMAN RIGHTS DEFENDERS, WHETHER INDIVIDUALS, GROUPS OR ORGANS OF SOCIETY, ADDRESSING ECONOMIC, SOCIAL AND CULTURAL RIGHTS (2016)

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1. *Stresses that the right of everyone, individually and in association with others, to promote and strive for the protection and realization of all human rights and fundamental freedoms, in accordance with the Declaration,¹ without retaliation or fear thereof is an essential element in building and maintaining sustainable, open and democratic societies, and reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues and development;*

 2. *Calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards the realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy;*

GA RESOLUTION 70/161: HUMAN RIGHTS DEFENDERS IN THE CONTEXT OF THE DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (2015)

5. *Strongly condemns the violence against and the targeting, criminalization, intimidation, torture, disappearance and killing of any individuals, including human rights defenders, for reporting and seeking information on human rights violations and abuses, and stresses the need to combat impunity by ensuring that those responsible for violations and abuses against human rights defenders, including against their legal representatives, associates and family members, are promptly brought to justice through impartial investigations;*

6. *Condemns all acts of intimidation and reprisal by State and non-State actors against individuals, groups and organs of society, including against human rights defenders and their legal representatives, associates and family members, who seek to cooperate, are cooperating or have cooperated with subregional, regional and international bodies, including the United Nations, its representatives and mechanisms, in the field of human rights;*

10. *Calls upon all States to create and maintain a safe and enabling environment for the realization of human rights and specifically to ensure that:*
 - (a) *The promotion and protection of human rights are not criminalized or met with limitations in contravention of the obligations and commitments of States under international human rights law;*
 - (b) *Human rights defenders, their family members, associates and legal representatives are not prevented from enjoying universal human rights owing to their work, including by ensuring that all legal provisions, administrative measures and policies affecting them, including those aimed at preserving public safety, public order and public morals, are minimally restrictive, clearly defined, determinable, non-retroactive and compatible with the obligations and commitments of States under international human rights law;*

(c) Measures to combat terrorism and preserve national security are in compliance with their obligations and commitments under international law, in particular under international human rights law, and do not jeopardize the safety or arbitrarily hinder the work of individuals, groups and organs of society engaged in promoting and defending human rights, while clearly identifying which offences qualify as terrorist acts by defining transparent and foreseeable criteria;

Where legislation and procedures governing the registration and funding of civil society organizations exist, they are transparent, non-discriminatory, expeditious, inexpensive, allow for the possibility to appeal and avoid requiring re-registration, with national legislation being in compliance with international human rights law;

(e) Procedural safeguards, including in criminal cases, are in place in accordance with international human rights law in order to eliminate unreliable evidence, unwarranted investigations and procedural delays, thereby effectively contributing to the expeditious closing of unsubstantiated cases, including against human rights defenders, and individuals are afforded the opportunity to lodge complaints directly with the appropriate authority, and respecting, inter alia, the right to be informed promptly and in detail of charges, the right to the presumption of innocence, the right to a fair and public hearing, the right to choose and communicate with counsel in confidence, the right to present witnesses and evidence and cross-examine prosecution witnesses and the right to appeal;

(f) Information, such as evidence of serious violations of human rights, held by public authorities is not unnecessarily classified or otherwise withheld from the public, and States adopt transparent, clear and expedient laws and policies that provide for the effective disclosure of information held by public authorities and a general right to request and receive such information, for which public access should be granted, except within narrow and clearly defined limitations;

(g) Provisions do not prevent public officials from being held accountable, and penalties for defamation are limited in order to ensure proportionality and reparation commensurate with the harm done;

(h) Information and communications technologies are not used in a manner that amounts to arbitrary or unlawful interference with the privacy of individuals or the intimidation of human rights defenders;

GA RESOLUTION 68/181: PROMOTION OF THE DECLARATION ON THE RIGHT AND RESPONSIBILITY OF INDIVIDUALS, GROUPS AND ORGANS OF SOCIETY TO PROMOTE AND PROTECT UNIVERSALLY RECOGNIZED HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS: PROTECTING WOMEN HUMAN RIGHTS DEFENDERS (2013)

1. *Calls upon all States to promote, translate and give full effect to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms... including by taking appropriate, robust and practical steps to protect women human rights defenders;*
5. *Expresses particular concern about systemic and structural discrimination and violence faced by women human rights defenders of all ages, and calls upon States to take all measures necessary to ensure their protection and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights;*
6. *Reiterates strongly the right of anyone, individually and in association with others, to defend the human rights of women in all their aspects, and stresses the important role of women human rights defenders in promoting and protecting human rights and fundamental freedoms, to which everyone is entitled without distinction of any kind, including in addressing all forms of human rights violations, combating impunity, fighting poverty and discrimination and promoting access to justice, democracy, the full participation of women in society, tolerance, human dignity and the right to development, while recalling that the exercise of these rights carries duties and responsibilities set out in the Declaration;*

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9. *Also calls upon States to exercise due diligence in preventing violations and abuses against human rights defenders, including through practical steps to prevent threats, harassment and violence against women human rights defenders, who face particular risks, and in combating impunity by ensuring that those responsible for violations and abuses, including gender-based violence and threats against women human rights defenders, committed by State and non-State actors, including online, are promptly brought to justice through impartial investigations;*
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10. *Further calls upon States to ensure that the promotion and protection of human rights are not criminalized or met with limitations in contravention of their obligations and commitments under international human rights law and that women human rights defenders are not prevented from enjoying universal human rights owing to their work, including by ensuring that all legal provisions, administrative measures and policies affecting women human rights defenders, including those aimed at preserving public morals, are clearly defined, determinable, non- retroactive and compatible with relevant provisions of international human rights law;*
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HRC RESOLUTION 22/6: PROTECTING HUMAN RIGHTS DEFENDERS

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3. *Stresses that legislation affecting the activities of human rights defenders and its application must be consistent with international human rights law, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and guided by the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,*
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6. *Calls upon States to ensure that human rights defenders can perform their important role in the context of peaceful protests, in accordance with national legislation consistent with the Charter of the United Nations and international human rights law and, in this regard, to ensure that no one is subject to excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts;*
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10. *Calls upon States to ensure that measures to combat terrorism and preserve national security:*

(a) 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; ...

11. *Further calls upon States to ensure that all legal provisions and their application affecting human rights defenders are clearly defined, determinable and non- retroactive in order to avoid potential abuse to the detriment of fundamental freedoms and human rights, and specifically to ensure that:*

(a) The promotion and the protection of human rights are not criminalized,

Regional Instruments

AFRICAN (BANJUL) CHARTER ON HUMAN AND PEOPLES' RIGHTS (BANJUL CHARTER)

2. *Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.*

4. *Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.*

6. *Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.*

7. *(2) No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.*

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9. (1) *Every individual shall have the right to receive information.*
- (2) *Every individual shall have the right to express and disseminate his opinions within the law.*
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10. (1) *Every individual shall have the right to free association provided that he abides by the law.*
- (2) *Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.*
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11. *Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.*
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13. (1) *Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.*

AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

3. *Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.*
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4. (1) *In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.*
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7. *Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.*
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8. *Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.*
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10. *No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.*

13. *(1) Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.*

PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA (MAPUTO PROTOCOL)

4. *(1) Every woman shall be entitled to respect for her life and the integrity and security of her person.*

9. *(1) States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that:...*
c) women are equal partners with men at all levels of development and implementation of State policies and development programmes .

(2) States Parties shall ensure increased and effective representation and participation of women at all levels of decision-making.

18. *(2) States Parties shall take all appropriate measures to:*
a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;

23. *The States Parties undertake to:...*
b) ensure the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.

25. *States Parties shall undertake to:*

a) provide for appropriate remedies to any woman whose rights or freedoms, as herein recognised, have been violated;

b) ensure that such remedies are determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by law.

AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE

12. *State Parties shall...*

(3) Create conducive conditions for civil society organizations to exist and operate within the law.

27. *State Parties shall commit themselves to...*

(2) Fostering popular participation and partnership with civil society organizations;

28. *State Parties shall ensure and promote strong partnerships and dialogue between government, civil society and private sector.*

DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION IN AFRICA

I. *(1) Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.*

(2) Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

II. *(1) No one shall be subject to arbitrary interference with his or her freedom of expression.*

(2) Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society.

- IV.** *(1) Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.*

ACHPR RESOLUTION 409 ON THE NEED TO ADOPT LEGAL MEASURES FOR THE PROTECTION OF WOMEN HUMAN RIGHTS DEFENDERS IN AFRICA (2018)

...Calls on States to:

1. *Recognise the importance of the role of women human rights defenders;*
2. *Take into account the seriousness of the violations committed against women human rights defenders;*
3. *Adopt specific legal measures for their protection;*
4. *Put an end to acts of intimidation and reprisals against women human rights defenders as a result of their collaboration with national, regional and international human rights bodies, as well as prosecute the perpetrators;*
5. *Protect individuals engaged in combatting violence against women human rights defenders.*

COTONOU DECLARATION ON STRENGTHENING AND EXPANDING THE PROTECTION OF ALL HUMAN RIGHTS DEFENDERS IN AFRICA (29 June 2017)

...recommendations to key stakeholders:...

To States,

- Adopt effective measures to prevent violations of the rights of HRDs and, where necessary, address the harm suffered by the activists and refrain from criminalizing or taking other adverse actions against these rights defenders, including reprisals and restrictions.

- Ensure that responses to terrorism do not lead to undue restrictions of civil society space and are conducted in compliance with the Principles and Guidelines on Human Rights and on Terrorism in Africa.
- Repeal punitive and restrictive laws, policies and practices that infringe upon the rights to freedom of association and of assembly that stigmatise and discriminate against specific categories of human rights defenders on the basis of sex, health status, sexual orientation and gender identity and expression or any other statuses.
- Engage in dialogue and consultation with human rights defenders and publicly recognize and support their work through communication and information campaigns...

ACHPR RESOLUTION 376 ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN AFRICA (2017)

The Commission calls upon States Parties to:

1. **Comply** with their obligations under the African Charter on Human and Peoples' Rights and other relevant human rights instruments ratified;
2. **Take** the necessary measures to provide human rights defenders with a conducive environment to be able to carry out their activities without fear of acts of violence, threat, intimidation, reprisal, discrimination, oppression and harassment from State and non-State actors;

3. **Adopt** specific legislative measures to recognise the status of human rights defenders, and protect their rights and the rights of their colleagues and family members, including women human rights defenders and those working on issues such as extractive industries, health and HIV/AIDS, reproductive health, sexual orientation and gender identity, promotion of peace and democracy, fight against terrorism, and respect for human rights;
4. **Refrain** from using the fight against terrorism as a pretext to restrict fundamental freedoms, including freedom of religion and conscience, expression, association, assembly and movement;
5. **Enact** specific laws in conformity with the UN Declaration on Human Rights Defenders, the Grand Bay Declaration and Plan of Action, and the Kigali Declaration, and take the necessary measures for their implementation.

ACHPR RESOLUTION 336 ON MEASURES TO PROTECT AND PROMOTE THE WORK OF WOMEN HUMAN RIGHTS DEFENDERS (2016)

The Commission:

Calls on State Parties to...

- iii. *ensure that efforts designed to prevent and address violations and discrimination against women human rights defenders are developed and monitored in consultation with human rights defenders and other relevant stakeholders;*
 - iv. ***train the judiciary and public security and other relevant authorities on the specific risks and protections for human rights defenders and in particular women human rights defenders;***
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ACHPR RESOLUTION 345 ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN AFRICA (2016)

The Commission:

- i. **Reminds** all States Parties to the African Charter on Human and Peoples' Rights of their obligation to promote and protect the rights and freedoms enshrined in the African Charter and other relevant human rights instruments;*
 - ii. Strongly condemns obstacles to the activities of human rights defenders and all forms of violence and reprisals against them;*
 - iii. **Urges** all States Parties to meet their obligations under the United Nations Declaration on Human Rights Defenders, the Grand Bay Declaration, the Kigali Declaration and the Principles and Guidelines on Human and Peoples' Rights while Combating Terrorism in Africa;*
 - iv. **Urges** States parties to release arbitrarily detained human rights defenders and put an end to all forms of harassment and other acts of intimidation against human rights defenders including individuals or groups of individuals who cooperate with or bring matters before African human rights mechanisms;*
 - v. **Calls on** States parties to take the necessary measures to conduct independent investigations into violations of the rights of human rights defenders and prosecute the perpetrators;*
 - vi. **Encourages** States parties to enact specific laws on the protection of human rights defenders.*
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ACHPR RESOLUTION 368 ON IMPLEMENTATION OF THE PRINCIPLES AND GUIDELINES ON HUMAN AND PEOPLES' RIGHTS WHILE COUNTERING TERRORISM (2015)

The Commission:

1. Calls on all African States, in accordance with Article 1 of the African Charter on Human and Peoples' Rights, to adopt legislative, administrative, judicial and other appropriate measures to give effect to the Principles and Guidelines on Human Rights while Countering Terrorism in Africa and ensure that the rights and obligations contained therein are guaranteed in law, policies, regulations and practices governing all counter-terrorism operations, including during armed conflict and under a state of emergency;

ACHPR RESOLUTION 196 ON HUMAN RIGHTS DEFENDERS IN AFRICA (2011)

...Calls on States to recognize the role of human rights defenders in the promotion and protection of rights and freedoms as recognised by the African Charter and other regional and international instruments;

Encourages States to adopt specific legislation on the protection of human rights defenders;

Urges the States to release the human rights defenders who are arbitrarily detained and to put an end to the judicial harassment and other acts of intimidation against human rights defenders;

Encourages the States to take all necessary measures to initiate independent investigations on cases of violations of the rights of human rights defenders so as to prosecute and judge the perpetrators.

Urges all States to prevent and refrain from all acts of intimidation or reprisal against individuals or groups who seize the African Commission on Human and Peoples' Rights...

ACHPR RESOLUTION 88 ON THE PROTECTION OF HUMAN RIGHTS AND THE RULE OF LAW IN THE FIGHT AGAINST TERRORISM (2005)

2. *Reaffirms* that African States should ensure that the measures taken to combat terrorism fully comply with their obligations under the African Charter on Human and Peoples' Rights and other international human rights treaties, including the right to life, the prohibition of arbitrary arrests and detention, the right to a fair hearing, the prohibition of torture and other cruel, inhuman and degrading penalties and treatment and the right to seek asylum;

KIGALI DECLARATION (2003)

28. Recognizes the important role of civil society organizations (CSOs) in general and human rights defenders in particular, in the promotion and protection of human rights in Africa, calls upon Member States and regional institutions to protect them and encourage the participation of CSOs in decision-making processes with the aim of consolidating participatory democracy and sustainable development, and underscores the need for CSOs to be independent and transparent.

GRAND BAY (MAURITIUS) DECLARATION AND PLAN OF ACTION, 1999

19. The Conference notes that the adoption of the UN Declaration on the Protection of Human Rights Defenders by the 54th Session of the UN Commission on Human Rights marks a significant turning point and calls on African governments to take appropriate steps to implement the Declaration in Africa.

AMERICAN DECLARATION ON THE RIGHTS AND DUTIES OF MAN

- I. Every human being has the right to life, liberty and the security of his person.
- II. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor.
- IV. Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.
- XXI. Every person has the right to assemble peaceably with others in a formal public meeting or an informal gathering, in connection with matters of common interest of any nature.

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- XXII.** *Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.*

AMERICAN CONVENTION ON HUMAN RIGHTS (ACHR)

- 1.** *(1) The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.*
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- 9.** *No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.*
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- 13.** *(1) Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.*
- (2) The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:*
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- a. respect for the rights or reputations of others; or*
- b. the protection of national security, public order, or public health or morals.*
- (3) The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions....*
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(5) Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

15. *The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.*

16. *(1) Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.*

(2) The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

(3) The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

23. *(1) Every citizen shall enjoy the following rights and opportunities:*

a. to take part in the conduct of public affairs, directly or through freely chosen representatives;...

(2) The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

25. *(1) Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.*

(2) The States Parties undertake:

a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

b. to develop the possibilities of judicial remedy; and

c. to ensure that the competent authorities shall enforce such remedies when granted.

INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN (CONVENTION OF BELEM DO PARA)

4. *Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:...*

c. The right to personal liberty and security;...

e. The rights to have the inherent dignity of her person respected and her family protected;

f. The right to equal protection before the law and of the law;

g. The right to simple and prompt recourse to a competent court for protection against acts that violate her rights;

h. The right to associate freely;

i. The right of freedom to profess her religion and beliefs within the law; and

j. The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.

5. *Every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.*

6. *The right of every woman to be free from violence includes, among others:*

a. The right of women to be free from all forms of discrimination; and

b. The right of women to be valued and educated free of stereotyped patterns of behavior and social and cultural practices based on concepts of inferiority or subordination.

INTER-AMERICAN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST PERSONS WITH DISABILITIES

III. *To achieve the objectives of this Convention, the states parties undertake:*

(1) To adopt the legislative, social, educational, labor-related, or any other measures needed to eliminate discrimination against persons with disabilities and to promote their full integration into society, including, but not limited to:

a) Measures to eliminate discrimination gradually and to promote integration by government authorities and/or private entities in providing or making available goods, services, facilities, programs, and activities such as employment, transportation, communications, housing, recreation, education, sports, law enforcement and administration of justice, and political and administrative activities;

INTER-AMERICAN DEMOCRATIC CHARTER

- 4.** *Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.*

The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy.

OAS DECLARATION OF PRINCIPLES ON FREEDOM OF EXPRESSION

- 1.** *Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.*
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- 2.** *Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.*
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- 4.** *Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.*
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10. *Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.*
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11. *Public officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as "desacato laws," restrict freedom of expression and the right to information.*
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OAS DECLARATION OF CHAPULTEPEC

2. *Every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights.*

OAS GA RESOLUTION 2517 (XXXIX-O/09): HUMAN RIGHTS DEFENDERS: SUPPORT FOR INDIVIDUALS, GROUPS, AND ORGANIZATIONS OF CIVIL SOCIETY WORKING TO PROMOTE AND PROTECT HUMAN RIGHTS IN THE AMERICAS (2009)

RESOLVES: ...

6. *To urge member states to continue stepping up their efforts to adopt necessary measures to safeguard the lives, freedom, and personal safety of human rights defenders and their families, including effective emergency protection measures in the case of imminent threat or danger, and to ensure that thorough and impartial investigations and proceedings are carried out, and appropriate punishments are applied, in all cases of violations against human rights defenders.*

7. To urge states to take appropriate measures, in accordance with their domestic laws and their international obligations, to address the question of impunity for attacks, threats, and acts of intimidation, including cases of gender-based violence, against human rights defenders and their families, including by ensuring that complaints are promptly investigated and addressed in a transparent, independent, and accountable manner.

OAS GA RESOLUTION 1671 (XXIX-O/99): HUMAN RIGHTS DEFENDERS IN THE AMERICAS, SUPPORT FOR THE INDIVIDUALS, GROUPS, AND ORGANIZATIONS OF CIVIL SOCIETY WORKING TO PROMOTE AND PROTECT HUMAN RIGHTS IN THE AMERICAS (1999)

RESOLVES: ...

2. To urge member states to persist in their efforts to provide Human Rights Defenders with the necessary guarantees and facilities to continue freely carrying out their work of promoting and protecting human rights, at the national and regional levels, in accordance with internationally recognized principles and agreements.

ARAB CHARTER ON HUMAN RIGHTS

- 3.** *(1) Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.*
- (2) The States parties to the present Charter shall take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enshrined in the present Charter in order to ensure protection against all forms of discrimination based on any of the grounds mentioned in the preceding paragraph.*
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(3) Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments. Accordingly, each State party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter.

14. *(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.*

21. *(1) No one shall be subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation.*

(2) Everyone has the right to the protection of the law against such interference or attacks.

23. *Each State party to the present Charter undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.*

24. *Every citizen has the right:*

(1) To freely pursue a political activity.

(2) To take part in the conduct of public affairs, directly or through freely chosen representatives...

(5) To freely form and join associations with others.

(6) To freedom of association and peaceful assembly.

(7) No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public health or morals or the protection of the rights and freedoms of others.

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- 32.** *(1) The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.*
- (2) Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.*
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- 35.** *(1) Every individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests.*
- (2) No restrictions shall be placed on the exercise of these rights and freedoms except such as are prescribed by the laws in force and that are necessary for the maintenance of national security, public safety or order or for the protection of public health or morals or the rights and freedoms of others.*
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- 40.** *(1) The States parties undertake to ensure to persons with mental or physical disabilities a decent life that guarantees their dignity, and to enhance their self-reliance and facilitate their active participation in society.*
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ASEAN HUMAN RIGHTS DECLARATION

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- 1.** *All persons are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity.*
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- 2.** *Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.*
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- 5.** *Every person has the right to an effective and enforceable remedy, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by the constitution or by law.*
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- 8.** *The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others. The exercise of human rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for the human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.*
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- 10.** *ASEAN Member States affirm all the civil and political rights in the Universal Declaration of Human Rights...*
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- 20.** *(1) Every person charged with a criminal offence shall be presumed innocent until proved guilty according to law in a fair and public trial, by a competent, independent and impartial tribunal, at which the accused is guaranteed the right to defence.*
- (2) No person shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed and no person shall suffer greater punishment for an offence than was prescribed by law at the time it was committed.*
- (3) No person shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure of each ASEAN Member State.*
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- 21.** *Every person has the right to be free from arbitrary interference with his or her privacy, family, home or correspondence including personal data, or to attacks upon that person's honour and reputation. Every person has the right to the protection of the law against such interference or attacks.*
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- 22.** *Every person has the right to freedom of thought, conscience and religion. All forms of intolerance, discrimination and incitement of hatred based on religion and beliefs shall be eliminated.*
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- 23.** *Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.*
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- 24.** *Every person has the right to freedom of peaceful assembly.*
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35. *The right to development is an inalienable human right by virtue of which every human person and the peoples of ASEAN are entitled to participate in, contribute to, enjoy and benefit equitably and sustainably from economic, social, cultural and political development. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. While development facilitates and is necessary for the enjoyment of all human rights, the lack of development may not be invoked to justify the violations of internationally recognised human rights.*

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

1. *Human dignity is inviolable. It must be respected and protected.*
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3. *(1) Everyone has the right to respect for his or her physical and mental integrity.*
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6. *Everyone has the right to liberty and security of person.*
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7. *Everyone has the right to respect for his or her private and family life, home and communications.*
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11. *(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*
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12. *(1) Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.*
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21. *(1) Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*
- (2) Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.*
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- 23.** *Equality between women and men must be ensured in all areas, including employment, work and pay.*

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

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- 24.** *(1) Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.*

(2) In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

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- 26.** *The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.*

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- 47.** *Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.*

EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

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- 1.** *The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.*

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- 5.** *(1) Everyone has the right to liberty and security of person.*

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- 7.** *(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.*

(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

8. *(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

10. *(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

11. *(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.*

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

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13. *Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.*
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14. *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*
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16. *Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.*
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COE FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES

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3. *(2) Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.*
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4. *(1) The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.*
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7. *The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.*
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9. *(1) The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media.*
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15. *(1) The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.*
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EUROPEAN UNION GUIDELINES ON HUMAN RIGHTS DEFENDERS (2008)

8. *...Missions should address the situation of human rights defenders in their reporting, noting in particular the occurrence of any threats or attacks against human rights defenders. In this contexts HoMs should be aware that the institutional framework can have a major impact on the ability of human rights defenders to undertake their work in safety. Issues such as legislative, judicial, administrative or other appropriate measures, undertaken by States to protect persons against any violence, threats retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of any of the rights referred to the UN Declaration on Human Rights Defenders are all relevant in this regard...*

EUROPEAN PARLIAMENT RESOLUTION ON EU POLICIES IN FAVOUR OF HUMAN RIGHTS DEFENDERS (17 JUNE 2010)

...3. Urges the EU and its Member States to express their political will to support the action of human rights defenders, and thus to make better use of all existing tools and develop new complementary mechanisms to support and promote their work through a genuinely participative strategy, which should contribute to an enabling environment for defenders in which they can perform their duties and enjoy protection; underlines that this must be combined with a policy aimed at prevention and protection from attacks and threats against human rights defenders, through both urgent and long-term measures;...

24. Condemns the climate of impunity for violations committed against defenders prevailing in numerous countries of the world; calls upon the Council and the Commission to raise this issue in their bilateral contacts, urging all states to ensure that perpetrators, regardless of their position or function, are brought to justice through independent and effective disciplinary and criminal procedures, bearing in mind always the possibility of appealing finally, after exhausting the domestic judicial instances of a state, to the European Court of Human Rights;

25. Stresses the need to ensure that the invocation of national and public security, including counter-terrorism, is not used arbitrarily against human rights defenders;

26. Points out that parliamentarians also play a crucial role when ensuring that national legislation potentially affecting human rights defenders and their activities is brought into conformity with internationally recognised human rights standards; underlines therefore the importance of these issues being systematically addressed by Members of the European Parliament in bi- and multilateral meetings with other parliamentarians and with experts on the ground, in line with its specific guidelines for human rights and democracy actions of MEPs in their visits to third countries;...

COE DECLARATION OF THE COMMITTEE OF MINISTERS ON COUNCIL OF EUROPE ACTION TO IMPROVE THE PROTECTION OF HUMAN RIGHTS DEFENDERS AND PROMOTE THEIR ACTIVITIES (6 FEBRUARY 2008)

1. Condemns all attacks on and violations of the rights of human rights defenders in Council of Europe member states or elsewhere, whether carried out by state agents or non-state actors;

2. Calls on member states to:

i) create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights;

ii) take effective measures to protect, promote and respect human rights defenders and ensure respect for their activities;

iii) strengthen their judicial systems and ensure the existence of effective remedies for those whose rights and freedoms are violated;

iv) take effective measures to prevent attacks on or harassment of human rights defenders, ensure independent and effective investigation of such acts and to hold those responsible accountable through administrative measures and/or criminal proceedings;

v) consider giving or, where appropriate, strengthening competence and capacity to independent commissions, ombudspersons, or national human rights institutions to receive, consider and make recommendations for the resolution of complaints by human rights defenders about violations of their rights;

vi) ensure that their legislation, in particular on freedom of association, peaceful assembly and expression, is in conformity with internationally recognised human rights standards and, where appropriate, seek advice from the Council of Europe in this respect;

vii) ensure the effective access of human rights defenders to the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures;

viii) co-operate with the Council of Europe human rights mechanisms and in particular with the European Court of Human Rights in accordance with the ECHR, as well as with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested;

ix) consider signing and ratifying the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124);

x) consider signing and ratifying the 1995 Additional Protocol to the European Social Charter and to consider recognising the right of national NGOs fulfilling the criteria mentioned therein to lodge collective complaints before the European Committee of Social Rights;

xi) provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas; ...

OSCE/ODIHR GUIDELINES ON THE PROTECTION OF HUMAN RIGHTS DEFENDERS (2014)*

- 23.** *Human rights defenders must not be subjected to judicial harassment by unwarranted legal and administrative proceedings or any other forms of misuse of administrative and judicial authority, or to criminalization, arbitrary arrest and detention, as well as other sanctions for acts related to their human rights work. They must have access to effective remedies to challenge the lawfulness of detention or any other sanctions imposed on them.*
- 24.** *States should review the domestic legal framework relevant to human rights defenders and their activities for its compliance with international human rights standards. They should broadly and effectively consult with human rights defenders and seek international assistance in doing so. Any legal provisions that directly or indirectly lead to the criminalization of activities that are protected by international standards should be immediately amended or repealed.*
- 25.** *Legal provisions with vague and ambiguous definitions, which lend themselves to broad interpretation and are or could be abused to prosecute human rights defenders for their work, should be amended or repealed. Full due process protections, in line with international fair trial standards, must be ensured.*
- 26.** *Laws, administrative procedures and regulations must not be used to intimidate, harass, persecute or retaliate against human rights defenders. Sanctions for administrative or minor offences must always be proportionate and must be subject to the possibility of appeal to a competent and independent court or tribunal.*

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- 27.** *States should take steps, where required, to strengthen the independence of the judiciary and prosecution authorities, as well as the proper functioning of law enforcement bodies, to ensure that human rights defenders are not subjected to politically-motivated investigations and prosecutions or to the otherwise abusive application of laws and regulations for their human rights work.*
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- 28.** *Effective oversight mechanisms should be put in place to investigate possible mis- conduct by law enforcement and judicial officials concerning the judicial harassment of human rights defenders. In addition, any structural shortcomings that may give rise to the abuse of power or corruption within the judiciary and law enforcement should be rigorously addressed.*
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- 29.** *Law enforcement officers, military personnel, public servants and other state employees who speak out against human rights violations or are engaged in other activities in defence of human rights should be protected from intimidation and harassment, disciplinary or other proceedings. In particular, the justice and discipline systems should not impose disproportionate limitations on members of the armed forces that would effectively deprive them of the right to defend human rights. Limitations on the rights of members of intelligence services and other security-sector officials have to meet the strict requirements of necessity and proportionality.*
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- 30.** *States should also protect, in law and practice, human rights defenders who are engaged in litigation from retaliatory charges, arbitrary prosecutions and other legal actions in response to cases that they file. Furthermore, their physical and personal integrity must be fully protected within and outside of the courtroom. Lawyers engaged in human rights work should not face intimidation or reprisals, such as the threat of disbarment, for their defence of human rights or of other human rights defenders.*
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- 37.** *State institutions and officials must refrain from engaging in smear campaigns, negative portrayals or the stigmatization of human rights defenders and their work. This includes the negative labelling of human rights defenders, discrediting human rights work and human rights defenders or defaming them in any way.*
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- 38.** *States should take proactive steps to counter smear campaigns against and the stig- matization of human rights defenders, including by third parties. They should publicly acknowledge the need to protect human rights defenders and the importance of their work, give recognition to individual human rights defenders and thereby strengthen the legitimacy and status accorded to human rights work in society.*
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OSCE BISHKEK DECLARATION (Freedom of the media)*

- 2.** *Governments should ensure that citizens as members of the different linguistic and cultural groups represented in the society have the right and the opportunity to freely express their views and preserve their language and culture via media.*

*OSCE instruments are included on the assumption that that they may be regarded as having acquired the status of “soft law”, or regional customary law. See Eric Manton, The OSCE Human Dimension and Customary International Law Formation, online, <https://www.osce.org/odihr/36254?download=true>.

APPENDIX B: TREATIES, DECLARATIONS AND OTHER INSTRUMENTS

The international law and principles setting out the standards for the rights of human rights defenders are found in the following international instruments: (Numbers of states parties indicated is current to 29 November 2019)

United Nations (UN) Treaties, Declarations and Other Instruments

The UDHR

- *Universal Declaration of Human Rights* ("UDHR"), adopted 10 Dec. 1984, U.N. Doc. A/810, at 71 (1948), online <<http://www.un.org/en/documents/udhr/>>.

UN Treaties

- *Vienna Convention on the Law of Treaties* ("Vienna Convention"), adopted 23 May 1969, entered into force 27 Jan. 1980, U.N. Doc. A/CONF. 39/26, reprinted in 8 ILM 679 (1969), online <<https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>>. 116 States Parties.
- *International Covenant on Civil and Political Rights* ("ICCPR"), adopted 16 Dec. 1966, entered into force 23 March 1976, U.N. Doc. A/6316, 999 U.N.T.S. 171, online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>>. 173 States Parties.
- *Optional Protocol to the International Covenant on Civil and Political Rights*, adopted 16 Dec. 1966, entered into force 23 March 1976, U.N. Doc. A/6316, 999 U.N.T.S. 171, online <<http://www1.umn.edu/humanrts/instree/b4ccprp1.htm>>. 116 States Parties.
- *International Covenant on Economic, Social and Cultural Rights* ("ICESCR"), adopted 16 Dec. 1966, entered into force 3 Jan. 1976, U.N. Doc. A/6316, 999 U.N.T.S. 3, online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>>. 170 States Parties.
- *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*: resolution/adopted by the General Assembly, adopted 10 December 2008, entered into force 5 May 2013, GA Res.

- 832, UN GAOR, 63rd Session, UN Doc A/RES/63/117 (2008), online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>>. 24 States Parties.
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ("CAT"), adopted 10 Dec. 1984, entered into force 26 June 1987, U.N. Doc. A/39/51, at 197 (1984), online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>>. 169 States Parties.
 - *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted 18 December 2002, entered into force on 22 June 2006, A/RES/57/199, online <<http://www.ohchr.org/en/ProfessionalInterest/Pages/OPCAT.aspx>>. 90 States Parties.
 - *Convention on the Elimination of All Forms of Discrimination against Women* ("CEDAW"), adopted 18 December 1979, entered into force 3 September 1981, UN Doc. A/34/46, at 193 (1979), online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>>. 189 States Parties.
 - *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*, adopted 6 October 1999, entered into force on 22 Dec. 2000, United Nations, Treaty Series, vol. 2131, p. 83, online <<http://www.un.org/womenwatch/daw/cedaw/protocol/text.htm>>. 113 States Parties.
 - *International Convention on the Elimination of All Forms of Racial Discrimination* ("CERD"), adopted 21 December 1965, entered into force 4 January 1969, U.N. Doc. A/6014 (1966), online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>>. 182 States Parties.
 - *Convention on the Rights of the Child* ("CRC"), adopted 20 Nov. 1989, entered into force 2 Sept. 1990, U.N. Doc. A/44/49, at 166 (1989), online <<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>. 196 States Parties.
 - *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, adopted 19 December 2011, entered into

force 14 April 2014, A/RES/66/138, online <https://treaties.un.org/doc/source/signature/2012/ctc_4-11d.pdf>. 46 States Parties.

- *Convention relating to the Status of Refugees*, adopted 28 July 1951, entered into force 22 April 1954, United Nations, Treaty Series, vol. 189, p. 137, online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>>. 146 States Parties.
- UN General Assembly, *Protocol Relating to the Status of Refugees*, adopted 31 January 1967, entered into force 4 October 1967, United Nations, Treaty Series, vol. 606, p. 267, online <<http://www1.umn.edu/humanrts/instree/v2prsr.htm>>. 147 States Parties.
- *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* ("ICRMW"), adopted 18 December 1990, entered into force 1 July 2003, A/RES/45/158, online <<http://www2.ohchr.org/english/bodies/cmw/cmw.htm>>. 55 States Parties.
- *International Convention for the Protection of all Persons from Enforced Disappearance*, adopted 20 December 2006, entered into force 23 December 2010, United Nations, Treaty Series, vol. 2716, p. 3, online <<http://www.ohchr.org/Documents/ProfessionalInterest/disappearance-convention.pdf>>. 62 States Parties.
- *Convention on the Rights of Persons with Disabilities*, adopted 13 December 2006, entered into force 3 May 2008, United Nations, Treaty Series, vol. 2515, p. 3, online <<http://www.un.org/disabilities/convention/conventionfull.shtml>>. 181 States Parties.
- International Labour Organization (ILO), *Convention concerning Freedom of Association and Protection of the Right to Organise*, C87, adopted 09 July 1948, entered into force 04 July 1950, online <http://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no::p12100instrument_id:312232>. 155 States Parties.

Other UN Instruments

- *United Nations Declaration on the Rights of Indigenous Peoples*, adopted 2 October 2007, by a majority of 143 states in favour, 4 votes against (Australia, Canada, New Zealand and the U.S.A.) and

- 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine), A/RES/61/295, online <http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf>. Canada and the other 3 States who voted against the Declaration have all since reversed their position.
- *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted 9 December 1998, A/RES/53/144, online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>>.
 - *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, adopted 25 November 1981, A/RES/36/55, online <<http://www.un.org/documents/ga/res/36/a36r055.htm>>.
 - *Rio Declaration on Environment and Development*, adopted 22 December 1992, A/RES/47/190, online <https://wedocs.unep.org/bitstream/handle/20.500.11822/19163/Rio_Declaration_on_Environment_and_Development.pdf?sequence=1&isAllowed=y>
 - *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, adopted 18 December 1992, A/RES/47/135, online <<http://www.un.org/documents/ga/res/47/a47r135.htm>>.
 - *Declaration on the Right to Development*, adopted 4 December 1986, A/RES/41/128, online <<http://www.un.org/documents/ga/res/41/a41r128.htm>>
 - *U.N. Human Rights Council Resolution on the Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers*, adopted without a vote on 7 June 2013, A/HRC/23/L.9, online <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/L.9>.
 - *Basic Principles on the Role of Lawyers*, unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990), online <<http://www1.umn>

edu/humanrts/instreet/i3bprl.htm>.

- *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173 of 9 December 1988, A/RES/43/173, online <<https://www.refworld.org/docid/3b00f219c.html>>.
- *The Durban Declaration and Programme of Action*, adopted by consensus at the 2001 World Conference against Racism (WCAR) 31 August to 8 September 2001, online <<http://www.un.org/en/durbanreview2009/ddpa.shtml>>.
- *The Public's Right To Know: Principles On Freedom Of Information Legislation*, June 1999, E/CN.4/2000/63, Annex II, online <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/102/59/PDF/G0010259.pdf?OpenElement>>.
- *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>>.
- *Code of Conduct for Law Enforcement Officials*, 5 February 1980, A/RES/34/169, online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>>.
- *Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials*, 24 May 1989, Economic and Social Council resolution 1989/61, annex, online <<http://www.coe.int/t/dg1/legalcooperation/economiccrime/cybercrime/cy%20activity%20Interface2006/un%20Guidelines%20CoC%20Law%20Enforcement%20Officers.pdf>>.
- *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted 16 December 2005, A/RES/60/147, online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>>.

- *Guidelines on the Role of Prosecutors*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx>>.
- *Basic Principles on the Independence of the Judiciary*, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, online <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>>.
- UN General Assembly resolution 68/181, *Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders*, adopted without a vote, 18 December 2013, A/RES/68/181, online <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/181>.
- UN General Assembly, Human Rights Council resolution 30/9, *Equal participation in political and public affairs*, adopted without a vote, 1 October 2015, A/HRC/RES/30/9, online <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/232/93/PDF/G1523293.pdf?OpenElement>>.
- UN General Assembly, Human Rights Council resolution 25/38, *The promotion and protection of human rights in the context of peaceful protests*, adopted by a vote (31 in favour, 9 against, 7 abstentions), 28 March 2014, A/HRC/RES/25/38, online <<http://www.ohchr.org/Documents/Issues/Executions/A-HRC-RES-25-38.pdf>>.
- UN General Assembly, Human Rights Council resolution 22/10, *Promotion and protection of human rights in the context of peaceful protests*, adopted without a vote, 21 March 2013, A/HRC/RES/22/10, online <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/128/40/PDF/G1312840.pdf?OpenElement>>.

- UN General Assembly, Human Rights Council resolution 19/35, *Promotion and protection of human rights in the context of peaceful protests*, adopted without a vote, 23 March 2012, A/HRC/RES/19/35, online <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/131/38/PDF/G1213138.pdf?OpenElement>>.
- UN General Assembly, Human Rights Council resolution 12/16, *Freedom of opinion and expression*, adopted without a vote, 2 October 2009, A/HRC/RES/12/16, online <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G09/166/89/PDF/G0916689.pdf?OpenElement>>.
- UN General Assembly, Human Rights Council resolution 24/5, *The rights to freedom of peaceful assembly and of association*, adopted without a vote, 26 September 2013, A/HRC/RES/24/5, online <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/178/33/PDF/G1317833.pdf?OpenElement>>.
- UN General Assembly, Human Rights Council resolution 21/16, *The rights to freedom of peaceful assembly and of association*, adopted without a vote, 27 September 2012, A/HRC/RES/21/16, online <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/174/63/PDF/G1217463.pdf?OpenElement>>.
- UN General Assembly, Human Rights Council resolution 15/21, *The rights to freedom of peaceful assembly and of association*, adopted without a vote, 30 September 2010, A/HRC/RES/15/21, online <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>>.
- UN General Assembly, Human Rights Council resolution 24/24, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, adopted by vote, 27 September 2013 [31 in favour, 1 against, 15 abstentions], A/HRC/RES/24/24, online <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/180/27/PDF/G1318027.pdf?OpenElement>>.
- UN General Assembly, Human Rights Council resolution 24/21, *Civil society space: creating and maintaining, in law and in practice, a safe and enabling environment*, adopted without a vote, 27 September

- 2013, A/HRC/RES/24/21, online <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/179/57/PDF/G1317957.pdf?OpenElement>>.
- UN General Assembly, Human Rights Council resolution 32/31, *Civil Society Space*, Adopted by a recorded vote (31 in favour, 7 against, 9 abstentions), 1 July 2016, A/HRC/RES/32/31, online <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/160/85/PDF/G1616085.pdf?OpenElement>>.
 - UN General Assembly, Human Rights Council resolution 31/32, *Protecting human rights defenders, whether individuals, groups or organs of society, addressing economic, social and cultural rights*, Adopted as orally revised by a recorded vote (33 in favour, 6 against, 8 abstentions), 24 March 2016, A/HRC/RES/31/32, online <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/083/21/PDF/G1608321.pdf?OpenElement>>.
 - UN General Assembly, Human Rights Council resolution 70/161, *Human rights defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, Adopted by a recorded vote (127 in favour, 14 against, 41 abstentions), 17 December 2015, A/RES/70/161, online <<https://undocs.org/en/A/RES/70/161>>.
 - UN General Assembly, Human Rights Council resolution 22/6, *Protecting human rights defenders*, adopted without a vote, 21 March 2013, A/HRC/RES/22/6, online <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/22/6>.
 - UN General Assembly, Human Rights Council resolution 21/12, *Safety of Journalists*, adopted without a vote, 27 September 2012, A/HRC/RES/21/12, online <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/174/10/PDF/G1217410.pdf?OpenElement>>.

African Union (AU) Treaties and Other Instruments

AU Treaties

- *African (Banjul) Charter on Human and Peoples' Rights* ("Banjul Charter"), June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58

(1982), entered into force 21 October 1986, online <<http://www.achpr.org/instruments/achpr/>>. 54 States Parties.

- *African Charter on the Rights and Welfare of the Child*, July 11, 1990, OAU Doc. CAB/LEG/24.9/49, entered into force Nov. 29, 1999, online <<http://www.achpr.org/instruments/child/>>. 49 States Parties.
- *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, 11 July 2003, entered into force 25 November 2005, online <<http://www.achpr.org/instruments/women-protocol/>>. 42 States Parties.
- *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*, adopted 10 June 1998, entered into force 25 January 2004, online <<http://www.achpr.org/instruments/court-establishment/>>. 30 States Parties.
- *African Charter on Democracy, Elections and Governance*, 30 January 2007, entered into force 15 February 2012, online <<http://www.achpr.org/instruments/charter-democracy/>>. 34 States Parties.

Other African Union Instruments

- *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa* ("The Robben Island Guidelines"), adopted by the African Court on Human and Peoples' Rights during its 32nd ordinary session, October 2002, online <<http://www.achpr.org/sessions/32nd/resolutions/61>>.
- *Declaration of Principles on Freedom of Expression in Africa*, adopted by the African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia, online <<http://hrlibrary.umn.edu/achpr/expressionfreedomdec.html>>.
- African Commission on Human and Peoples' Rights, *Cotonou Declaration on strengthening and expanding the protection of all Human Rights Defenders in Africa*, adopted at the 2nd International Symposium on Human Rights Defenders in South Africa (Johannesburg), 27 March – 1 April 2017, online <<https://www.achpr.org/news/viewdetail?id=31>>.

- African Commission on Human and Peoples' Rights Resolution 409, *Resolution on the Need to Adopt Legal Measures for the Protection of Women Human Rights Defenders in Africa*, adopted 13 November 2018, ACHPR/Res. 409 (LXIII) 2018, online <https://www.achpr.org/sessions/resolutions?id=430>.
- African Commission on Human and Peoples' Rights Resolution 376, *Resolution on the Situation of Human Rights Defenders in Africa*, adopted 22 May 2017, ACHPR/Res.376(LX)2017, online <<https://www.achpr.org/sessions/resolutions?id=419>>.
- African Commission on Human and Peoples' Rights Resolution 336, *Resolution on Measures to Protect and Promote the Work of Women Human Rights Defenders*, adopted 25 February 2016, ACHPR/Res.336(EXT.OS/XIX)2016, online < <https://www.achpr.org/sessions/resolutions?id=252>>.
- African Commission on Human and Peoples' Rights Resolution 345, *Resolution on the Situation of Human Rights Defenders in Africa*, adopted 20 April 2016, ACHPR/Res.345(LVIII)2016, online <<https://www.achpr.org/sessions/resolutions?id=384>>.
- African Commission on Human and Peoples' Rights Resolution 368, *Resolution on Implementation of the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa*, adopted 22 May 2017, ACHPR/Res.368(LX)2017, online < <https://www.achpr.org/sessions/resolutions?id=410>>.
- African Commission on Human and Peoples' Rights Resolution 196, *Resolution on Human Rights Defenders in Africa*, adopted 05 November 2011, ACHPR/Res.196(L)2011, online <<https://www.achpr.org/sessions/resolutions?id=192>>.
- African Commission on Human and Peoples' Rights Resolution 88, *Resolution on the Protection of Human Rights and the Rule of Law in the Fight against Terrorism*, adopted 5th December 2005, ACHPR/Res.88(XXXVIII)05, online <<https://www.achpr.org/sessions/resolutions?id=222>>.
- *Kigali Declaration*, adopted by the 1st African Union (AU) Ministerial Conference on Human Rights in Africa meeting, 8 May 2003, online

<<https://www.achpr.org/legalinstruments/detail?id=39>>.

- *Grand Bay (Mauritius) Declaration and Plan of Action*, adopted by the OAU Ministerial Conference on Human Rights in Africa, 16 April 1999, online <https://archives.au.int/bitstream/handle/123456789/2058/Grand%20Bay%20Declaration_E.pdf?sequence=1&isAllowed=y>.

Organization of American States (OAS) Treaties, Declarations and Other Instruments

OAS Treaties

- *American Convention on Human Rights* ("ACHR"), "Pact of San Jose", Costa Rica, 22 November 1969, entered into force 18 July 1978, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, online <http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm>. 25 States ratified/acceded, but 2 States later renounced their ratification (Trinidad and Tobago, Venezuela). (9 States, including Canada and the U.S.A., have not ratified the Convention).
- *American Declaration on the Rights and Duties of Man* ("American Declaration"), adopted by the Ninth International Conference of American States, Bogotá, Colombia, 2 May 1948, OEA/Ser.L./V/11.71, at 17 (1988), online <<http://www.oas.org/dil/1948%20American%20Declaration%20of%20the%20Rights%20and%20Duties%20of%20Man.pdf>>.
- *Charter of the Organization of American States*, 30 April 1948, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force 13 Dec. 1951, amended 1967, 1985, 14 Dec. 1992, 10 June 1993, online <http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.pdf>. 35 States Parties.
- *Inter-American Convention On The Prevention, Punishment And Eradication Of Violence Against Women "Convention Of Belem Do Para"*, adopted 06 September 1994, entered into force 03 May 1995, online <<http://www.oas.org/juridico/english/treaties/a-61.html>>. 32 States Parties.
- *Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities*, adopted 8 June 1999,

entered into force 14 September 2001, online <<http://www.oas.org/juridico/english/treaties/a-61.html>>. 32 States Parties.

Other OAS instruments

- *Inter-American Democratic Charter*, adopted 11 September 2001, <http://www.oas.org/en/democratic-charter/pdf/demcharter_en.pdf>.
- *Declaration of Principles on Freedom of Expression*, adopted by the Inter-American Commission on Human Rights at its 108th regular sessions in October 2000, online <<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26>>.
- *Chapultepec Declaration*, adopted by the Hemisphere Conference on Free Speech Mexico City March 11, 1994, online <<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=60>>.
- OAS, General Assembly Resolution 2517, *Human Rights Defenders: Support for individuals, groups, and organizations of civil society working to promote and protect human rights in the Americas*, adopted 4 June 2009, AG/RES. 2517 (XXXIX-O/09), online <<http://www.oas.org/consejo/GENERAL%20ASSEMBLY/Resoluciones-Declaraciones.asp>>.
- OAS, General Assembly Resolution 1671, *Human Rights Defenders in the Americas: Support for the individuals, groups, and organizations of civil society working to promote and protect human rights in the Americas*, adopted 7 June 1999, AG/RES. 1671 (XXIX-O/99), online <<http://www.oas.org/consejo/GENERAL%20ASSEMBLY/Resoluciones-Declaraciones.asp>>.

Council of Europe (COE): Treaties and Other Instruments

COE Treaties

- *European Convention on Human Rights* ("ECHR"), Nov. 4, 1950, 213 U.N.T.S. 222, entered into force 3 September 1953, online <<http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CM=7&DF=24/07/2012&CL=ENG>>. 47 States Parties. Ratification is required for entry into the European Union.
- *Charter of Fundamental Rights of the European Union*, proclaimed at

the Nice European Council on 7 December 2000, entered into force 01 December 2009, online <<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=EN>>.

- *Framework Convention for the Protection of National Minorities*, adopted 10 November 1994 by the Committee of Ministers of the Council of Europe, entered into force 1 February 1998, ETS No.157, online <<http://www.coe.int/en/web/minorities/text-of-the-convention>>. (The *Framework Convention* may be ratified by member States of the Council of Europe, and non-member States may join at the invitation of the Committee of Ministers. Accession to the Convention is obligatory, at least politically, for States that apply for membership in the Council of Europe.) 39 Member States.

Other EU Instruments

- European Union, *Ensuring Protection - European Union Guidelines on Human Rights Defenders*, adopted by the Council of the European Union, 14 June 2004 and revised in 2008, online <https://eeas.europa.eu/sites/eeas/files/eu_guidelines_hrd_en.pdf>.
- European Union, European Parliament Resolution, *EU policies in favour of human rights defenders*, adopted 17 June 2010, (2009/2199(INI)), online <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0226+0+DOC+XML+V0//EN>>.

Other European Instruments

- Council of Europe, Parliamentary Assembly Resolution 2225, *Protecting human rights defenders in Council of Europe member States*, adopted by the Assembly on 26 June 2018, Resolution 2225 (2018), online <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24932&lang=en>>.
- Council of Europe, Parliamentary Assembly Resolution 2095, *Strengthening the protection and role of human rights defenders in Council of Europe member States*, adopted by a vote of the Assembly (67 in favour, 18 against, 3 abstentions) on 28 January 2016, Resolution 2095 (2016), online <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22500&lang=en>>.

- Council of Europe, Parliamentary Assembly Resolution 1891, *The situation of human rights defenders in Council of Europe member States*, adopted by a vote of the Assembly (46 in favour, 1 against, 0 abstentions) on 27 June 2012, Resolution 1891 (2012), online <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18948&lang=en>>.
- Organization for Security and Co-operation in Europe, OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guidelines on the Protection of Human Rights Defenders*, 10 June 2014, online <<https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders?download=true>>.
- Organization for Security and Co-operation in Europe, *Bishkek Declaration*, (Fifth Central Asia Media Conference “Media in Multi-Cultural and Multi-Lingual Societies”, Bishkek, Kyrgyzstan, 17-18 September 2003), online <<http://www.osce.org/fom/42521?download=true>>.

Other Instruments

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APPENDIX C: OTHER RESOURCES

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Lawyers' Rights Watch Canada

Lawyers' Rights Watch Canada (LRWC) is a committee of Canadian lawyers who promote human rights and the rule of law by providing support internationally to human rights defenders in danger. LRWC promotes the implementation and enforcement of international standards designed to protect the independence and security of human rights defenders around the world. In its work, LRWC:

- Campaigns for lawyers whose rights, freedoms or independence are threatened as a result of their human rights advocacy;
- Produces legal analyses of national and international laws and standards relevant to human rights abuses against lawyers and other human rights defenders; and
- Works in cooperation with other human rights organizations.

Around the world, lawyers and others who defend human rights are often singled out as targets of repression, much of which is perpetrated by governments or government-controlled agencies. Criminal offences against human rights defenders occur with alarming frequency. In addition, authorities use existing laws and legal procedures to prosecute or otherwise intimidate advocates representing unpopular clients or causes, often in violation of international standards. Methods used to silence, intimidate or punish advocates are often illegal pursuant to the law of the state itself.

LRWC seeks to identify illegal actions against advocates, campaign for the cessation of such actions, and lobby for the implementation of effective immediate and long-term remedies.

LRWC was incorporated as a non-profit society on June 8, 2000 and Lawyers' Rights Watch (Legal Research) Canada – LRW(LR)C – was incorporated January 2, 2002, pursuant to the provisions of the Canada Corporations Act. LRWC is run by volunteers and funded solely by membership fees and donations from individuals. Donations are gratefully accepted.

www.lrwc.org