

# **From restriction to protection:**

**Research report on the legal environment for  
human rights defenders and the need for national  
laws to protect and promote their work**

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# I. INTRODUCTION

**“ The incorporation of the Declaration on Human Rights Defenders into national laws and policies is crucial to ensuring a safe and enabling environment for the work of human rights defenders.”**

*Michel Forst, UN Special Rapporteur on Human Rights Defenders and former UN Independent Expert on Human Rights in Haiti*

This report summarises the key findings of a major research project on the legal recognition and protection of human rights defenders in national law. It covers more than forty jurisdictions from all regions and a wide range of legal traditions. The aim of this research is to inform the development of a model law which would guide implementation of the international Declaration on Human Rights Defenders at the national level.<sup>1</sup>

The report is also a response to the Human Rights Council’s call to civil society actors to provide information, and States to seek assistance, in relation to ‘reviewing, amending or developing legislation that affects or would affect, directly or indirectly, the work of human rights defenders’.<sup>2</sup>

The report is divided into four main sections.

The first, Chapter III, gives a general overview and presents the key findings regarding the nature and extent of the legal recognition and protection of human rights defenders at the national level.

The second section, Chapter IV, summarises a range of findings regarding laws of general application which promote and protect the work of human rights defenders.

The third section, Chapter V, identifies the types of national laws and policies that operate to hinder or restrict the work of human rights defenders and which should be reviewed and amended or repealed to ensure that defenders can operate in a safe and enabling environment. Chapter V also includes a checklist to guide stakeholders (such as human rights defenders, policy makers, law reform commissioners, members of the Executive and parliamentarians), in their efforts to assess the compatibility of existing laws with the Declaration or to enact new laws. It is hoped that the checklist will be equally useful to human rights experts such as Special Procedure mandate holders or treaty body experts in their assessments of the compatibility of national laws with the Declaration and other relevant international human rights law.

The final section, Chapter VI, sets out key findings and recommendations as to the development, enactment and reform of national laws to ensure that human rights defenders are able to operate in a safe, enabling and conducive legal environment.

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<sup>1</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc A/Res/53/144 (adopted without a vote by the UN General Assembly, 9 December 1998).

<sup>2</sup> See ‘Protecting Human Rights Defenders’, UN Doc A/HRC/Res/22/6, OP 20 and OP 22 (adopted by consensus 21 March 2013).

# 1. ENSHRINING THE DECLARATION ON HUMAN RIGHTS DEFENDERS IN NATIONAL LAW

The legal recognition and protection of human rights defenders is crucial to ensure that they can work in a safe, enabling environment and be free from attacks, reprisals and unreasonable legal restrictions. As the former UN Special Rapporteur on Human Rights Defenders wrote in her report to the March 2014 session of the Human Rights Council:<sup>3</sup>

*One of the key elements of a safe and enabling environment for defenders is the existence of laws and provisions...that protect, support and empower defenders... The adoption of laws that explicitly guarantee the rights contained in the Declaration on Human Rights Defenders is crucial in that it could contribute to building an enabling environment and give these rights legitimacy.*

The UN Office of the High Commissioner for Human Rights has similarly said that, ‘to support and protect human rights defenders, parliaments should make the Declaration a national legal instrument in order to facilitate its application by national authorities and to ensure adherence thereto by the judiciary and State authorities.’<sup>4</sup> The UN Human Rights Council has also spoken on the issue, adopting a significant resolution in March 2013 calling on States to ‘create a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity’.<sup>5</sup> The resolution calls on States to ensure that legislation affecting the activities of human rights defenders is consistent with the Declaration and to review and amend laws which restrict, stigmatise or criminalise the work of defenders. This includes counter-terrorism laws, defamation laws, laws which restrict access to foreign sources of funding, and laws which limit freedom of expression, assembly or association on discriminatory grounds.

Despite this, and almost 15 years after its adoption, very few States have acted to comprehensively incorporate the Declaration into national law. Worse still, governments in all regions are increasingly enacting laws which restrict and even criminalise the work of human rights defenders and non-governmental organisations (NGOs).<sup>6</sup>

## 2. THE ROLE AND DEVELOPMENT OF A MODEL LAW

In response to these gaps and trends, ISHR is working in partnership with regional, sub-regional and national human rights defender groups and networks from around the world to develop a model national law on human rights defenders.

The purpose of this Model Law is to:

- assist and provide technical guidance to States to develop laws, policies and institutions to support the work of human rights defenders and implement the Declaration on Human Rights Defenders at the national level;
- provide human rights defenders with a tool to advocate for stronger legal recognition and protection of their important work; and

<sup>3</sup> ‘Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya’, UN Doc A/HRC/25/55, paras 62-3, available at [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-55\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-55_en.doc).

<sup>4</sup> Office of the High Commissioner for Human Rights, ‘Human Rights Defenders: Protecting the right to defend human rights: Fact Sheet No 29’, p 33, available at <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>. See also ‘Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya’, UN Doc A/HRC/13/22 (30 December 2009), para 114(a), where the Special Rapporteur recommends that States ‘adopt the Declaration on Human Rights Defenders as a part of domestic legislation and establish focal points for human rights defenders within the office of the Head of State or Government, or other relevant ministries’.

<sup>5</sup> ‘Protecting Human Rights Defenders’, UN Doc A/HRC/Res/22/6, para 2.

<sup>6</sup> See, eg, International Center for Not-for-Profit Law, ‘The Legal and Regulatory Framework for Civil Society: Global Trends in 2012-2013’ (October 2013), available at <http://www.icnl.org/research/trends/Global%20Trends%20in%20NGO%20Law%20Final%20October%2016.pdf>.

- provide human rights defenders with a tool against which to measure the coverage and effectiveness of existing laws and policies in this regard.

The development of a model national law on human rights defenders was one of the key recommendations made by the Vienna+20 meeting of international experts in June 2013.<sup>7</sup>

It has also been identified as an important tool by national level defenders themselves, including from Mexico (where a national law was recently enacted) and the Democratic Republic of Congo (where such a law is proposed).

More generally, the African Commission on Human and Peoples' Rights has said that 'there is growing recognition in Africa of the importance of using Model Laws to shape the development of national legislation in conformity with regional and international standards'.<sup>8</sup>

## Value of a model law from the perspective of national-level human rights defenders:

### Daniel Joloy, Comision Mexicana para la Defensa y Promocion de Derechos Humanos, Mexico

'While we were working with the Congress in drafting the Mexican Law for the Protection of Human Rights Defenders and Journalists, we constantly faced opposition from different legislators arguing some clauses were not plausible or that we, as defenders, were exaggerating the issues. In responding we had to rely on the scarce information available about the very few human rights defender mechanisms that are already in place, such as in Colombia or Guatemala. Having a Model Law that reflects best practice in the domestic legal recognition and protection of defenders from around the world would have given us an important legitimacy to introduce international standards into the national law.'

### Felix Mukwandja, The Carter Center, Democratic Republic of Congo

'Globally, a model law would be a reference and a source of inspiration for decision makers and human rights defenders...It should contain the key elements of the law as well as key arguments to protect human rights defenders effectively. A model law could serve as a tool to analyse the degree of relevance of a law or policy on the protection of human rights defenders in a particular state and, if this level of protection is low, it could be an important basis for advocacy.'

'In the DRC, where civil society is already proposing a human rights defender law, the model law could serve at three levels. First, it could provide strong arguments to human rights defenders to prove that asking for a law to protect defenders is in line with international law and not illegal. Second, it could provide the Congolese authorities, especially the Parliament, with information on the definition, the legality and legitimacy of the work of human rights defenders. Finally, the model law could help human rights defenders analyse the current draft bill and improve it accordingly.'

The development of a Model Law on Human Rights Defenders is proceeding through a number of key stages:

- **Comparative legal research** across more than 40 States representing all regions and a wide range of legal traditions on the existence of – and best practice in relation to – laws, policies and institutions which recognise, protect and support the work of human rights defenders and NGOs. This research, which is summarised in this report, also sought to identify and document laws and policies which unduly restrict, hamper or interfere with human rights defenders' work.
- **Regional consultations** organised by ISHR, in partnership with regional and sub-regional NGOs and the UN Special Rapporteur on Human Rights Defenders, to obtain input from

<sup>7</sup> 'Vienna+20: Advancing the Protection of Human Rights', Report of the International Expert Conference, Vienna, 27 and 28 June 2013, p 4, available at <http://www.ohchr.org/Documents/Events/OHCHR20/ConferenceReport.pdf>.

<sup>8</sup> African Commission on Human and Peoples' Rights, 'Model Law on Access to Information in Africa', p 8, available at [http://www.achpr.org/files/news/2013/04/d84/model\\_law.pdf](http://www.achpr.org/files/news/2013/04/d84/model_law.pdf).

national human rights defenders on the scope and content of a model law, and to identify the types of laws and policies that restrict or hamper their work. These consultations are planned for 2014 and 2015, with the consultation for Asia having taken place in Bangkok, Thailand in April 2014 and the consultation for the Middle East and North Africa having been held in Tunis, Tunisia in October 2014.

- **Drafting of a model law** by international legal experts based on the comparative research and regional consultations, and development of a comprehensive audit of the types of laws and policies requiring review or amendment to ensure that defenders are not unduly hampered or restricted in their work. This stage is planned for 2015.
- **Refinement and endorsement** of the model law by a meeting of international and regional human rights experts. This stage is planned for 2015.
- **Advocacy efforts** aimed at the endorsement of the model law by the UN Human Rights Council and relevant regional human rights bodies, such as the African Commission on Human and Peoples' Rights. This stage is planned for 2016.
- **Advocacy efforts at the national level** in two or three strategically selected States, with a view to enacting the model law in legislation or implementing it in policy. This stage is planned for 2016.

The project has been developed to complement the important work of other NGOs, such as Protection International's work to assess the effectiveness of, and best practice regarding, human rights defender protection mechanisms and programs (such as in Colombia and Mexico).<sup>9</sup> It also draws on existing compilations of legal research on the legal environment for civil society (such as the database of the International Center for Not-for-Profit Law).<sup>10</sup>

**“ Enacting the rights of human rights defenders in national law would be a significant step towards transforming the international promise of the Declaration on Human Rights Defenders into a national-level reality.”**

*Gustavo Gallon, Director of the Colombian Commission of Jurists*

<sup>9</sup> See, eg, <http://protectioninternational.org/publication/protection-of-human-rights-defenders-best-practices-and-lessons-learn/>; <http://protectioninternational.org/wp-content/uploads/2013/04/Best-Practices-and-Lessons-Learnt.pdf>.

<sup>10</sup> See, eg, <http://www.icnl.org/research/library/ol/online/search/en>.



## II. ABOUT THIS REPORT

This report summarises the key findings of a major research project on the legal recognition and protection of human rights defenders in national law covering more than forty jurisdictions from across the world. The jurisdictions were selected to ensure broad representation of all regions and a wide range of legal traditions, while also drawing on the coverage and expertise of the law firms which assisted with the project.

For each jurisdiction the research aimed to identify those laws and policies which either promote and protect the work of human rights defenders in line with the international Declaration on Human Rights Defenders, or which unduly limit and restrict their work. This included both primary research on laws and policies as they appear 'on the books' and secondary research on the impact or effectiveness of such laws and policies. This secondary research drew on sources such as Amnesty International, the East and Horn of Africa Human Rights Defenders Project, FORUM-ASIA, Human Rights Watch, Peace Brigades International, Protection International, and the US State Department, and commentary from national human rights institutions and non-governmental organisations at both the regional and national-levels.

The jurisdictions covered by the research are:

- Angola
- Argentina
- Australia
- Barbados
- Canada
- China
- Colombia
- Côte d'Ivoire
- Cuba
- Democratic Republic of Congo
- Egypt
- Ethiopia
- The Gambia
- Guatemala
- Guinea
- Honduras
- Hungary
- India
- Indonesia
- Iran
- Israel
- Italy
- Jamaica
- Japan
- Kazakhstan
- Kenya
- Laos
- Liberia
- Malaysia
- Maldives
- Myanmar
- Nigeria
- Norway
- Philippines
- Russia
- Sierra Leone
- Spain
- South Africa
- South Sudan
- Turkey
- Uganda
- United Arab Emirates
- United Kingdom
- United States of America

This research was coordinated and supervised by ISHR and undertaken on a pro bono basis by qualified lawyers from the following leading international law firms:

- Allens
- Debevoise & Plimpton
- DLA Piper
- Reed Smith
- Simmons & Simmons

The report was made possible thanks to the financial support of the Irish Department of Foreign Affairs and Trade and the Liechtenstein Ministry of Foreign Affairs.

The views in this report represent those of the International Service for Human Rights alone and not those of the contributing law firms or ministries.

### III. SPECIFIC LAWS TO PROTECT AND SUPPORT HUMAN RIGHTS DEFENDERS

“ One of the key elements of a safe and enabling environment for defenders is the existence of laws and provisions at all levels that protect, support and empower defenders, and are in compliance with international human rights law and standards.”

*Margaret Sekaggya, former UN Special Rapporteur on Human Rights Defenders (2008-2014)*

#### 1. SPECIFIC LAWS ARE REQUIRED TO SUPPORT AND PROTECT HUMAN RIGHTS DEFENDERS

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

This is reflected in recommendations and reports by independent experts,<sup>11</sup> United Nations bodies,<sup>12</sup> and regional human rights mechanisms in Africa<sup>13</sup> and the Americas.<sup>14</sup>

It is also increasingly recognised by States, including in the context of the Universal Periodic Review,<sup>15</sup> and through emerging State practice itself, with specific human rights defender laws enacted in

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<sup>11</sup> See, eg, 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya' (23 December 2013), UN Doc A/HRC/25/55, paras 62-3, available at [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-55\\_en.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-55_en.doc). See also 'Vienna+20: Advancing the Protection of Human Rights', Report of the International Expert Conference, Vienna, 27 and 28 June 2013, p 4, available at <http://www.ohchr.org/Documents/Events/OHCHR20/ConferenceReport.pdf>; and Justice & Peace, Netherlands Ministry of Foreign Affairs et al, 'Speak Truth to Power Report' (2014) p 37.

<sup>12</sup> See, eg, 'Summary of the Human Rights Council panel discussion on the importance of the promotion and protection of civil society space', UN Doc A/HRC/27/33 (26 June 2014), para 71; 'Concluding Observations of the Committee on the Elimination of Racial Discrimination: Mexico', UN Doc CERD/C/MEX/CO/16-17 (4 April 2012), para 15.

<sup>13</sup> See, eg, African Commission on Human and Peoples' Rights Resolution ACHPR/Res.196 on Human Rights Defenders in Africa (adopted 5 November 2011) which 'Encourages States to adopt specific legislation on the protection of human rights defenders'.

<sup>14</sup> See, eg, Inter-American Commission on Human Rights Resolution on Human Rights Defenders of 27 May 2014, which 'applauds the legislative and structural measures that some OAS member states have adopted to safeguard the lives, freedom, and personal safety of human rights defenders' and 'Urges member states to harmonize their applicable domestic laws with applicable international law, in accordance with their acquired international obligations, in order to protect the work carried out by human rights defenders'.

<sup>15</sup> In the context of the Universal Periodic Review, as at the conclusion of the 18<sup>th</sup> session in January 2014, the following States have made recommendations that the State under review should enact a specific law or policy to incorporate the Declaration on Human Rights Defenders at the national level or strengthen an existing law in that regard: Austria, Belgium, Brazil, Canada, Colombia, Czech Republic, Denmark, Hungary, Ireland, Netherlands, Norway, Poland, Romania, Slovakia, Spain, Switzerland, the United Kingdom and the United States.

Colombia,<sup>16</sup> Côte d'Ivoire<sup>17</sup> and Mexico,<sup>18</sup> and progressing through official legislative processes in Burkina Faso, Honduras<sup>19</sup> and the Philippines.<sup>20</sup>

A number of other States have established human rights defender protection programs through decree, including Brazil and Guatemala,<sup>21</sup> with the latter also establishing a 'Unit for the Analysis of Attacks against Human Rights Defenders'. This Unit has a mandate to analyse patterns of attacks against human rights defenders and make recommendations with a view to improving the effectiveness of investigations, and of prevention and protection measures.<sup>22</sup>

In September 2014, these developments were endorsed by the Human Rights Council in a consensus resolution which welcomed 'the recent enactment by some States of national legislation and policies to facilitate, promote and protect civil society space consistent with international human rights law' and which encouraged 'their effective implementation'.<sup>23</sup>

## Good practice examples from UN experts and treaty bodies:

**Democratic Republic of Congo:** Following a country mission to the Democratic Republic of Congo in 2009, the UN Special Rapporteur on Human Rights Defenders made a recommendation that 'the Government should adopt national and provincial laws on the protection of human rights defenders, with a specific reference to the work of women human rights defenders, developed in consultation with civil society and on the basis of technical advice from relevant international agencies'.<sup>24</sup>

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

<sup>16</sup> See Colombia *Law 418 Act of 1997*, as amended by *Laws 548 of 1999, 782 of 2002 and 1106 of 2006*.

<sup>17</sup> See Côte d'Ivoire *Law on the Promotion and Protection of Human Rights Defenders of 2014*.

<sup>18</sup> See Mexico *Law for the Protection of Human Rights Defenders and Journalists of 2012*.

<sup>19</sup> On 4 June 2014, a draft 'Law to protect human rights defenders, journalists and justice operators' was introduced into the National Congress of Honduras. It is currently undergoing a period of consultation: see <http://protectioninternational.org/2014/08/11/protection-international-and-cejil-join-efforts-to-pass-law-protecting-human-rights-defenders-in-honduras/>.

<sup>20</sup> In July 2013, the Human Rights Defenders Protection Act 2013 (House Bill No 1472) was introduced into the Philippines House of Representatives with the express purpose of implementing the Declaration on Human Rights Defenders at the national level: see [http://www.congress.gov.ph/download/basic\\_16/HB01472.pdf](http://www.congress.gov.ph/download/basic_16/HB01472.pdf). The Bill was referred to the Parliamentary Committee on Human Rights on 29 July 2013 and is now pending before that body.

<sup>21</sup> States to have established human rights defender protection programs through decree, include Brazil (National Program for the Protection of Human Rights Defenders established by Decree No 6.044 of 12 February 2007) and Guatemala (Coordination Protection Unit established by Internal Agreement II of the Presidential Commission for Human Rights and Ministerial Agreement No 103 of 2008). For a comparative analysis of the operation and effectiveness of some of these laws and policies, see Protection International, 'Focus 2013 – Public Policies for the Protection of Human Rights Defenders: The State of the Art' (at [http://protectionline.org/files/2013/05/Focus-2013\\_130523\\_ENG\\_2nd-Ed.pdf](http://protectionline.org/files/2013/05/Focus-2013_130523_ENG_2nd-Ed.pdf)), and Maria Martin Quintana and Enrique Eguren Fernandez, *Protection of Human Rights Defenders: Best Practices and Lessons Learnt* (2009).

<sup>22</sup> The Unit for the Analysis of Attacks against Human Rights Defenders in Guatemala was established pursuant to Ministerial Agreement No 103-2008. In 2009, Guatemala also adopted a 'National Policy of Prevention and Protection for Human Rights Defenders and Other Vulnerable Groups' which, while not legally enforceable, seeks to promote coordination between various government agencies and authorities, together with non-governmental organisations, to prevent and protect against attacks on human rights defenders. The Policy was agreed upon by the Congress, the Executive, the Ministry of Interior and the Human Rights Prosecutor, with input from civil society.

<sup>23</sup> 'Civil society space', UN Doc A/HRC/Res/27/31 (adopted by consensus 26 September 2014), preambular para 12.

<sup>24</sup> 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya: Mission to the Democratic Republic of Congo', UN Doc A/HRC/13/22/Add.2, para 97. See also 'Commentary to the Declaration on

**Mexico:** Following its country review of Mexico in 2012, the UN Committee on the Elimination of Racial Discrimination urged ‘the State party to expedite the adoption of legislation that specifically guarantees the protection of human rights defenders, including defenders of the rights of indigenous peoples, and to take timely measures to prevent such acts, inter alia by establishing a special mechanism for the protection of human rights defenders, in line with the Declaration on Human Rights Defenders, adopted by the General Assembly, and the recommendations of the Special Rapporteur on the situation of human rights defenders’.<sup>25</sup>

## Good practice examples from the Universal Periodic Review:

The following are good practice examples of recommendations made to States in the context of the Human Rights Council’s Universal Periodic Review:

- The **Czech Republic** recommends that **India** ‘enact a law on the protection of human rights defenders, with emphasis on those defenders facing greater risks’ (May 2012, no response)
- **Hungary** recommends that **Colombia** ‘enact legislation recognizing the legitimate work of human rights defenders and ensuring their life, security and integrity, and conduct prompt, impartial and effective investigations into allegations of threats, attacks and violence against them’ (April 2013, accepted)
- **Spain** recommends that **Indonesia** ‘adopt legislation for the legal recognition and protection of human rights defenders, as well as to repeal the legislation which restricts the right to defend and promote human rights’ (May 2012, rejected)
- **Slovakia** recommends that the **Democratic Republic of Congo** ‘adopt an effective legal framework for the protection of human rights activists in line with the Declaration on Human Rights Defenders’ (December 2009, accepted)
- During the second UPR of **Mexico** in 2013, over 40% of recommending States followed up on the implementation of recommendations made during the first UPR that Mexico enact a specific law on human rights defenders, by making recommendations as to how this law could be more effectively operationalised and its protection mechanism better resourced.

## Good practice example from a regional mechanism:

### African Commission on Human and Peoples’ Rights Resolution 196 of 5 November 2011

‘Recalling the human rights protection instruments, particularly the United Nations Declaration on Human Rights Defenders in 1998...

Bearing in mind the commitment of the States parties of the African Union in the Grand Bay (Mauritius) Declaration to implement the provisions of the United Nations Declaration on Human Rights Defenders...

Encourages States to adopt specific legislation on the protection of human rights defenders.’

Despite this recognition and these recommendations, however, very few States have acted to comprehensively incorporate the Declaration on Human Rights Defenders into national law or policy. Notably, of the eighteen States that have made specific recommendations to other States in the context of the Universal Periodic Review to enact legislation on the recognition and protection of human rights defenders, only Brazil and Colombia have developed such a domestic law or policy themselves. Similarly, very few States have acted to establish a human rights defender focal point within their national human rights institution or other relevant body, notwithstanding the call to do so by the UN Human Rights Council in Resolution 13/13.<sup>26</sup>

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the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Freedoms’ (July 2011), p 21.

<sup>25</sup> ‘Concluding Observations of the Committee on the Elimination of Racial Discrimination: Mexico’, UN Doc CERD/C/MEX/CO/16-17 (4 April 2012), para 15.

<sup>26</sup> ‘Protection of human rights defenders’, UN Doc A/HRC/Res/13/13 (adopted without a vote 25 March 2010), para 5.

Of those States that have enacted human rights defender laws or policies, such initiatives have tended to focus on the protection of human rights defenders who are already at risk. That is, there tends to be only a limited focus within national human rights defender protection mechanisms on creating an enabling environment for defenders, playing a preventative role, or promoting accountability and combating impunity for attacks and other violations against human rights defenders. Thus, for example, the Mexican law has been critiqued by civil society in the following terms:<sup>27</sup>

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

This can be contrasted with the more recent approach taken in Côte d'Ivoire, where the National Assembly adopted 'La Loi No. 2014-388 portant la promotion et la protection des défenseurs des droits de l'homme' on 11 June 2014, which codifies the State obligation to investigate and pursue accountability for threats and attacks against human rights defenders.<sup>28</sup>

## Good practice example from States:

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

'As an example of a good practice, the Special Rapporteur commends the adoption of a law and creation of a protection mechanism for defenders and journalists in Mexico in 2012. The law provides a legal basis for the coordination between the government agencies responsible for the protection of defenders and journalists. It defines an extraordinary process for emergency response in less than 12 hours. It also includes collaboration agreements with state-level governments in order to ensure their participation in the mechanism. Furthermore, it establishes a complaints procedure and ensures that public officials who do not implement the measures ordered by the mechanism will be legally sanctioned. The new mechanism also ensures the participation of civil society organizations in its decision-making processes and guarantees the right of the beneficiary to participate in the analysis of his/her risk and the definition of his/her protective measures.'<sup>29</sup>

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

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

<sup>27</sup> Daniel Joloy, 'Mexico's National Protection Mechanism for Human Rights Defenders: Challenges and Good Practices' (2013) *Journal of Human Rights Practice*, Vol 5 No 3, p 497.

<sup>28</sup> See further <http://www.assnat.ci/?q=article/les-d%C3%A9put%C3%A9s-sont-pour-la-promotion-et-la-protection-des-d%C3%A9fenseurs-des-droits-de-l%E2%80%99homme>.

<sup>29</sup> 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya' (23 December 2013), UN Doc A/HRC/25/55, para 89. Notwithstanding the initial endorsement by the Special Rapporteur, two years on from the law's enactment, both national and international human rights organisations have criticised the law's lack of effective implementation, citing under-resourcing, a lack of inter-institutional coordination, poor quality risk analysis, an absence of high-level political backing and the partial implementation of the protection mechanism's structure as obstacles: see, eg, 'El derecho a defender los derechos humanos en México: Informe sobre la situación de las personas defensoras 2011-13'; Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todas y Todos" 2014, pp 89-95 and [http://www.pbi-mexico.org/fileadmin/user\\_files/projects/mexico/files/Mechanism/1403BriefingMechanismPBI.pdf](http://www.pbi-mexico.org/fileadmin/user_files/projects/mexico/files/Mechanism/1403BriefingMechanismPBI.pdf).

The law recognises the particular threats faced by, and protection needs of, women human rights defenders. Unlike Mexico's law on the protection of human rights defenders, however, the Côte d'Ivoire law does not establish or mandate a specific protection mechanism for human rights defenders.<sup>30</sup>

The Côte d'Ivoire law has been welcomed by civil society organisations, including the Côte d'Ivoire Coalition of Human Rights Defenders and the West African Human Rights Defenders Network, although it is too early to assess the implementation or impact of the law.<sup>31</sup>

While the present report welcomes and endorses the enactment of specific laws and policies to support and protect human rights defenders, it is imperative that such laws are properly assessed and evaluated. Such evaluations, which should involve extensive consultation with human rights defenders themselves, should be undertaken with a view to making such amendments to the law itself, or the program or mechanism it mandates or establishes, as are necessary to optimise the law's effectiveness and contribution to a safe and enabling operating environment for human rights defenders. In this respect, it is positive that in his inaugural report to the UN General Assembly, UN Special Rapporteur on Human Rights Defenders, Michel Forst, foreshadowed a study 'with the aim of demonstrating the effectiveness of national mechanisms in the protection of defenders, or alternatively to reveal the measures to be taken to improve that effectiveness'.<sup>32</sup>

## 2. HUMAN RIGHTS LAWS OF GENERAL APPLICATION ARE INADEQUATE

In some States human rights enjoy a high level of recognition and protection in the constitution or a legislative instrument of general application.<sup>33</sup> In a number of cases, such States take the view that the specific legal recognition and protection of human rights defenders is unnecessary in this context.<sup>34</sup> This approach is, however, incompatible with empirical evidence that the recognition of specific human rights, or the rights of specific groups, in law is associated with the realisation of such rights in practice.<sup>35</sup>

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

<sup>31</sup> See further <http://www.ishr.ch/news/cote-divoire-new-law-will-strengthen-protection-human-rights-defenders>.

<sup>32</sup> 'Report of the Special Rapporteur on the situation of human rights defenders', UN Doc A/69/259 (5 August 2014).

<sup>33</sup> For an example of such constitutional protection, see, the South African *Bill of Rights* or the Canadian *Charter of Rights and Freedoms 1982*. For an example of legislative protection, see the United Kingdom's *Human Rights Act 1998*, which incorporates the European Convention on Human Rights into national law, or Norway's *Human Rights Act 1999*, which incorporates international human rights treaties and provisions into domestic law, with international law prevailing in the case of conflict.

<sup>34</sup> In a submission to the UN Special Rapporteur for Human Rights Defenders, for example, the United Kingdom stated that 'Human rights defenders are not marked out as a separate category in UK domestic law. They are able to carry out their activities. If they were threatened this would be a matter for the law enforcement authorities in the same way as for anyone residing in the UK': 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya – Addendum: Responses to the questionnaire on the security and protection of human rights defenders' (26 February 2010), UN Doc A/HRC/13/22/Add.4, p 215.

<sup>35</sup> See, for example, Human Rights Committee, 'General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant', UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004), para 13. It is important to emphasise here that the legal recognition and protection of human rights is a necessary but by no means sufficient factor contributing to their realisation in practice. There are many jurisdictions, for example, with impressive Bills or Charters of Rights in which the legal promise is not matched by the lived reality. This, however, is an argument for better implementation of specific human rights laws, not against the adoption of such laws in the first instance.

Moreover, evidence establishes that specific laws can have particular normative, expressive and educative functions that cannot be achieved through laws of general application.<sup>36</sup> In other words, specific laws on human rights defenders could assist not only to provide formal legal protection to their work, but also to give official recognition to the legitimacy of such work, educate law enforcement officers, public officials and the public at large about the importance of defenders' work and the protection thereof, and be a source of support and inspiration to defenders themselves both inside and outside the country concerned.

Consistently with this evidence, the former Special Rapporteur on Human Rights Defenders, Margaret Sekaggya, has said that:<sup>37</sup>

*The adoption of laws that explicitly guarantee the rights contained in the Declaration on Human Rights Defenders is crucial in that it could contribute to building an enabling environment and give these rights legitimacy. Furthermore, such laws could contribute to building wider societal support for the demand of fulfilling these rights.*

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

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

### 3. KEY FINDINGS AND RECOMMENDATIONS

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

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

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

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

<sup>36</sup> Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties*, (Oxford: Oxford University Press, 2008), p 32; Wibren Van Der Burg, 'The Expressive and Communicative Functions of Law, Especially with Regard to Moral Issues' (2001) *Law and Philosophy* 20.

<sup>37</sup> 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya', UN Doc A/HRC/25/55 (23 December 2013), para 63.

- provide for access to effective remedy for victims.<sup>38</sup>

The law should also include provisions to:

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

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<sup>38</sup> For a discussion and guidelines as to the development of protection programs, see 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya', UN Doc A/HRC/13/22 (30 December 2009), paras 25-110.



# IV. GENERAL LAWS WHICH SUPPORT OR ENABLE THE WORK OF HUMAN RIGHTS DEFENDERS

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

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

## 1. LEGAL AND CONSTITUTIONAL BILLS OF RIGHTS

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

- from the constitutional protection of a comprehensive range of civil, political, economic, social and cultural rights in South Africa;<sup>39</sup>
- to the constitutional protection of a more limited range of civil and political rights in Canada,<sup>40</sup> Guatemala,<sup>41</sup> and the United States;<sup>42</sup>
- to the legislative protection of all rights enshrined in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the European Convention on Human Rights in Norway;<sup>43</sup>
- to the even more limited legislative protection of a range of civil and political rights in the United Kingdom.<sup>44</sup>

While none of these instruments contain provisions that are specific to human rights defenders, they do recognise and protect rights that are central to defenders' work. This includes the rights to freedom of expression,<sup>45</sup> freedom of association and assembly,<sup>46</sup> and freedom from discrimination.<sup>47</sup> The recognition

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<sup>39</sup> South African *Bill of Rights 1996*.

<sup>40</sup> Canadian *Charter of Rights and Freedoms 1982*.

<sup>41</sup> Guatemala *Political Constitution of the Republic of Guatemala of 1985 (as amended in 1993)*.

<sup>42</sup> See, eg, First and Fourteenth Amendment to the United States Constitution.

<sup>43</sup> Norway *Act relating to the strengthening of the status of human rights in Norwegian law (Human Rights Act 1999)*.

<sup>44</sup> United Kingdom *Human Rights Act 1998*.

<sup>45</sup> See, eg, First Amendment to the US Constitution; Canadian *Charter of Rights and Freedoms 1982*, Article 2(b); South African *Bill of Rights 1996*, Article 16; United Kingdom *Human Rights Act 1998*, Schedule 1, Article 10; Guatemala *Constitution*, Chapter I, Title II, Article 35.

<sup>46</sup> See, eg, First Amendment to the US Constitution; Canadian *Charter of Rights and Freedoms 1982*, Articles 2(c) and 2(d); South African *Bill of Rights 1996*, Articles 17 and 18; United Kingdom *Human Rights Act 1998*, Schedule 1, Article 11; Guatemala *Constitution*, Chapter I, Title II, Articles 33 and 34.

<sup>47</sup> See, eg, Fourteenth Amendment to the US Constitution; Canadian *Charter of Rights and Freedoms 1982*, Article 15; South African *Bill of Rights 1996*, Article 9; United Kingdom *Human Rights Act 1998*, Schedule 1, Article 14.

and protection of such rights in law is a necessary (although not sufficient) factor contributing to their realisation in practice.<sup>48</sup>

### Good practice example:

#### South Africa: Bill of Rights

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

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

## 2. LAWS PROVIDING ACCESS TO INTERNATIONAL BODIES

The right of unhindered access to and communication with international bodies, and to be protected in doing so, is codified in both specific treaties applying to certain human rights bodies,<sup>49</sup> and more broadly in the Declaration on Human Rights Defenders.<sup>50</sup> It is also an essential component of the rights to freedom of expression and association recognised by a wide range of international and regional human rights treaties and instruments.<sup>51</sup>

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

<sup>48</sup> See, eg, Human Rights Committee, 'General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant', UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004), para 13. See also the view of the former Special Rapporteur – based on eight years' of research and country missions – that 'in countries where human rights are specifically recognised and protected in domestic law, those rights are more likely to be respected and realized in practice': 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya' (23 December 2013), UN Doc A/HRC/25/55, para 63.

<sup>49</sup> See, eg, Optional Protocol to the Convention against Torture, Article 15; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Article 11; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Article 13; and Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Article 4.

<sup>50</sup> Articles 5(c) and 9(4).

<sup>51</sup> The Universal Declaration on Human Rights (Articles 13, 19, 20), the International Covenant on Civil and Political Rights (Articles 12, 19, 22), the International Covenant on Economic, Social and Cultural Rights (Article 8, Optional Protocol Article 13), the Convention on the Elimination of All Forms of Racial Discrimination (Article 5(d)(i), (viii)), the Convention on the Elimination of All Forms of Discrimination against Women (Article 7, Optional Protocol Article 11), the Convention on the Rights of the Child (Article 13), the European Convention on Human Rights (Articles 10, 11, Article 2 to Protocol No 4), the African Charter on Human and Peoples' Rights (Articles 9, 10, 12), the American Convention on Human Rights (Articles 13, 16, 22), the Arab Charter on Human Rights (Article 28), the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Article 13, Optional Protocol Article 15), the Convention No 87 on Freedom of Association and Protection of the Right to Organise of the International Labour Organisation (Article 2); and UNGA Resolution 53/144 on the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, 8 March 1999, UN Doc A/RES/53/144, Annex, Articles 5, 6. See also, United Nations, *Commentary to the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*, July 2011, p 48.

Constitution of the Russian Federation provides that ‘Everyone shall have the right to appeal, according to international treaties of the Russian Federation, to international bodies for the protection of human rights and freedoms, if all the existing internal State means of legal protection have been exhausted.’

While included as illustrations of good practice, all three of these examples demonstrate deficiencies. In all three cases, the constitutional or legislative provision limits the right of recourse to international bodies to violations of those rights that are specifically recognised or guaranteed by the State (as against those rights that are recognised under international human rights law or that fall within the jurisdiction of the international mechanism). Thus, the right to communicate with international bodies is circumscribed by reference to what is protected under national law. The Russian provision contains a further limitation; namely that the right to communicate with international bodies only appears to apply following the exhaustion of domestic remedies, notwithstanding that the exhaustion of domestic remedies is only an admissibility requirement for individual communications to treaty bodies, and not for other mechanisms such as the UN Human Rights Council’s Special Procedures. Furthermore, given evidence of reprisals in Russia against those who engage with the UN human rights system,<sup>52</sup> the Russian example demonstrates that the recognition of rights in law is a necessary but by no means sufficient factor contributing to the realisation of those rights in practice.

### Good practice example:

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

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

## 3. LAWS PROVIDING PROTECTION AGAINST INTIMIDATION AND REPRISALS

Enjoyment of the right to unhindered access to and communication with human rights bodies implies that those accessing or attempting to access or communicate with these bodies should not face any form of intimidation or reprisal for doing so. The Declaration on Human Rights Defenders recognises the right of human rights defenders to protection from reprisals for their communication or cooperation, or attempted communication or cooperation, with the UN human rights bodies.<sup>53</sup>

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

No State was identified through the research as having enacted laws or provisions protecting or prohibiting reprisals against a person or group in association with their engagement with international human rights mechanisms in general terms, although a small number of States have provided protection for unhindered access in legislation regarding specific international bodies. For example, legislation in Austria, and proposed legislation in Australia,<sup>54</sup> provide specifically for protection from reprisals for cooperating with the UN Subcommittee on the Prevention of Torture, which monitors places of detention pursuant to the Optional Protocol to the Convention against Torture.

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<sup>52</sup> See, eg, ‘Cooperation with the United Nations, its representatives and mechanisms in the field of human rights: Report of the Secretary-General’, UN Doc A/HRC/27/38 (27 August 2014), para 43. See also see <http://www.ishr.ch/news/russia-reprisals-against-ngos-breach-international-law-and-obligations-human-rights-council>.

<sup>53</sup> Declaration on Human Rights Defenders, Articles 2(1), 9(1) and 12(2).

<sup>54</sup> Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) (National Uniform Legislation) Bill 2013 (NT) sections 13-14; Monitoring of Places of Detention (Optional Protocol to the Convention against Torture) Bill 2017 (ACT) section 17.

## Good practice example:

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

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

By contrast, a significant number of States have enacted specific provisions to prohibit victimisation or reprisals against a person or group in association with their engagement with domestic human rights or other complaints mechanisms, or in retaliation for the exercise of protected rights or freedoms (particularly for having submitted a complaint in relation to discrimination). Thus, for example, the US *Civil Rights Act of 1964* prohibits retaliation and intimidation of any person based on race, colour, religion, gender or national origin for filing a discrimination charge, participating in an investigation or opposing discriminatory practices.<sup>55</sup> In the United Kingdom, the *Protection from Harassment Act 1997* and the *Equality Act 2010* (in particular section 27) similarly recognise and provide penalties in relation to breaches of the right to be free from victimisation or harassment.<sup>56</sup>

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

## Good practice examples:

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

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

### **Australia: Equal opportunity and anti-discrimination laws**

Anti-discrimination legislation exists in all Australian jurisdictions and allows persons to make a complaint of discrimination or harassment to the Australian Human Rights Commission or, in the case of state or territory legislation, the relevant statutory body. Importantly, all discrimination legislation provides that it is unlawful to victimise or intimidate a complainant, a person who supports another in bringing a complaint to the relevant statutory body, or a person giving evidence in a case.<sup>57</sup>

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

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

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

In the Philippines, for example, a new act to combat enforced or involuntary disappearances requires the State to protect lawyers, human rights defenders and others working on cases of alleged enforced

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<sup>55</sup> Title VII of the *Civil Rights Act of 1964* (42 U.S.C. § 2000e-3(a)).

<sup>56</sup> For further examples, see Finland’s *Non-Discrimination Act* (21/2004), section 8; Mauritius’ *Equal Opportunities Act 2008*, section 7(1)(a); and Guyana’s *Prevention of Discrimination Act 1997*, Part VIII(22).

<sup>57</sup> *Age Discrimination Act 2004* (Cth) section 51; *Disability Discrimination Act 1992* (Cth) section 42; *Racial Discrimination Act 1975* (Cth) section 27(2); *Sex Discrimination Act 1984* (Cth) section 94; *Anti-Discrimination Act 1977* (NSW) section 50; *Equal Opportunity Act 2010* (Vic) sections 103-104; *Anti-Discrimination Act 1991* (Qld) sections 129-131; *Equal Opportunity Act 1984* (WA) section 67; *Equal Opportunity Act 1984* (SA) section 86; *Anti-Discrimination Act 1998* (Tas) section 18; *Discrimination Act 1991* (ACT) section 68; *Anti-Discrimination Act* (NT) section 23.

disappearances from any form of intimidation or reprisal for this work.<sup>58</sup> Uganda has enacted a similar law in relation to torture.

### Good practice example:

#### **Uganda: Prevention and Prohibition of Torture Act 2012**

Pursuant to section 21 of Uganda's *Prevention and Prohibition of Torture Act 2012*, the State has a legal responsibility to ensure that any person making a complaint or giving evidence in relation to alleged torture 'is protected against all manner of ill-treatment or intimidation as a consequence of his or her complaint or any evidence given'.

## 4. LAWS OR PROGRAMS PROTECTING PARTICULARLY VULNERABLE GROUPS OF HUMAN RIGHTS DEFENDERS

It is well recognised that certain groups of human rights defenders are particularly vulnerable to threats and attacks (including women human rights defenders and those working on issues of sexual orientation and gender identity, journalists and media workers, human rights defenders who work on land and environment rights or issues of corporate accountability, human rights defenders who work on issues of corruption and impunity, and human rights defenders who work on cases of torture and enforced disappearances).<sup>59</sup> It is also well established that States have a positive duty to protect them against such risks, including through the adoption of specific legislative measures.<sup>60</sup>

A small number of States reviewed have enacted laws of general application which contain specific provisions to enhance protection for groups of human rights defenders at particular risk or, through legislation, have established protection programs for particular groups that may be at risk in association with their work to promote and protect human rights. Thus, for example, Kenya enacted the *Witness Protection Act of 2006* and, pursuant to the *Witness Protection (Amendment) Act of 2010*, established the Witness Protection Agency with the purpose of, inter alia, protecting witnesses in cases involving human rights violations. Regrettably, the effectiveness of the program has been hampered by inadequate resourcing, with continuing reports of witness harassment and insecurity.<sup>61</sup>

### Good practice example:

#### **Philippines: Anti-Enforced or Involuntary Disappearance Act of 2012**

In December 2012, the Philippines became the first State in the Asian region to enact a specific law criminalising and providing protection against enforced and involuntary disappearances; a crime which is perpetrated disproportionately against human rights defenders.<sup>62</sup>

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<sup>58</sup> Philippines *Anti-Enforced or Involuntary Disappearance Act of 2012*, section 24.

<sup>59</sup> See, eg, 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya', UN Doc A/HRC/19/55 (21 December 2011); Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya', UN Doc A/HRC/16/44 (20 December 2010).

<sup>60</sup> See, eg, 'Protecting women human rights defenders', UN Doc A/Res/68/181 (resolution adopted by the UN General Assembly on 18 December 2013). See also 'Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai', UN Doc A/HRC/26/29 (14 April 2014), para 73(c); Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya', UN Doc A/HRC/16/44 (20 December 2010), para 109.

<sup>61</sup> See, eg, Human Rights Watch, 'Kenya: Rights defenders under attack', available at <http://www.hrw.org/news/2013/10/04/kenya-rights-defenders-under-attack>.

<sup>62</sup> See, eg, 'Report of the Working Group on Enforced or Involuntary Disappearances', UN Doc A/HRC/27/49 (4 August 2014), paras 61, 69, 84, 94, 119.

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

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

## 5. LAWS WHICH CRIMINALISE OR FURTHER SANCTION ATTACKS AGAINST PEOPLE IN ASSOCIATION WITH THEIR HUMAN RIGHTS WORK

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

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

### Good practice example:

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

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

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

## 6. NATIONAL HUMAN RIGHTS INSTITUTION FOCAL POINTS FOR HUMAN RIGHTS DEFENDERS

National human rights institutions established in conformity with the Paris Principles<sup>63</sup> (NHRIs) have a potentially valuable role to play in the protection of human rights defenders and the promotion of a safe and enabling environment for their work.

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

- NHRIs establish and adequately resource a focal point dedicated to the recognition and protection of human rights defenders, with a particular focus on human rights defenders at risk, such as women human rights defenders and those working on issues of sexual orientation and gender identity;<sup>64</sup> and
- NHRIs promote and disseminate the Declaration on Human Rights Defenders and work to raise awareness about the important and legitimate role of human rights defenders.<sup>65</sup>

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

### Good practice examples:

#### India: National Human Rights Commission of India<sup>66</sup>

The National Human Rights Commission of India, established pursuant to the *Protection of Human Rights Act 1993*, is accredited as an 'A status' institution in conformity with the Paris Principles. The Commission created a dedicated 'Focal Point for Human Rights Defenders' in May 2010 which is open and on call 24 hours per day, seven days per week. According to some Indian civil society organisations, 'more often than not the Focal Point responds quickly to threats and complaints by individual HRDs – even if calls are made late at night'.<sup>67</sup> The Commission has also established a dedicated webpage for its work on human rights defenders,<sup>68</sup> which includes cases of alleged attacks and violations,<sup>69</sup> together with recommendations to enhance their recognition and protection. This information is also included in the

<sup>63</sup> 'Principles Relating to the Status of National Institutions', Adopted by General Assembly Resolution 48/134 of 20 December 1993. Commonly referred to as the Paris Principles, this resolution stipulates minimum standards in relation to the mandate, autonomy, independence, pluralism, resourcing and investigative powers of NHRIs. National human rights institutions which are considered to fully comply with the Paris Principles are accredited as 'A status' by the International Coordinating Committee of NHRIs.

<sup>64</sup> See, eg, 'Report of the Special Rapporteur on the situation of human rights defenders', UN Doc A/HRC/22/47, para 120(g); Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya' (23 December 2013), UN Doc A/HRC/25/55, para 80; and also 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, paras 16-17.

<sup>65</sup> See, eg, 'Report of the Special Rapporteur on the situation of human rights defenders', UN Doc A/HRC/22/47, paras 120(a)-(c); 'Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya' (23 December 2013), UN Doc A/HRC/25/55, para 131(c); and also 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, paras 16-17.

<sup>66</sup> See further <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NHRIs/India.pdf>.

<sup>67</sup> See further the views of the All India Network of NGOs and Individuals working with National and State Human Rights Institutions (AiNNI) and Human Rights Defenders Alert India (HRDA) at <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NGOs/India-HRDAandAiNNI.pdf>.

<sup>68</sup> See further <http://www.nhrc.nic.in/hrd.htm>.

<sup>69</sup> See further [http://www.nhrc.nic.in/Documents/HRD\\_CASES\\_2014\\_01.pdf](http://www.nhrc.nic.in/Documents/HRD_CASES_2014_01.pdf).

Commission's Annual Report. Additionally, the Commission conducts regular trainings and workshops to 'sensitise state functionaries about the valuable role played by human rights defenders'.

**Philippines: Commission on Human Rights of the Philippines**<sup>70</sup>

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

**Uganda: Uganda Human Rights Commission**<sup>71</sup>

The Uganda Human Rights Commission is established under Article 51 (1) of the *Constitution of the Republic of Uganda* and the *Uganda Human Rights Commission Act of 1997*. It is accredited by the International Coordinating Committee of NHRIs as an 'A status' institution in conformity with the Paris Principles. The Commissioner has established a 'Human Rights Defenders' Desk' with responsibility for the design and implementation of policies and programs to protect defenders, investigating and tracking violations against defenders, and reviewing and advising on proposed bills that may affect defenders (such as the *Public Order Management Bill of 2011*). According to the Commission, the 'key obstacle to the effective protection of human rights defenders' in Uganda is 'the lack of a law to specifically protect human rights defenders which limits the ability of the desk and other human rights defenders to effectively address some of the situations that relate to violations of their rights.'<sup>72</sup>

## 7. LAWS PROTECTING ACCESS TO OR THE DISCLOSURE OF INFORMATION

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

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

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

<sup>70</sup> See further <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NHRIs/Philippines.pdf> and <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NGOs/Philippines-PAHRA.pdf>.

<sup>71</sup> See further <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NHRIs/Uganda.pdf> and <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NGOs/Africa-EHAHRDP.pdf>.

<sup>72</sup> See further <http://www.ohchr.org/Documents/Issues/Defenders/AnswersNHRI/NHRIs/Uganda.pdf>.



Many of the jurisdictions surveyed have adopted laws on access to information, the use and disclosure of such information, and protection from retaliation in relation to such use and disclosure.<sup>73</sup> Thus, for example, both Australia's *Freedom of Information Act 1982* and the United Kingdom's *Freedom of Information Act 2000* give members of the public the right to access the documents of most government agencies, with this right not affected by any reason the applicant has for seeking access.<sup>74</sup>

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

## Good practice examples:

### Sierra Leone: The Right to Access Information Act 2013

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

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

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

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

In many cases, however, the right to access information is subject to limitations or exemptions in relation to certain government agencies or authorities,<sup>75</sup> certain types of documents, or on broad grounds such as national security or international relations.<sup>76</sup> This may restrict the utility of such laws to human rights defenders, with many defenders working on issues that relate to 'national security' or whose work is characterised as constituting a threat to national security.<sup>77</sup>

Many jurisdictions surveyed have also enacted whistleblower legislation to protect disclosures about improper conduct and other matters of public interest, and to provide for the protection of persons making such disclosures.<sup>78</sup> In many cases, however, this legislation is limited in its application to certain categories of person (particularly employees of the government department, authority or company in relation to which the disclosure is made)<sup>79</sup> and does not extend more broadly to 'citizen whistleblowers' (a category in relation to which many human rights defenders would fall).

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<sup>73</sup> See, eg, Sierra Leone *The Right to Access Information Act 2013*; *Freedom of Information Act 1982* (Cth); *Freedom of Information Act 2000* (UK).

<sup>74</sup> *Freedom of Information Act 1982* (Cth) section 11; *Freedom of Information Act 2000* (UK) sections 1 and 8.

<sup>75</sup> *Freedom of Information Act 1982* (Cth) Schedule 2 exempt bodies include the Australian Security Intelligence Organisation and the Crime Commission.

<sup>76</sup> See, eg, *Freedom of Information Act 2000* (UK) sections 24 and 27.

<sup>77</sup> 'Summary of the Human Rights Council panel discussion on the importance of the promotion and protection of civil society space', UN Doc A/HRC/27/33 (26 June 2014), paras 23 and 25.

<sup>78</sup> See, eg, South Africa *Protected Disclosures Act No 26 of 2000*; United Kingdom *Public Interest Disclosure Act 1996*; Australia *Public Interest Disclosures Act 2013*.

<sup>79</sup> Thus, for example, South Africa's *Protected Disclosures Act No 26 of 2000* applies only to employees in relation to disclosures about their employer or other employees of that employer.

**Good practice example:****Australia: Public Interest Disclosures Act 2013**

The Australian *Public Interest Disclosures Act 2013* has been described by Blueprint for Free Speech as ‘benchmark legislation worldwide for whistleblower protection’.<sup>80</sup> The Act seeks to encourage and support disclosures by public officials of wrongdoing in the public sector and ensure proper investigation and action in relation to the disclosure. The Act permits external disclosure (such as to the media) where the whistleblower considers the investigation or action to be inadequate, provides for the suppression of the identity of the whistleblower, and provides for a range of protections against reprisals (including compensation for the victim and criminal prosecution for the person taking the reprisal).

## 8. LAWS SUPPORTING THE ESTABLISHMENT AND OPERATION OF HUMAN RIGHTS AND NON-GOVERNMENTAL ORGANISATIONS

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

While the comparative research disclosed many examples of legislative restrictions on the exercise of this right (including obstacles to registration, inappropriate governmental oversight, excessive regulation, and restrictions on the right to access foreign sources of funds), it also disclosed some examples of legislation designed to enable NGOs to thrive, including by establishing expeditious registration processes<sup>81</sup> and conferring tax benefits on certain NGOs and associations.<sup>82</sup> Some jurisdictions have gone further to establish a ‘notification procedure’ (as compared with a ‘prior-authorisation procedure’), meaning that NGOs can be legally established by notifying the relevant authorities rather than having to seek permission, authorisation, or approval from such authorities for their incorporation.<sup>83</sup>

In some jurisdictions, such as South Africa and the United States, positive enabling legislation and processes for NGOs are also underpinned by strong constitutional protection of the right to freedom of association.<sup>84</sup>

**Good practice examples:****South Africa: Non-Profit Organisations Act 1997**

The South African *Non-Profit Organisations Act 1997* has as one of its key objectives to ‘create an environment in which non-profit organisations can flourish’ (section 2(a)) and ‘an administrative and

<sup>80</sup> See <https://blueprintforfreespeech.net/document/australia-overview>.

<sup>81</sup> See, eg, Japan and Australia, where the registration of NGOs can be done wholly online.

<sup>82</sup> See, eg, US Department of State, ‘Fact Sheet: Non-Governmental Organizations (NGOs) in the United States’ (12 January 2012), available at <http://www.humanrights.gov/2012/01/12/fact-sheet-non-governmental-organizations-ngos-in-the-united-states/>.

<sup>83</sup> The UN Special Rapporteur has identified notification procedures as ‘best practice’ in the establishment of legal personality for NGOs, pointing to Cote d’Ivoire and Switzerland, among others, as jurisdictions with such regimes: see Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai’, UN Doc A/HRC/20/27 (21 May 2012), paras 58 and 95.

<sup>84</sup> In the United States, for example, the right to freedom of association – including the right to establish an NGO – is protected by the First Amendment of the Constitution, which has been held by the US Supreme Court to be an ‘essential and inseparable’ aspect of freedom of speech. Restrictions are allowed only if there is a compelling governmental interest that does not impose a ‘serious burden’ on the organisation’s right of association: see, eg, *NAACP v Alabama*, 357 U.S. 449 (1958) and *Boy Scouts of America v Dale*, 530 U.S. 640 (2000).

regulatory framework within which non-profit organisations can conduct their affairs' (section 2(b)). Innovatively, the Act contains a chapter on 'Creating an Enabling Environment' for non-profit organisations (Chapter 2), which imposes particular responsibilities on the State and its agents, with section 3 providing that, 'Within the limits prescribed by law, every organ of state must determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of non-profit organisations to perform their functions.'

#### United Kingdom: Charities Act 2011

The United Kingdom's *Charities Act 2011* confers a range of tax exemptions, deductibilities and other benefits on organisations with a 'charitable purpose'. Pursuant to section 3(1)(h) of the Act, 'the advancement of human rights' is specifically recognised as a charitable purpose, with a recent judicial decision confirming that the term 'human rights' is to be interpreted to take account of the evolution and development of human rights and includes the promotion and protection of human rights abroad.<sup>85</sup>

## 9. LAWS SUPPORTING THE RIGHT TO PEACEFUL ASSEMBLY AND PROTEST

Exercise of the right to peaceful assembly, including through participation in peaceful protests, is an important and legitimate aspect of the work of many human rights defenders.<sup>86</sup> Recognising this, Article 5(a) of the Declaration affirms the right to 'meet or assembly peacefully', while Article 12 affirms the right to 'participate in peaceful activities against violations of human rights and fundamental freedoms'. Article 12 also enshrines the obligation of States to ensure that persons participating in such activities are protected from violence, threats, retaliation or discrimination.

As is the case with the right to freedom of association, the right to peaceful assembly enjoys protection in the constitutions of many of the States surveyed – including South Africa, South Sudan, Colombia, Canada, and the United States<sup>87</sup> – and legislative recognition and protection in others.<sup>88</sup> As discussed in Part V below, however, in practice the exercise of this right is limited in many of these jurisdictions. Limitations include legislative provisions requiring the authorisation of protests,<sup>89</sup> permitting the use of force in relation to unauthorised gatherings,<sup>90</sup> or affording the State a wide discretion to declare a protest unlawful.<sup>91</sup>

There were no jurisdictions identified which afford particular recognition to protests which pertain to the promotion or protection of human rights in general terms. In the United States, however, the *Civil Rights Act of 1968* does prohibit any intimidation of, or interference with, a person participating in a peaceful

<sup>85</sup> See *Human Dignity Trust v The Charity Commission for England and Wales* (2014) UK First Tier Tribunal (Charity), Case No CA/2013/0013 (9 July 2014). Decision available at <http://www.judiciary.gov.uk/wp-content/uploads/2014/07/human-dignity-trust-v-charity-commission.pdf>.

<sup>86</sup> See, eg, 'Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN Doc A/61/312 (5 September 2006), para 76; Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani', UN Doc A/58/380 (18 September 2003), para 24.

<sup>87</sup> See, eg, First Amendment to the US Constitution; Canadian *Charter of Rights and Freedoms 1982*, Articles 2(c) and 2(d); South African *Bill of Rights 1996*, Articles 17 and 18; Colombian *Constitution 1991*, Articles 37 and 56; South Sudan *Constitution*, Article 25(1).

<sup>88</sup> See, eg, United Kingdom *Human Rights Act 1998*, Schedule 1, Article 11; Norway *Act relating to the strengthening of the status of human rights in Norwegian law (Human Rights Act 1999)*.

<sup>89</sup> See, eg, South Africa *Regulation of Gatherings Act 1993*, section 3; Colombia *National Police Code*, Art 102.

<sup>90</sup> See, eg, South Africa *Regulation of Gatherings Act 1993*, section 9(2); Colombia *National Police Code*, Art 104.

<sup>91</sup> See, eg, South Sudan *Criminal Procedure Act 2008*, section 158(2), which provides that assemblies that threaten the safety and soundness of South Sudan, its government and state institutions and public welfare can be deemed unlawful.

assembly or speech or encouraging others to do so, where that assembly or speech pertains to a range of specified human rights issues.

### Good practice example:

#### United States: Civil Rights Act of 1968

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

## 10. LAWS PROTECTING A REFUSAL TO VIOLATE HUMAN RIGHTS

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

A small number of States have enacted provisions which give effect to this right in general terms,<sup>92</sup> while a larger number of States have legal or constitutional provisions which protect limited aspects of the right, such as protection against prosecution for defying an order obedience to which would involve violation of a constitutional or legal right,<sup>93</sup> or provisions which recognise and protect the right to conscientious objection.<sup>94</sup>

### Good practice example:

#### Canada: Provincial human rights legislation

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

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

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<sup>92</sup> See, eg, Myanmar *National Human Rights Commission Act 2014*, which states that a person cannot threaten a person for refusing to do something that is forbidden by the Act.

<sup>93</sup> See, eg, Article 91 of the Constitution of Columbia, which allows any military officer to disobey an order that commands him or her to violate a constitutional right, while section 4(2) of Uganda's *Prevention and Prohibition of Torture Act 2012* provides for immunity of public officials from punishment where they refuse to obey an order amounting to torture, cruel or inhuman treatment.

<sup>94</sup> See, eg, Article 59 of the Russian Constitution, which preserves the right to undertake civilian service as an alternate to compulsory military service.

## 11. KEY FINDINGS AND RECOMMENDATIONS

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

Without limitation, this should include:

- Enshrining rights that are necessary for civil society and human rights defenders to operate, such as the freedoms of peaceful assembly, association, opinion and expression, in law or the State's constitution;
- Codifying the unlimited right of all persons to unhindered access to and communication with international, regional and sub-regional human rights mechanisms, either in law or the State's constitution;<sup>95</sup>
- Adopting provisions which strictly prohibit any intimidation or reprisal against a person or organisation in association with their cooperation with any national, sub-regional, regional or international human rights mechanisms. Such provisions should stipulate the duty of the State and its authorities to investigate and pursue accountability for any case of intimidation or reprisal and recognise the right of victims to effective remedies in that regard. Such provisions could be included in general or specific human rights law, in legislation establishing or mandating the State's national human rights institution, or in any law or decree which recognises the competence of a human rights mechanism or complaints body to receive a communication or complaint;<sup>96</sup>
- Establishing mechanisms to protect particular groups or professionals in circumstances where their work to promote, protect or give effect to human rights is likely to expose them to increased threats or risk of harm. These groups may include, but are not limited to, journalists working to expose corruption or document human rights violations (including in the context of assemblies or protests), judges, prosecutors, lawyers and others working on cases of torture or enforced disappearance, and doctors and health professionals involved in the provision of sexual and reproductive health services;
- Mandating and adequately resourcing a dedicated human rights defender focal point within a national human rights institution established in conformity with the Paris Principles with the functions of providing support and protection, investigating, documenting and following up on alleged attacks and violations, reviewing and advocating on laws and policies that may affect defenders, and conducting training and education activities to raise awareness as to the legitimacy and importance of defenders' work;
- Enacting provisions, such as in the State's criminal code, which stipulate that where an offence is perpetrated against a person in connection with their work to promote or protect human rights, that should be considered an aggravating factor;
- Ensuring that laws regulating the establishment and governance of organisations and associations are simple, accessible and non-discriminatory, and that they facilitate the expeditious and inexpensive incorporation of human rights organisations (including through a process of notification rather than authorisation for the establishment of such organisations), minimise the regulatory burden on such organisations, and safeguard their independence and autonomy;<sup>97</sup>

<sup>95</sup> See also 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, OP 13 and OP14.

<sup>96</sup> This is particularly the case for any legislation, decree or policy which recognises the competence of a body in relation to which the mandating treaty or protocol requires a State Party to prevent and pursue accountability for hindrance or interference with the right of communication: see, eg, Optional Protocol to the Convention against Torture, Art 15; Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Art 11; Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Art 13; Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Art 4; and European Convention on Human Rights, Art 34.

<sup>97</sup> See further 'Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Freedoms' (July 2011), pp 45-7. See also 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, OP 8; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai', UN Doc A/HRC/20/27 (21 May 2012), paras 95-100.

- Ensuring that taxation and other laws that may confer benefits on charities recognise that the promotion and protection of human rights is a charitable purpose and that advocacy activities are essential to realisation of this purpose;<sup>98</sup>
- Enacting provisions which particularly recognise the right to freedom of expression, association and peaceful assembly in relation to the promotion and protection of human rights, affirm the positive obligation of State authorities to facilitate and protect such speech, assembly and association, and establish offences and penalties for interference with such speech, association and assembly;<sup>99</sup>
- Ensuring that freedom of information laws contain a strong presumption in favour of access to information regarding human rights held by both public and private bodies, provide for the timely provision of such information, and that any exemptions or exceptions to disclosure (such as on grounds of national security or international relations) be narrow, clearly defined and subject to a balancing exercise which recognises the strong public interest in information and disclosures relating to alleged violations of human rights;<sup>100</sup>
- Enacting whistleblower legislation, or expanding the scope of existing legislation, to provide particular protection where the disclosure relates to the alleged violation of human rights, or is likely to expose human rights violations or promote accountability for such violations, whether by State or non-State actors and whether the whistleblower is an employee of the organisation or agency or not; and
- Enshrining – whether in general human rights legislation, anti-discrimination legislation or otherwise – the right to exercise human rights and to be protected from any form of intimidation or reprisal for doing so or for refusing to do or not do something which may violate human rights.

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<sup>98</sup> See also See also 'Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Freedoms' (July 2011), p 99.

<sup>99</sup> 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, OP 6.

<sup>100</sup> See also 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, OP 11(e).

# V. GENERAL LAWS WHICH LIMIT AND RESTRICT THE WORK OF HUMAN RIGHTS DEFENDERS

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

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

In addition to enacting specific laws to protect and support human rights defenders and tailoring laws of general application to enable their work, States should also ensure that laws are not used or abused to criminalise, stigmatise, restrict or hinder such work. In this regard, the UN Human Rights Council has expressed ‘grave concern that, in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organisations, have been misused to target human rights defenders or have hindered their work’.<sup>101</sup> The Council has also called on States ‘to take concrete steps to prevent and stop the use of legislation to hinder or limit unduly the ability of human rights defenders to exercise their work, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law’.<sup>102</sup>

This section identifies a range of laws that limit and restrict the work of human rights defenders, either on their face or in effect through their misuse. Through representative examples, it points to trends and to the types of laws which should be reviewed and amended, as called for by Human Rights Council resolutions 22/6,<sup>103</sup> 25/18,<sup>104</sup> and 27/31,<sup>105</sup> to ensure a safe and enabling legislative environment for human rights defenders.

The section is intended to be referenced in the identification of consequential amendments that would be necessary to ensure that any specific law on human rights defenders is effective in practice.

## 1. LAWS ON PUBLIC ASSEMBLY AND PROTEST

While the right to freedom of peaceful assembly and protest is protected under various international and regional instruments, together with many national laws and constitutions, the comparative research

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<sup>101</sup> ‘Protecting Human Rights Defenders’, UN Doc A/HRC/Res/22/6, para 13. See also ‘Mandate of the Special Rapporteur on the situation of human rights defenders’, UN Doc A/HRC/Res/25/18 (28 March 2014).

<sup>102</sup> ‘Protecting Human Rights Defenders’, UN Doc A/HRC/Res/22/6, preambular para 15 and operative para 22. See also ‘Mandate of the Special Rapporteur on the situation of human rights defenders’, UN Doc A/HRC/Res/25/18 (28 March 2014).

<sup>103</sup> See, in particular, preambular para 15 and operative para 22.

<sup>104</sup> See, in particular, preambular para 13.

<sup>105</sup> ‘Civil society space’, UN Doc A/HRC/Res/27/31 (adopted 26 September 2014), preambular para 12.

disclosed that, in practice, the exercise of this right is limited in many of these jurisdictions by legislative provisions, such as those which:

- unnecessarily require the notification or authorisation of protests, often weeks in advance;<sup>106</sup>
- afford police or other officials a wide discretion to impose undue restrictions or conditions on the time, place or conduct of an assembly;<sup>107</sup>
- substantially restrict the times or places in which a protest can take place;<sup>108</sup>
- afford the State a wide discretion to declare a protest unlawful or a threat to public order or security, often without the right to judicial review;<sup>109</sup>
- permit the use of force in relation to unauthorised gatherings or assemblies that are deemed to breach the peace;<sup>110</sup>
- punish or criminalise the organisers of an assembly for the conduct of third party participants in that assembly;<sup>111</sup> and
- prohibit the dissemination of information about assemblies deemed 'unauthorised' in contravention of international human rights law.<sup>112</sup>

## Restrictive practice example:

### Egypt: Law No 107 of 2013

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

## Restrictive practice example:

### Myanmar: Right to Peaceful Assembly and Peaceful Procession Act 2011

In Myanmar, citizens have a right under the 2008 Constitution and *the Right to Peaceful Assembly and Peaceful Procession Act 2011* to participate in protests. However such protests must be approved prior to the protest taking place (Article 4) and there is no court appeal against negative decisions. Elements of

<sup>106</sup> See, eg, South Africa *Regulation of Gatherings Act 1993*, section 3; Colombia *National Police Code*, Article 102; Spain *Organic Law 1/1992 on the Protection of Public Safety*; Russia *Federal Law on Rallies and Decree of the President of the Russian Federation of 25 May 1992 'On procedure of conduct of meetings, rallies, marches and pickets'*; Myanmar *Right to Peaceful Assembly and Peaceful Procession Act 2011*; Sierra Leone *Public Order Act 1965*, s 17(1). Note that not all notification requirements are unlawful, with the UN Human Rights Committee in *Auli Kivenmaa v Finland* (UN Doc CCPR/C/50/D/412/1990) stipulating the circumstances in which notification requirements may be compatible with Article 21 of the International Covenant on Civil and Political Rights.

<sup>107</sup> See, eg, Malaysia *Peaceful Assembly Act 2012*, read together with the *Police Act 1967* and the *Local Government Act 1975*. See also Uganda *Public Order Management Act 2013*, read together with the *Police Act*, sections 35-36 and the *Penal Code Act 1950*, section 69; Myanmar *Right to Peaceful Assembly and Peaceful Procession Act 2011*; Sierra Leone *Public Order Act 1965*, section 17(2).

<sup>108</sup> See, eg, Sierra Leone *Public Order Act 1965*, section 10(1), which criminalises the use of a drum or other instrument in a procession before 4pm or after 9pm, and section 23(4), which criminalises any procession, or call to convene a procession, of more than 50 people within one mile of the House of Representatives.

<sup>109</sup> See, eg, South Sudan *Criminal Procedure Act 2008*, section 158(2), which provides that assemblies that threaten the safety and soundness of South Sudan, its government and state institutions and public welfare can be deemed unlawful. See also Sierra Leone *Public Order Act of 1965*, sections 17(3) and 18(1)-(2).

<sup>110</sup> See, eg, Uganda *Public Order Management Act 2013*, read together with the *Police Act*, sections 35-36 and the *Penal Code Act 1950*, section 69. See also South Africa *Regulation of Gatherings Act 1993*, section 9(2); Colombia *National Police Code*, Article 104.

<sup>111</sup> See, eg, Uganda *Public Order Management Act 2013*.

<sup>112</sup> See, eg, Russia *Federal Law 'On information, information technologies and protection of Information' No 149-Φ3 of 27.07.2006* (ed. 28.12.2013); Sierra Leone *Public Order Act of 1965*, section 23(4).



the protest such as the ‘matter permitted to express’ and the ‘words permitted to speak out’ must be approved in advance by police (Article 8(f)). The penalty for engaging in a peaceful protest without authorisation, or for moving outside the prior authorisation (for example by saying words which have not been approved) is three months’ imprisonment or a fine of 30,000 Kyat (Articles 18 and 19).

### Restrictive practice example:

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

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

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

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

## 2. LAWS REGULATING THE ESTABLISHMENT, GOVERNANCE, ACTIVITIES AND FUNDING OF ASSOCIATIONS

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

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

The research disclosed a worsening trend of restrictions on the establishment, operation, activities, governance and access to resources for NGOs, notwithstanding protection under international law of the right to form independent associations and the right of such associations to access and receive funding and resources for the purpose of promoting and protecting human rights.<sup>113</sup>

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

- impose significant, arbitrary or discriminatory obstacles to the formation and registration of associations;<sup>114</sup>
- provide for excessive governmental interference, control, supervision or oversight of NGOs or establish NGO registration boards the members of which are appointed by or at the discretion of government;<sup>115</sup>
- limit or criminalise the right of NGOs or their members to exercise the right to freedom of expression or to advocate in relation to particular issues,<sup>116</sup> such as the rights of lesbian, gay, bisexual, transgender or intersex persons,<sup>117</sup> or to call for a boycott of certain goods or services;<sup>118</sup>
- constrain the activities and operations of NGOs on broad or vague grounds, such as prohibiting them from engaging in activities which 'disrupt the law and order' or the 'peace and tranquility' of the State;<sup>119</sup>
- impose significant limitations or prohibitions on (and even criminalise)<sup>120</sup> access to funding from 'foreign' sources, require government approval for the receipt of foreign funds, or restrict the activities of organisations receiving such funds;<sup>121</sup>
- stigmatise or otherwise limit the activities of NGOs receiving foreign funding through

<sup>113</sup> See, in particular, Declaration on Human Rights Defenders, Article 13. See also Civil society space', UN Doc A/HRC/Res/27/31 (adopted 26 September 2014), operative para 10; Organisation for American States, 'Human Rights Defenders: Support for the Individuals, Groups and Organisations of Civil Society Working to Promote and Protect Human Rights in the Americas', AG/RES 2280 (XXXVII-O/07) (adopted 5 June 2007).

<sup>114</sup> See, eg, Uganda *Non-Governmental Organisations Registration Act 1989*, section 2(1), which provides that NGOs must be registered by the Uganda Non-Governmental Organisations Board which is, in turn, effectively controlled by the Ministry of Internal Affairs and the Office of the Prime Minister. See also Ethiopia *Charities and Societies Proclamation*; Kenya *Non-Governmental Organizations Coordination Board Act 1990*. See further 'Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Freedoms' (July 2011), pp 38-42.

<sup>115</sup> See, eg, China *Regulations on Registration and Administration of Associations*, Article 28; The Gambia *NGO Decree 81 of 1996*, which subjects NGOs to the supervision of the NGO Affairs Agency within the Office of the President and requires NGOs to conform to government development plans.

<sup>116</sup> See, eg, Uganda *NGO Registration Regulations, SI 113-1, 1990*.

<sup>117</sup> See, eg, Uganda *Anti-Homosexuality Act 2014*; Nigeria *Same-Sex Marriage Prohibition Act 2014*; Russia *Law on propaganda of non-traditional sexual relations 2013 (Article 14 (1) of the Federal Law 'On basic guarantees of a child's rights in the Russian Federation')*.

<sup>118</sup> See, eg, Israel *Law Preventing Harm to the State of Israel by Means of Boycott 2011* (the Anti-Boycott Law) makes it a civil offence to call for a boycott against Israel and its products and those produced in the settlements in the West Bank.

<sup>119</sup> See, eg, Myanmar *Law Relating to the Forming of Organizations 1988*.

<sup>120</sup> See, eg, Venezuela *Criminal Code*, Article 140.

<sup>121</sup> See, eg, Ethiopia *Charities and Societies Proclamation* which prohibits organisations that receive more than 10 percent of their funding from foreign sources from carrying out activities relating to human rights, promotion of equality, conflict resolution and justice reform. See also Egypt *Law No 84 of 2002*, which requires that an NGO obtain authorisation from the Ministry of Solidarity and Social Justice prior to receiving any funds from foreign sources, and *Penal Code*, Article 78 which criminalises the receipt of funds from abroad which may be used for acts 'harmful to national interest' with life imprisonment. Other examples of restrictions on foreign funding for NGOs include Jordan's *Law on Societies of 2008*, Algeria's *Law on Association of 2012*, Venezuela's *Law for the Defense of Political Sovereignty and National Self-Determination of 2010*, and India's *Foreign Contribution (Regulation) Act 2010*.

- requirements that they register as ‘foreign agents’;<sup>122</sup>
- facilitate the closure or de-registration of NGOs on broad and vague grounds, such as constituting a ‘security risk’ or acting contrary to the national interest;<sup>123</sup> and
- criminalise associations on vague, overbroad or illegitimate grounds which may be incompatible with the rights to freedom of expression, association or assembly, including such grounds as ‘subverting or promoting the subversion of the Government or any of its officials’ or ‘interfering with, or resisting, or encouraging interference with or resistance to the administration of any law’.<sup>124</sup>

### Restrictive practice example:

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

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

### Restrictive practice example:

#### **Kenya: Non-Governmental Organizations Coordination Board Act 1990**

In 2013, the Kenyan Non-Governmental Organizations Coordination Board, established under the *Non-Governmental Organizations Coordination Board Act 1990*, denied registration to the National Gay and Lesbian Human Rights Commission on the basis that the name of the organisation was ‘unacceptable’ and incompatible with the criminalisation of anal sex in Kenya’s Penal Code. The NGLHRC has appealed the Board’s decision, with a hearing before the country’s High Court scheduled for October 2014.<sup>125</sup>

### Restrictive practice example:

#### **Uganda: NGO Registration Regulations, SI 113-1, 1990**

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

### Restrictive practice example:

#### **China: Regulations on Registration Administration of Associations**

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

<sup>122</sup> See, eg, Russia *Federal Law ‘On Making Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Noncommercial Organizations Performing the Functions of Foreign Agents,’* No. 121-FZ, 2012.

<sup>123</sup> See, eg, South Sudan *NGO Act 2003*, section 14(f). See also Uganda *NGO Registration Regulations, SI 113-1, 1990*, Regulation 13.

<sup>124</sup> See, eg, Nigeria *Criminal Code: Unlawful Societies*, sections 62-68; Myanmar *Unlawful Associations Act 1908*.

<sup>125</sup> See further Human Rights Watch, ‘Kenya: Allow rights groups to register’, 2 October 2014, available at <http://www.hrw.org/news/2014/10/02/kenya-allow-rights-groups-register>.

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

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

## 3. LAWS REGULATING JOURNALISTS OR RESTRICTING THE FORM OR CONTENT OF COMMUNICATIONS

The research disclosed a proliferation of laws which excessively regulate or restrict the work of journalists, many of whom play a crucial role in reporting on, exposing or promoting accountability for human rights violations and may be characterised as human rights defenders.<sup>126</sup>

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

Legislative provisions which interfere with the independence of the media and realisation of the rights to freedom of expression and access to information include, for example, those which establish government or quasi-government control over the media, such as by vesting authority to register or de-register journalists or publishing houses in bodies or organs that are wholly or partly controlled by the state.<sup>127</sup>

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

<sup>126</sup> See generally 'The safety of journalists', UN Doc A/HRC/27/L.7 (adopted by consensus on 25 September 2014).

<sup>127</sup> See, eg, Kenya *Information and Communications Act 2013* and *Media Act 2013*, which establish a Communications and Multimedia Appeals Tribunal with power to impose fines on media companies and recommend the de-registration of journalists. See also China *Regulations on Publication Administration* (Promulgated by the State Council on 25 December 2001 and amended on 19 March 2011); Malaysia *Printing Presses and Publishing Act 1984*; The Gambia *Newspaper Registration Act 2004*.

## Restrictive practice example:

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

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

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

- enable government censorship or blocking of content on arbitrary or overbroad grounds;<sup>128</sup>
- criminalise the publication of content on arbitrary or overbroad grounds, such as that the content is ‘insulting’, spreads ‘false news’,<sup>129</sup> or is prejudicial to the national interest, public order, morality or security;<sup>130</sup>
- criminalise the publication of information about national security measures or operations;<sup>131</sup>
- excessively restrict or criminalise freedom of expression through offences of libel,<sup>132</sup> defamation,<sup>133</sup> slander, sedition,<sup>134</sup> or blasphemy;<sup>135</sup>
- criminalise advocacy or the dissemination or publication of information about particular human rights issues (for example, issues of sexual orientation or gender identity),<sup>136</sup>
- render it a criminal offence to criticise or insult the government or head of state.<sup>137</sup>

<sup>128</sup> See, eg, Kenya *Information and Communications Act 2013* and *Media Act 2013*, which enables the Communications and Multimedia Appeals Tribunal to impose almost any order on freedom of expression. See also Turkey *Internet Act* (as amended in February 2014), which empowers the Telecommunications and Transmissions Authority to block and take down websites without court order; and Article 15.3 of the Russian *Federal Law on Information* which requires internet providers to block web content that a designated authority deems to be ‘extremist’ or to be encouraging participation in non-sanctioned meeting and events.

<sup>129</sup> See, eg, Uganda *Penal Code Act*, section 50; South Sudan *Penal Code Act 2008*, section 75; The Gambia *Information and Communications Act 2009* (as amended in July 2013); Laos *Penal Code*.

<sup>130</sup> See, eg, South Sudan *Penal Code Act 2008*, section 75; Malaysia *Printing Presses and Publishing Act 1984*; Israel *Press and Publications Law of 1995*; Myanmar *Electronic Transactions Law 2004*, section 33.

<sup>131</sup> See, eg, Australia *National Security Legislation Amendment Act 2014* (Cth) which criminalises the disclosure of information about national security officers, measures or operations, with journalists publishing such information liable for imprisonment of 5 to 10 years. See also Japan *Specific Secrets Protection Act 2013* which imposes prison sentences of up to 5 years for journalists who pursue the disclosure of state secrets; Malaysia *Official Secrets Act 1972*; Uganda *Official Secrets Act*, section 4; and United States *Espionage Act*.

<sup>132</sup> See, eg, Kazakhstan *Criminal Code*, Article 19; Sierra Leone *Seditious Libel Law of 1965*.

<sup>133</sup> See, eg, Italy *Penal Code*, Articles 594-5; Angola *Law 7/78 on Crimes Against State Security*; Malaysia *Defamation Act 1975*; Laos *Penal Code*; The Philippines *Cybercrime Prevention Act (Republic Act No. 10175)*; Liberia *Penal Code*, section 44.71; Sierra Leone *Public Order Act 1965*, sections 26-37.

<sup>134</sup> See, eg, Malaysia *Sedition Act*; Sierra Leone *Seditious Libel Law of 1965*.

<sup>135</sup> See, eg, Russia *Criminal Code*, Article 148 which provides that public actions that demonstrate clear disrespect to society and offend ‘feelings of the faithful’ are punishable by a prison sentence for up to three years and fines.

<sup>136</sup> See, eg, Uganda *Anti-Homosexuality Act 2014*; Russia *Law on propaganda of non-traditional sexual relations 2013 (Article 14 (1) of the Federal Law ‘On basic guarantees of a child’s rights in the Russian Federation’)*.

<sup>137</sup> See, eg, Egypt *Penal Code*, Article 179; South Sudan *Penal Code Act 2008*, section 76; Kazakhstan *Criminal Code (Law on the Leader of the Nation)*, Article 317-1; Guatemala *Penal Code*, Articles 411-413.

### Restrictive practice example:

#### Australia: National Security Legislation Amendment Act 2014 (Cth)

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

### Restrictive practice example:

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

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

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

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

## 4. LAWS RELATING TO NATIONAL SECURITY AND COUNTER-TERRORISM

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

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

The comparative research disclosed that laws relating to counter-terrorism and national security are increasingly being used and misused in many jurisdictions to hinder, obstruct and criminalise the work of human rights defenders. This propensity has been recognised by the Human Rights Council in a number of recent resolutions, including those relating to human rights defenders<sup>138</sup> and the protection of civil society space.<sup>139</sup> Most recently, in September 2014, the Council called on States ‘to prevent and stop the use of such provisions, and to review and, where necessary, amend any relevant provisions in order to ensure compliance with international human rights law and, as appropriate, international humanitarian law’.<sup>140</sup>

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

- prohibiting or criminalising the formation of certain associations on broad and discretionary grounds,<sup>141</sup> or the provision of any kind of support to such associations;<sup>142</sup>
- prohibiting or criminalising certain speech,<sup>143</sup> or other forms of expression,<sup>144</sup> on arbitrary or overbroad grounds,<sup>145</sup>

<sup>138</sup> See, most recently, ‘Mandate of the Special Rapporteur on the situation of human rights defenders’, UN Doc A/HRC/Res/25/18 (28 March 2014), preambular para 12.

<sup>139</sup> ‘Civil society space’, UN Doc A/HRC/Res/27/31 (adopted 26 September 2014), preambular para 11.

<sup>140</sup> ‘Civil society space’, UN Doc A/HRC/Res/27/31 (adopted 26 September 2014), preambular para 11.

<sup>141</sup> See, eg, Nigeria *Criminal Code: Unlawful Societies*, sections 62-68.

<sup>142</sup> See, eg, Israel *Prevention of Terrorism Ordinance 1948*, which prohibits expressing support for illegal or terrorist organisations; Uganda *Anti-Terrorism Act 2012*; and Turkey *Anti-Terror Law*, Article 7/2, which criminalises any propaganda for a ‘terrorist’ organisation. The United States has also been criticized for enacting laws and policies, in particular Executive Order 13224 and the *USA Patriot Act*, which grant the government and law enforcement authorities with broad authority to designate groups as terrorist entities, without adequate transparency or oversight, and to freeze their assets: see further Thomas Carothers and Saskia Brechenmacher, *Closing Space: Democracy and Human Rights Support under Fire* (2014), p 30.

<sup>143</sup> See, eg, Russia *Federal law on counteraction to extremist activities*.

<sup>144</sup> See, eg, Israel *IDF Order No. 101 Regarding Prohibition of Incitement and Hostile Propaganda Actions* (also known as Military Order 101). The Order restricts the actions of 10 or more persons gathering for a political purpose or a matter which could be construed as political. The order does not mention a distinction between peaceful and non-peaceful. See also Russia *Criminal Code*, Article 275 which classifies as treason the provision of financial, practical, technical, consultative or other assistance to a foreign state or its representatives aimed against the ‘safety of the Russian Federation’.

<sup>145</sup> See, eg, Ethiopia *Anti-Terrorism Proclamation of 2009*, which includes an overbroad and vague definition of terrorist acts and a definition of ‘encouragement of terrorism’ that makes the publication of statements ‘likely to be understood as encouraging terrorist acts’ punishable by 10 to 20 years in prison. According to Human Rights Watch,

- prohibiting or criminalising journalism or commentary on certain ‘national security’ issues;<sup>146</sup>
- permitting incommunicado detention, preventative detention or extended detention without independent judicial review;<sup>147</sup>
- criminalising certain conduct on arbitrary and overbroad grounds, such as ‘dangerousness’,<sup>148</sup> ‘extremism’,<sup>149</sup> ‘propaganda against the system’, or ‘acting against national security’.<sup>150</sup>

### Restrictive practice example:

#### Ethiopia: Anti-Terrorism Proclamation of 2009

Ethiopia’s *Anti-Terrorism Proclamation of 2009* includes an overbroad and vague definition of ‘terrorist act’ and a definition of ‘encouragement of terrorism’ that makes the publication of statements ‘likely to be understood as encouraging terrorist acts’ punishable by 10 to 20 years in prison. According to Human Rights Watch, this law is systematically used to ‘crush free speech’ and has been used to criminalise and prosecute journalists and bloggers in violation of international human rights standards.<sup>151</sup>

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

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

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this law is systematically used to ‘crush free speech’: see <http://www.hrw.org/news/2012/06/27/ethiopia-terrorism-law-used-crush-free-speech>.

<sup>146</sup> See, eg, Australia *National Security Legislation Amendment Act 2014* (Cth), section 35P.

<sup>147</sup> See, eg, Malaysia *Security Offences (Special Measures) Act 2012* and *Prevention of Crime (Amendment and Extension) Act 2013*, which provide for extended preventative detention without adequate judicial oversight.

<sup>148</sup> See, eg, Cuba *Penal Code*, Articles 72-90.

<sup>149</sup> See, eg, Russia *Federal Law On counteraction to extremist activities*, in which ‘extremism’ is defined to include obstructing the work of governmental bodies.

<sup>150</sup> See, eg, Iran *Criminal Code*.

<sup>151</sup> See, eg, Human Rights Watch, ‘Ethiopia: Terrorism law used to crush free speech’ at <http://www.hrw.org/news/2012/06/27/ethiopia-terrorism-law-used-crush-free-speech> and ‘Ethiopia: Drop case against bloggers, journalists’ at <http://www.hrw.org/news/2014/07/19/ethiopia-drop-case-against-bloggers-journalists>.



## 5. KEY FINDINGS AND RECOMMENDATIONS

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

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

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

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

## VI. KEY FINDINGS AND RECOMMENDATIONS

“ States should adopt national and provincial laws on the protection of human rights defenders, with a specific reference to the work of women human rights defenders. These laws should be developed in consultation with civil society and on the basis of technical advice from relevant international agencies.”

*‘Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Freedoms’ (July 2011), p 21.*

Drawing on research and analysis of legal frameworks in more than forty jurisdictions from all regions, ISHR makes the following key findings and recommendations to promote the effective legislative implementation of the international Declaration on Human Rights Defenders at the national level.

### 1. KEY FINDINGS

***Key finding 1: Specific legal protection of human rights defenders is a necessary component of an enabling environment for their work***

The legal recognition and protection of human rights defenders in a specific law is a necessary, although not sufficient, element of establishing and maintaining a safe and enabling environment for their work.

***Key finding 2: A model national law on human rights defenders would assist with domestic implementation of the Declaration on Human Rights Defenders***

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

***Key finding 3: Laws of general application can play an important role in the protection of human rights defenders***

Laws of general application have a vital role to play in ensuring that human rights defenders can operate in a safe environment, free from hindrance and insecurity. This is particularly the case where those laws contain specific provisions, or mandate the establishment of specific programs, adapted to the situation and protection needs of human rights defenders.

***Key finding 4: There is a proliferation of laws which are used to hinder, restrict and criminalise the work of human rights defenders***

There is a wide range of laws of general application which are used or misused by States to hinder and restrict and, in some cases, to criminalise and target, the work of human rights defenders. Without limitation, these laws include legislation relating to:

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

## 2. RECOMMENDATIONS TO BUILD ON GOOD PRACTICE

### ***Recommendation 1: Develop, enact and implement a specific national law on the recognition and protection of human rights defenders***

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

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

The law should also include provisions to:

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

### ***Recommendation 2: Enshrine the rights to freedom of expression, association and assembly in law or the constitution***

State should enshrine all those human rights that are necessary for civil society and human rights defenders to operate – such as the freedoms of peaceful assembly, association, opinion and expression – in law or the State's constitution, together with the State's obligation to protect, promote and facilitate the exercise of such rights.

### ***Recommendation 3: Recognise and protect the right to access and communicate with human rights bodies and mechanisms***

States should recognise and protect the unlimited right of all persons to unhindered access to and communication with international, regional and sub-regional human rights mechanisms, either in law or the State's constitution.

***Recommendation 4: Adopt legislative provisions to prohibit and promote accountability for intimidation and reprisals***

States should adopt provisions which strictly prohibit any intimidation or reprisal against a person or organisation in association with their cooperation with any national, sub-regional, regional or international human rights mechanism or complaints body. Such provisions should stipulate the duty of the State and its authorities to investigate and pursue accountability for any case of intimidation or reprisal and recognise the right of victims to effective remedies in that regard. Such provisions could be included in general or specific human rights laws, in legislation establishing or mandating the State's national human rights institution, or in any law or decree which recognises the competence of a human rights body to receive a communication or complaint.

***Recommendation 5: Mandate and resource a human rights defender focal point within the national human rights institution***

States should legislatively mandate and adequately resource a dedicated human rights defender focal point within a national human rights institution established in conformity with the Paris Principles. Without limitation, this focal point should be tasked with the functions of: providing support and protection to defenders at risk; investigating, documenting and following up on alleged attacks and violations; reviewing and advocating on laws and policies that may affect defenders; and conducting training and education activities to raise awareness as to the legitimacy and importance of defenders' work.

***Recommendation 6: Establish mechanisms to protect particular groups or professionals at risk due to their human rights work***

States, professional associations and regulators should establish mechanisms to protect particular groups or professionals in circumstances where their work to promote, protect or give effect to human rights is likely to expose them to increased threats or risk of harm. These groups may include, but are not limited to, journalists working to expose corruption or document human rights violations (including in the context of assemblies or protests), judges and prosecutors, lawyers and others working on cases of torture or enforced disappearance, and doctors and health professionals involved in the provision of sexual and reproductive health services.

***Recommendation 7: Specifically criminalise attacks against human rights defenders***

States should consider enacting provisions, such as in the State's criminal code, which specifically criminalise attacks against human rights defenders or which stipulate that where an offence is perpetrated against a person in connection with their work to promote or protect human rights this should be considered an aggravating factor.

***Recommendation 8: Facilitate the prompt, expeditious and inexpensive establishment of human rights organisations and other NGOs***

States should ensure that laws regulating the establishment and governance of organisations and associations are simple, accessible and non-discriminatory, and that they facilitate the expeditious and inexpensive incorporation of human rights organisations (including through a process of notification rather than authorisation for the establishment of such organisations), minimise the regulatory burden on such organisations, and safeguard their independence and autonomy.

***Recommendation 9: Support the charitable status of, and confer charitable benefits on, human rights organisations, including those which undertake advocacy***

States should ensure that taxation and other laws that may confer benefits on charities recognise that the promotion and protection of human rights is a charitable purpose and that advocacy activities are essential to realisation of this purpose.

***Recommendation 10: Enshrine the right to access and disclose information relating to human rights***

State should ensure that freedom of information laws contain a strong presumption in favour of access to information regarding human rights held by both public and private bodies and provide for the timely

provision of such information, They should also ensure that any exemptions or exceptions to disclosure (such as on grounds of national security or international relations) be narrow, clearly defined and subject to a balancing exercise which recognises the strong public interest in information and disclosure relating to human rights.

***Recommendation 11: Enact or expand whistleblower legislation to protect human rights related disclosures***

States should enact whistleblower legislation, or expand the scope of existing legislation, to provide particular protection where the disclosure relates to the alleged violation of human rights, or is likely to expose or promote accountability for such violations, whether by State or non-State actors and whether the whistleblower is an employee of the organisation or agency or not.

***Recommendation 12: Codify the right to refuse to violate human rights***

States should enshrine – whether in general human rights legislation, anti-discrimination legislation or otherwise – the right to exercise human rights and to be protected from any form of intimidation or reprisal for doing so, or for refusing to do or not do something which may violate human rights.

### 3. RECOMMENDATIONS TO REFORM RESTRICTIVE PRACTICE

***Recommendation 13: Review and amend all laws and provisions which may restrict or hinder the work of human rights defenders***

States should review and repeal or amend all provisions which unreasonably, unnecessarily or discriminatorily hinder or restrict the work of human rights defenders, ensuring that all legislation affecting their work complies with the Declaration on Human Rights Defenders and other relevant international human rights laws and standards. In conducting this review, States should have particular regard to the following types of legislation, or legislation which relates to the following issues:

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

***Recommendation 14: Decriminalise the establishment of, or participation in, unregistered associations***

States should recognise the right of individuals to establish and participate in unregistered entities or associations and remove any impediment, including criminal sanctions, to the ability of individuals to join together to engage in lawful activities without the requirement to register as legal entities.

***Recommendation 15: Safeguard the independence of NGOs***

States should reform any entity for registration or oversight of NGOs to ensure that it is independent of government, includes civil society representatives, and does not have the power or authority to determine or interfere with the mandate or activities of such organisations.

***Recommendation 16: Decriminalise non-compliance with NGO registration or reporting requirements***

States should decriminalise any non-compliance with registration or reporting requirements for NGOs.

***Recommendation 17: Prohibit the de-registration of NGOs on vague grounds or grounds which do not accord with international human rights standards***

States should prohibit the de-registration or criminalisation of NGOs on grounds that are broad, vague or do not comply with international human rights standards, such as that they are acting 'contrary to national interest' or 'subverting the Government'. States should also provide for independent judicial review of any proposed de-registration.

***Recommendation 18: Remove discriminatory restrictions on access to foreign funds and repeal requirements for NGOs receiving foreign funds to register as foreign agents***

States should remove any restrictions on access to foreign funds that do not apply to commercial organisations and enshrine the right to solicit, receive and utilise funds, including foreign funds, for the purpose of promoting and protecting human rights. Further, States should repeal any laws or provisions which require that an NGO register as a 'foreign agent' (or similar) or which empower a court, tribunal or other body to declare them as such.

***Recommendation 19: Repeal restrictions on the right to advocate in relation to all human rights for all persons***

States should remove any restrictions on the right of individuals and NGOs to engage in advocacy or public debate (including in relation to particular human rights issues, such as lesbian, gay, bisexual, transgender or intersex rights) or to critique existing or proposed laws, policies or practices.

***Recommendation 20: Decriminalise offences of defamation, libel, slander and similar offences***

States should decriminalise the offences of defamation, libel, slander, blasphemy and similar offences, including offences relating to criticism of the government, head of State, or State. States should also ensure that civil defamation laws do not provide for excessive fines or damages that may be incompatible with the right to freedom of expression.

***Recommendation 21: Decriminalise activities and the publication of materials that are prohibited on broad and vague grounds that are incompatible with international human rights standards***

States should decriminalise activities, or the publication of materials, that are prohibited on grounds that are broad, vague or do not comply with international human rights standards, such as being 'insulting', 'dangerous' or 'prejudicial to the national interest'.

***Recommendation 22: Repeal requirements as to the registration of journalists, including in order to cover protests or demonstrations, and safeguard the independence of journalists***

States should repeal any requirement as to the registration of journalists, including in order to cover protests, demonstrations and assemblies, and should remove authority for media regulation from any body or entity that is wholly or partly controlled by government.

***Recommendation 23: Amend counter-terrorism laws to ensure compliance with international human rights standards, including the Declaration on Human Rights Defenders***

States should amend counter-terrorism laws and measures to ensure a precise and targeted definition of 'terrorism' and 'terrorist activities', the inclusion of safeguards (including independent judicial review), and the repeal of any powers that are not reasonable, necessary, proportionate and in compliance with international human rights standards.

***Recommendation 24: Repeal authorisation requirements in relation to the conduct of peaceful protests and assemblies***

States should repeal requirements of authorisation (as opposed to notification) in order to convene a peaceful assembly, and establish and safeguard the ability to convene public, peaceful assemblies without notice in exceptional circumstances.

***Recommendation 25: Explicitly prohibit excessive use of force against protesters and assemblies***

States should prohibit the excessive use of force against protesters and prohibit the use of any force merely because a protest is 'unauthorised' or has not complied with notification requirements where they exist.

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