

# In the eyes of the law:

Human rights defenders demand  
national legal recognition and protection

Full consultation report

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## I. ABOUT THIS REPORT

This report contains the outcomes of the consultation in 2015 of over 500 human rights defenders (defenders) from 111 States across all regions. The consultations regarded the current legal recognition and protection of defenders at the national level, the risks defenders face, and how a model national law on the recognition and protection of defenders could contribute to creating a safe and enabling environment for their work.

The study complements ISHR's existing research on both good and bad practises toward a safe and enabling legal environments for defenders (set out in ISHR's report [From restriction to protection](#)<sup>1</sup>) by compiling the perspectives of local defenders from across the world in regards to the need for – and the necessary components of – a model law, and other elements required for a safe and enabling environment for defenders.

This report reflects the voices and experiences of defenders consulted, and is intended to complement and be read in conjunction with the substantial research and reports on the design, implementation and effectiveness of particular human rights defender protection laws and mechanisms undertaken by other organisations. Such other resources include the report entitled [In Defense of Life: Civil Observation Mission \(moc\) Report on the situation of human rights defenders in Mexico 2015](#)<sup>2</sup> prepared by a group of national and international organisations<sup>3</sup>, as well as Protection International's materials on its [Focus web page](#)<sup>4</sup> arising from a study of new and ad hoc national legislation and mechanism to protect defenders.

The report does not intend to represent a global comprehensive account of the legal environment in which defenders work, nor an exhaustive analysis of threats and challenges faced by defenders in the countries covered. The report offers a snapshot of the range of obstacles to human rights defence that exist and how national legislation may address them.

### A. The international framework regarding the recognition and protection of human rights defenders

The legal recognition and protection defenders is crucial to ensure they can work in a safe and enabling environment free from threats, intimidation, attacks and legal restrictions.

The adoption of the '*Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*' (UN Declaration on Human Rights Defenders) in 1998 recognised the importance and legitimacy of the work of defenders and their need for better protection. While not legally binding, the UN Declaration on Human Rights Defenders reaffirms existing rights under international law that are instrumental to the defence of human rights, and its adoption by the UN General Assembly represents a commitment by Member States to implement it.

With States holding the primary responsibility to ensure that defenders are able to conduct their work freely, the UN has frequently called upon States to implement laws that explicitly guarantee the rights reaffirmed in the UN Declaration on Human Rights Defenders.

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<sup>1</sup> [http://www.ishr.ch/sites/default/files/article/files/research\\_report\\_on\\_legal\\_environment\\_for\\_hrds\\_upload.pdf](http://www.ishr.ch/sites/default/files/article/files/research_report_on_legal_environment_for_hrds_upload.pdf)

<sup>2</sup> [http://www.cmdpdh.org/publicaciones-pdf/cmdpdh\\_en\\_defensa\\_de\\_la\\_vida\\_conclusiones\\_de\\_la\\_mision\\_de\\_observacion\\_civil\\_sobre\\_situacion\\_de\\_personas\\_defensoras\\_en\\_mexico\\_2015.pdf](http://www.cmdpdh.org/publicaciones-pdf/cmdpdh_en_defensa_de_la_vida_conclusiones_de_la_mision_de_observacion_civil_sobre_situacion_de_personas_defensoras_en_mexico_2015.pdf)

<sup>3</sup> The Mexican Commission for the Defense and Promotion of Human Rights (cmdpdh), Peace Brigades International – Mexico Project (pbi Mexico) and Conexx-Europe, with the support of Amnesty International Mexico (ai Mexico), Just Associates (jass), the International Service for Human Rights (ishr), Front Line Defenders (fld), Protection International (pi), Robert F. Kennedy Human Rights (rfk Human Rights), the Observatory for the Protection of Human Rights Defenders (omct/fidh), and the German Coordination for Human Rights in Mexico

<sup>4</sup> <http://focus.protectionline.org/>

The UN Office of the High Commissioner for Human Rights has said that, 'to support and protect defenders, parliaments should make the Declaration on Human Rights Defenders 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>5</sup> The former UN Special Rapporteur on defenders similarly identified a 'conducive legal environment', including the incorporation of the UN Declaration on Human Rights Defenders into national law as an essential (although by no means sufficient) element of a safe and enabling environment for defenders.<sup>6</sup> Furthermore, the UN Human Rights Council adopted a significant resolution in March 2013 calling on States to 'create a safe and enabling environment in which defenders can operate free from hindrance and insecurity'.<sup>7</sup> The resolution asks States to ensure that legislation affecting the activities of defenders is consistent with the UN Declaration on Human Rights Defenders, 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.

## **B. ISHR's consultations of human rights defenders**

Regardless, very few States have incorporated the UN Declaration on Human Rights Defenders comprehensively into national law even 15 years after its adoption, Worse still, governments in all regions are increasingly enacting laws which restrict and even criminalise the work of defenders and non-governmental organisations (NGOs).<sup>8</sup>

In response to these gaps and trends, ISHR conducted regional consultations with 500 defenders to understand the risks and obstacles they face and the legal recognition and protection they require to carry out their work safely. The consultations took place in the following regions:

- South East Asia (Bangkok, Thailand), 29-30 April 2014, with Asian Forum for Human Rights and Development (FORUM-ASIA);
- Middle East and North Africa (MENA) (Tunis, Tunisia), 28-19 October 2014, with the UN Special Rapporteur on defenders and the Office of the UN High Commissioner for Human Rights;
- Eastern Europe and Central Asia (Tbilisi, Georgia), 4-5 November 2014 with the UN Special Rapporteur on defenders and the Office of the UN High Commissioner for Human Rights;
- Latin America (Bogota, Colombia), 21-22 January 2015, with the Colombian Commission of Jurists and the UN Special Rapporteur on defenders.
- East Africa (Kampala, Uganda), 20 May 2015 with the East and Horn of Africa Human Rights Defenders Project and the participation of the UN Special Rapporteur on defenders;
- West Africa (Côte d'Ivoire), 30-31 May 2015, with the West African Network of Human Rights Defenders, the Ivorian Coalition of Human Rights Defenders, and the participation of the UN Special Rapporteur on defenders and the African Commission Special Rapporteur on defenders; and

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<sup>5</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>6</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>7</sup> 'Protecting Human Rights Defenders', UN Doc A/HRC/Res/22/6, para 2

<sup>8</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%202016.pdf>.

- Western Europe, North America and others (Florence, Italy), 22-23 June 2015 with the UN Special Rapporteur on defenders and the Office of the UN High Commissioner for Human Rights.

The consultations collated the defenders' experiences working in diverse contexts and issues, including women's rights; the protection of the rights of lesbian, gay, bisexual and intersex (LGBTI) persons; business and human rights; access to justice; enforced disappearances; refugee and asylum seeker rights; migrant rights; the rights of ethnic minorities; the rights of people with disabilities; environmental protection; transitional justice; the right to freedom of expression; sexual and reproductive rights; prisoner rights; indigenous rights; accountability for human rights violations; impunity; and economic, social and cultural rights.

The overall objective of the regional consultations was to define key risks and obstacles to defenders and what they consider to be necessary to create and maintain a safe and enabling environment for their work. The consultation process was intended to ensure that any model national law on defenders responds comprehensively to defenders' protection needs; contributes to and promotes a safe and enabling environment for their work; can be effectively implemented and operationalised; builds on good practices and lessons learnt in jurisdictions which have enacted protective or enabling legislation for defenders; is developed pursuant to a participatory and consultative process; and provides a minimum standard to guide the development of legislation for the protection of defenders.

### **C. Moving towards a model law on the recognition and protection of human rights defenders**

The consultations demonstrated that defenders consider legal recognition and protection grounded in specific national legislation to be a key aspect of establishing and maintaining a safe and enabling environment in which to conduct their work.

In response to these consultations, ISHR is working with defenders at national, regional and international levels to develop a model national law on the recognition and protection of defenders and to advocate for its adoption and enactment nationally and internationally.<sup>9</sup>

The purpose of the model law is to:

- assist and provide technical guidance to States to develop laws, policies and institutions to support the work of defenders and implement the Declaration on Human Rights Defenders at the national level;
- provide defenders with a tool to advocate for stronger legal recognition and protection of their important work; and
- provide defenders with a tool against which to measure the comprehensiveness and effectiveness of existing laws and policies in this regard.

### **D. General findings of the consultations in regards to a model law**

Numerous participants in each of the consultations identified the need for a specific law to promote and protect the work of defenders. Participants further identified that, for a law to be effective in protecting defenders on the ground, it is imperative that:

- defenders are at the core of its development;
- it is tailored to respond to their specific needs and in the context in which defenders operate;
- provisions are foreseen for its effective implementation; and

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<sup>9</sup> See <http://bit.ly/model-law> for further background and ongoing updates on the project.

- its efficacy is guaranteed through the amendment of other national laws which impact upon those rights, such as the rights to freedom of expression, association and assembly, which are crucial in fomenting an enabling environment for human rights defence.

## **E. Reading this report**

The second section (II) of this report presents the perspectives of defenders in regards to key elements to be contemplated in a model law, lessons learnt from existing legislative initiatives, and other strategies to guarantee the legal protection of defenders.

The third section (III) of the report documents the main risks and obstacles identified by defenders as hindering their work, and outlines which groups of defenders face heightened or specific risks.

ISHR has also produced a summary briefing paper of this report, entitled *In the eyes of the law: Human rights defenders demand national legal recognition and protection. Summary consultation report*, and all other documentation regarding ISHR's model law project can be found online at [www.ishr.ch/modellaw](http://www.ishr.ch/modellaw).

# **II. CONSULTATION CONCLUSIONS: INSTITUTIONAL RECOGNITION AND PROTECTION OF DEFENDERS**

## **1. STATES SHOULD DEVELOP AND ENACT A SPECIFIC LAW FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS**

The majority of defenders in all of the regional consultations concluded that States should develop and enact a specific law to implement the UN Declaration on Human Rights Defenders and ensure a safe and enabling environment for their work. All defenders agreed that consultation with defenders in the drafting process of the law ensures its effectiveness.

The law should reaffirm defenders rights and clarify obligations of both State and non-state actors. Specific calls regarding the development, content and implementation of such a law are summarised in the sub-sections below.

National legislation was perceived by defenders as an opportunity to end impunity by articulating criminal and civil enforcement penalties and guaranteeing remediation of any violations against them.

Furthermore, most defenders agreed that the law should establish a protection mechanism with preventative and reactive faculties. Lessons from existing national level policies for the protection of defenders allow for an analysis of which elements could be included into a national law in order to ensure its effective implementation.

Additionally, defenders considered that the law should be responsive to particular situations and protection needs of all defenders, including defenders working on the rights of LGBTI persons, women human rights defenders, rural communities and collectives, as well as journalists.

The following subsections set out the views of defenders expressed during the consultations on the content required to ensure a national law implements the UN Declaration on Human Rights Defenders effectively, promotes and recognises the vital and legitimate work of defenders, and penalises and ends impunity for attacks against defenders.

### **A. The rights of human rights defenders**

The law should enshrine the rights of defenders, including the rights to:

- work to promote and protect human rights, both individually and in association with others;
- freedom of opinion and expression, including the right to disseminate information relating to human rights and human rights violations;
- access information on human rights and human rights violations from both State and non-State actors;
- freedom of association and assembly, including the right to form human rights organisations, NGO coalitions and networks, as well as to peacefully protest;
- life and physical integrity, together with the right to freedom from arbitrary detention;
- access to legal counsel and to a fair trial; and
- access and use of resources, including from foreign sources.

## **B. The obligations of the State**

The law should enshrine the obligations of the State, including the obligations to:

- guarantee the rights of defenders (as outlined under point A, above);
- make public statements in support of the work of defenders and ensure the widespread dissemination of the national defender law and the UN Declaration on Human Rights Defenders;
- establish, mandate and adequately resource a specific and effective protection mechanism for defenders and – when necessary - their associates (for example colleagues, family members, friends and legal representatives);
- ensure that all threats and attacks against defenders are promptly and thoroughly investigated, with perpetrators held accountable and victims provided with access to effective remedies;
- facilitate access to information requested by defenders, from both State and non-State actors, pertaining to human rights, including in relation to places of detention;
- guarantee the security and confidentiality of communications between defenders and their contacts regarding human rights violations;
- ensure the full and effective participation of defenders in the development, enactment and implementation of laws, policies and projects pertaining to their work;
- document and make public periodic reports as to the incidence and patterns of attacks and violations against defenders, while respecting the confidentiality of defenders and their associates; and
- prohibit restrictions of funding of NGOs, defenders, networks or coalitions.

## **C. The obligations of non-State actors**

Given the current context in which defenders operate, the law should enshrine obligations of non-State actors, particularly of corporations and other business enterprises, including their obligations to:

- respect, uphold and not interfere with the rights of defenders (as outlined under section A, above), particularly the exercise of their rights to freedom of expression, association and assembly;
- engage defenders in processes of consent, consultation, due diligence and human rights impact assessment with a view to identifying, avoiding, mitigating and remedying human rights violations, as well as risks of violations; and
- provide and facilitate access to information requested by defenders pertaining to human rights.

#### **D. Enforcement penalties and remedies**

The law should include provisions for the enforcement of the obligations of both State and non-State actors, including provisions:

- creating specific offences and imposing both criminal and civil penalties in relation to violations of the rights of defenders; and
- providing remedies for victims, including through the establishment of a fund to provide rehabilitation, compensation and reparations to defenders and their associates.

#### **E. The establishment and mandate of a protection mechanism**

Defenders feel that effective laws ought to create and mandate a comprehensive, specific and adequately financed protection mechanism(s) to ensure timely and effective preventative and reactive measures with which to guarantee the protection of defenders at risk. Some also believed that any mechanism ought to be granted the power to investigate violations against defenders.

A law should mandate a mechanism(s), which:

- operates to protect and promote the work of defenders;
- responds to the individual protection needs of defenders in a timely, and sometimes urgent, fashion;
- analyses and makes recommendations as to systemic and structural factors which undermine or threaten the work of defenders;
- directly involves defenders in the development, governance and decision-making structures of the mechanism;
- includes specific, rather than generic, protection measures which respond to the level and nature of risk, taking into account gender, gender identity and sexual orientation, ethnicity, age, health and family considerations, geographical location, socio-economic contexts and the individual or collective nature of the beneficiary; and
- includes protocols regarding security and emergencies, as well as witness protection.

#### **F. Key elements of implementation which must be foreseen when developing the law**

Defenders agreed that once such a law is enacted, States should ensure effective implementation and enforcement. There needs to be political will, active prevention of violations, accountability for violations, and responses to violations that are specific to the nature of the violation.

Further, the law ought to stipulate a process of periodic review by the State together with civil society - with a view to ensuring that the law closes protection gaps and responds to immediate and systemic threats to the work of defenders.

Many defenders agreed the development of a specific entity within the government (centrally or sometimes regionally) with a mandate to work towards the recognition, protection and consultation of defenders ensures its effectiveness.

Whether such entities are created in the form of focal points, ministries or offices would depend upon national legal and political frameworks and the proposals of local defenders. Such entities should focus on particularly vulnerable groups of defenders such as women defenders, defenders working on the rights of LGBTI persons and defenders working for corporate accountability.

During the consultations defenders identified a range of strategic elements required for the approval, implementation and promotion of defender laws. These elements may inform further tools and work by civil society, such as an 'activists' handbook' which could accompany the model law and serve as a resource for those working for the adoption and implementation of such laws at the national level.

However, defenders suggested that certain provisions ought to be written into the law itself in order to contribute to its effective implementation, such as provisions:

- guaranteeing adequate and sustainable financial resources for the law's effective implementation;
- ensuring the involvement of a range of actors in promoting the importance of the law, publicising its objectives and scope, as well as disseminating information on how to access any protection mechanism the law might create;
- defining the process through which practical regulations will be established for the implementation of the law and its mechanism(s);
- committing senior levels of government to coordinating, and actively contributing to, the implementation of the law while holding them responsible;
- guaranteeing periodic monitoring and evaluation of the implementation of the law, including through ongoing consultation with defenders. Defenders suggested that this could be conducted through the creation of an observatory body, which may include a range of actors, such as academics and diplomats;
- establishing, in consultation with defenders, continuous and appropriate trainings for officials responsible for implementing the law, to guarantee that it be implemented in an effective, consistent and sensitive manner; and
- establishing penalties for violations of the law, including those committed by State officials.

## **2. EVALUATION OF, AND LESSONS LEARNT FROM, EXISTING PROTECTION LAWS, POLICIES AND MECHANISMS**

In general, the defenders consulted believed that in developing a model law important lessons could be learnt from existing national level legislation, policies and initiatives for the recognition or protection of defenders.

### **A. Evaluation of existing protection laws and policies**

Some States, including Côte d'Ivoire, Mexico and Honduras, have enacted legislation for the protection of defenders. Other States, such as Burkina Faso, the Philippines and Indonesia, have prepared draft laws. Others, such as Colombia, Brazil and Guatemala, have protection policies, mechanisms and entities created by decree and other normative initiatives. Using different approaches, these national laws and policies all recognise the work of defenders, incorporate some but not all of civil society's proposals, and provide for the protection of defenders and their activities to some degree. In all cases the process of elaborating the

laws and policies has catalysed dialogue among defenders, government and international NGOs on what is required to achieve those objectives.

However, none of the existing laws, policies and mechanisms have been fully implemented. Lessons learnt from these experiences can help ensure the greater effectiveness of any future policies.

### ***Lessons learnt from West Africa***

**Cote d'Ivoire** adopted a law in June 2014 but, at the time of the consultation in West Africa, a decree providing for the modalities and specificities of its implementation (as required by Article 19 of the law) had not yet been developed. The protection mechanism envisaged in the Cote d'Ivoire law would also be established by the decree.

During the consultations, Ivorian defenders suggested that the national human rights institution (NHRI), charged both with individual protection and with identifying and making recommendations on systematic issues ought to play a greater role in ensuring the development of the necessary decree. Furthermore, defenders believe that the law ought to be strengthened in regards to the detail and periodicity of reporting regarding its implementation.

Since the consultation, the draft decree has been developed. The Ministry of Human Rights was tasked with establishing the decree, however the Ivorian Coalition for Human Rights Defenders in collaboration and consultation with Ivorian civil society organisations and the National Commission for Human Rights took the initiative to prepare a draft decree.

The national assembly in **Burkina Faso** is currently considering a draft law on the protection of defenders. However, defenders reported that, to date, there has been a lack of transparency and consultation with civil society in the development of the law. They also expressed concern that the draft law does not provide for the establishment, mandate or resourcing of a protection mechanism.

Key lessons learnt from the experiences in Côte d'Ivoire and Burkina Faso included that:

- Laws should avoid placing vague, overly broad and/or arbitrary restrictions on the work of defenders. For example, the Côte d'Ivoire law provides that defenders must contribute to national and social solidarity, while another section provides that defenders must respect public security and the 'public interest'. Defenders expressed concern that such vague and arbitrary terms could be applied excessively and arbitrarily and that the nature of the work of many defenders may fall outside of these descriptions.
- Laws should contain enforcement provisions, as well as penalties for offences against defenders, and remedies for defenders whose rights are abused.
- Laws could be strengthened by the inclusion of a preamble, recognising the vital work of defenders, the Declaration on Human Rights Defenders and, if relevant, provisions from the African Charter on Human and Peoples' Rights.
- Laws should recognise the particular situation and protection needs and diversity (including class, ethnicity, gender, sexuality orientation and gender identity) of defenders working on different issues.

### ***Lessons learnt from Latin America***

In 2012 **Mexico** passed the *Law for the Protection of Human Rights Defenders and Journalists*. The law created a protection mechanism, governed by a board of State representatives, defenders and journalists, through which public institutions ought to work together to prevent and respond to threats against defenders. The mechanism was intended to be operated by Federal civil servants based in Mexico City.

However, defenders reported grave weaknesses in its implementation, including the flow of funds to the mechanism, the turnover of staff, poorly defined or failed protective measures, a lack of sensitivity to the

victims, protracted debates over the eligibility of those applying for protection, slow response times, as well as a lack of coordination between federal and state level bodies. There have been instances where defenders have activated a panic button provided to them by the protection mechanism, only to find there was no response to their call. The law created a governmental unit within the mechanism focused on analysis and the prevention of violations against defenders but it was only partially established in August 2015. A lack of political will was seen as the key factor underpinning the range of deficiencies in implementation of the law.

At the time of ISHR's Latin America consultation, **Honduras** was working towards the enactment of the '*Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Legal Practitioners*', which would enact the Declaration on Human Rights Defenders into national law and provide measures for the protection of defenders. The law was passed in May 2015 in response to concerted advocacy by local and regional civil society, as well as recommendations from international human rights organisations and UN human rights bodies.

However, the law that was passed ignored key recommendations and excluded elements necessary for its effectiveness. Defenders reported that it is vital that further steps be taken to strengthen the law and its associated mechanisms, through the development of regulations for its implementation. This would ensure, for example, that the National Protection System established within the law is adequately resourced, and that civil society is better represented within its governance and decision making structure.

In the case of those countries with protection policies not enshrined in law, many problems raised by defenders were shared and appeared to be underpinned by an apparent lack of political will from the authorities to implement the policies effectively. In **Guatemala**, for example, defenders suggested that the government was deliberately dismantling, abusing and under-resourcing the administrative and judicial mechanisms established for the protection of defenders. In **Colombia**, defenders reported how the national protection programme had been used by State agents to spy on and threaten defenders within the programme whilst, more recently, the programme's functioning had been undermined by the apparent embezzling of its resources by public officials. In **Brazil**, defenders complained that the protection programme is, in practise, only applied in some States and its functioning was ineffective even there. This was deemed to be due to a lack of resources, political will, coordination and public faith in the programme. Where protective measures were granted, they were often deemed to be inadequate and their implementation slow.

Defenders in Latin America believe that the development process for any new defender law ought to ensure that lessons are learnt from the difficulties which existing laws and policies in Latin America have faced, in terms of their effective implementation.

The obstacles to effective implementation of protection laws, policies, mechanisms and entities identified in Latin America, included:

- A lack of consultation with relevant national, regional and international defenders in their drafting.
- A lack of an inclusive, comprehensible definition of defenders in line with the UN Declaration on Human Rights Defenders.
- A lack of real political will across all levels of government.
- A lack of resources.
- Inadequate risk analysis methodology and application.
- Defender scepticism of their utility due to State abuse of the policies, including defenders being threatened by - or with the authorisation, support or acquiescence of - State actors.
- A tendency to develop protection mechanisms that are only reactive, rather than also preventive, and that do not tackle the root causes of violations against defenders.

- A tendency to authorise inadequate “hard” protective measure (armed guards, CCTV, panic buttons etc.) rather than analysing risk and defining measures appropriate to the defenders’ risks and operating environment.
- A lack of consideration of factors such as gender, gender identity and sexual orientation, ethnicity and age, or the effects of compound discrimination for specific groups of defenders.
- A lack of mechanisms to guarantee the participation of defenders in the implementation, governance and decision-making structures of such policies
- The need for more clearly defined roles, responsibilities and coordination mechanisms for and between different governmental agencies.
- A tendency to concentrate and centralise the implementation of protection mechanisms in the capital city/major population centres, weakening the protection of defenders in remote regions.
- The absence of properly trained, experienced staff.
- The absence of effective mechanisms to combat impunity.

Latin American defenders also referred to the political utility of protection laws and mechanisms, even when some of their practical elements fail. Across the continent, for example, defenders valued the utility of the system of precautionary, urgent and provisional measures through which the Inter-American system instructs States to implement measures for the protection of specific at-risk defenders. Whilst implementation of these measures at the national level was usually inadequate, defenders recognised their value in raising the political cost of attacks against them. In the same vein, some defenders from Colombia and Mexico saw application to the respective protection programme or mechanism as a means of generating a political cost, regardless of whether the concrete protective measures were implemented or not.

### ***Stalled initiatives for the recognition and protection of human rights defenders***

Three other stalled initiatives for national level legislation were mentioned during the consultations:

- A defender bill under discussion by the **Nepalese** NHRI.
- A draft bill prepared by NGOs regarding the protection of defenders in the **Philippines**, which continues to encounter significant opposition, attributed to a lack of real political will.
- Two proposals – one presented by civil society in 2008 and another presented by the Ombudsman in 2011 – in **Peru** for a law for the protection of defenders. The proposals focused on the protection of defenders, victims and witnesses in a post-conflict context.

## **B. Evaluation of additional national level initiatives with an impact upon the protection of human rights defenders**

Whilst the number of States with specific laws or policies for the protection of defenders is few, during the consultations defenders referred to the following additional initiatives, which they considered have been at least partly successful in protecting defenders:

- The **Philippines** created the Inter-agency Coordination Committee for the protection of imprisoned defenders under threat, composed of representatives of NHRIs, civil society, lawyers, the army, police and prison management. The Committee accompanies defenders from detention centres to court hearings.
- The ‘Mesa Nacional de Garantías’ in **Colombia** is an initiative composed of both State and civil society representatives and accompanied by the OHCHR, UNDP and diplomats. It is split into a sub-group dedicated to the protection of defenders and a sub-group focused on the investigation of

crimes against defenders. Defenders commented that the space has been useful in guaranteeing recognition of, and dialogue regarding, the threats facing defenders. However, they lamented its weak response to defender demands, its inability to engage local State actors and the lack of political will to tackle structural deficiencies identified by civil society.

- The National Mechanism for Protection against Torture in **Paraguay** provides recognition of defenders and a space for dialogue between them and State representatives which led to actions for the prevention of torture, including against defenders.
- **Mali** and **Cote d'Ivoire** appointed Ministers for Human Rights as focal points for defenders within their respective governments.
- **Guatemala** created a 'Special Prosecutor's Office' to address aggressions against defenders, an 'Institute for the Analysis of Attacks against Human Rights Defenders', a 'Journalist Protection Program', a 'Department of Protection Mechanisms for Human Rights Defenders' and a 'Protocol for the Implementation of Immediate and Preventive Security Measures' for Human Rights Activists. However, defenders suggested that the government has deliberately dismantled these mechanisms and undermined their impact.
- The 'White List', a list of defenders who are at risk, was proposed by the NHRI of **Thailand**. The intention is that by making this list public, these defenders will be protected. However, defenders were dubious regarding the success of this mechanism.

It was noted that defender protection laws and policies could contemplate the protection of defenders from other countries. A number of good practises by third States, in the authorisation of visas for at-risk defenders, were noted including the following:

- the provision of temporary protection visas;
- long-term multiple entry visas to defenders under threat;
- quicker provision of emergency visas to defenders under immediate threat;
- allowing visa requests to be made from 'safer' countries, instead of a defenders' home country; and
- considering the specific challenges of certain groups of defenders, such as women defenders who, due to their family and personal situation, are often not formally employed, and therefore cannot provide proof of employment.

### **3. BROADER STRATEGIES AND GOOD PRACTICE TO ENSURE A SAFE AND ENABLING ENVIRONMENT FOR DEFENDERS**

Generally, defenders agreed that a specific law for the recognition and protection of defenders would be insufficient to guarantee a safe and enabling environment for their work unless it also acknowledged and reiterated other necessary governmental measures.

In particular, they believed that a useful model law ought to ensure that consequential amendments be made to already-existing laws with the potential to restrict or enhance the environment for human rights defence. They also saw the law as an opportunity to strengthen other institutions with the potential to impact directly upon defenders' work, as well as to articulate measures through which the State could strengthen civil society and guarantee that defenders receive greater public recognition as a step towards their protection.

#### **A. Legal framework – repealing and amending restrictive legislation**

A range of legislation exists across all regions, which limits the activities of defenders, either as a direct result of restrictive content, or indirectly through arbitrary or abusive application. Such legislation should be repealed or amended to remove such restrictions and eliminate vague or arbitrary terms which might be misinterpreted. States should put in place measures which prevent and sanction the arbitrary application of legislation against defenders, whilst also modifying or overturning laws which restrict the rights of the populations which defenders protect, for example laws which restrict freedom of expression or outlaw homosexuality.

The following sections summarise the recommendations made by defenders in regards to the amendment or repeal of existing legislation which restricts civil society space and the activities of defenders.

##### ***Laws which criminalise human rights defenders***

Defenders discussed a range of legislation which was unduly applied to criminalise their work and paralyse their activities by diverting time and money in fighting the imposition of fines, arbitrary arrest, or administrative sanctions. The criminalisation of defenders was deemed to be particularly acute with laws which suspend due process through, for example, the use of States of Emergency or sanction extended pre-charge and pre-trial detention. In some States, the explicit criminalisation of the defence of certain rights – or the rights of certain people, such as LGBTI persons – meant that defenders had to operate illegally. This was equally the case in States where the rights of specific populations, such as women or ethnic minorities, were not adequately protected in law.

Depending upon their perceived legitimacy in the eyes of defenders, it was suggested that NHRIs might coordinate, convene or even constitute observatory bodies to monitor criminal and/or administrative proceedings against defenders. These observatories, which should to operate with the participation of civil society representatives, could provide *pro bono* legal support and, for example, submit *amicus curie* briefs. Other participants thought that specialised courts dealing with cases of defenders would be an appropriate measure to address criminalisation.

### ***Laws restricting freedom of assembly***

Defenders recommended that legislation restricting the rights to freedom of assembly and association should be reviewed and amended to bring it into line with international human rights law. This included laws that:

- prohibit actions which disturb the public order or obstruct traffic, are ‘against business operations’, or take place in ‘prohibited places’;
- allow for the use of excessive force against demonstrators (which often results in defenders being injured and sometimes killed);
- impose excessive demands upon those seeking the authorisation of protests;
- grant additional powers during ‘a State of Emergency’ that suspend civil rights;
- enable military and para-military groups to prohibit protests permanently on the basis of an absence of a ‘political solution’ to a conflict;
- provide that protest organisers are responsible for the actions of any or all protest participants;
- establish excessive penalties for minor crimes common in the context of protests, such as for resisting arrest; and
- allow the police to set up barricades around assembly areas.

### ***Laws restricting freedom of association***

Defenders recommended that legislation restricting the right to freedom of association be reviewed and amended to bring it into line with international human rights law. This included legislation that:

- imposes arbitrary and onerous registration and reporting requirements on NGOs, including Indonesia’s Law No. 17/2014 on Societal Organisations;
- restricts the rights of NGOs to, or prohibits the formation of NGOs which engage in advocacy or political activities or undertake advocacy in relation to particular rights;
- allows the State to revoke an organisation’s legal registration on vague terms; and
- restricts the right to access funding, including from foreign sources.

### ***Laws restricting freedom of information***

Defenders recommended that legislation restricting the right to freedom of information be reviewed and amended to bring it into line with international human rights law. This includes legislation such as the Myanmar Official Secrets Act 1923, which has been used to arrest journalists, and the Indonesian draft State Secrecy Bill.

### ***Laws restricting freedom of expression***

Defenders recommended that legislation restricting the rights to freedom of expression be reviewed and amended to bring it into line with international human rights law. This includes laws that:

- criminalise defamation (such as the Indonesian Penal Code and the Information and Electronic Translations Act), libel, blasphemy, apostasy, disclosing state secrets and hate speech;
- prohibit freedom of expression based on vague, ambiguous language around ‘morality’ and ‘national security’;

- restrict media content, such as Myanmar's Motions Pictures Act (1996) and Television and Video Law (1985); and
- restrict the right of freedom of expression of certain groups, such as the military and employees of certain governmental agencies, including detention centres.

### ***Counter-terrorism, national security and counter-insurgent legislation, doctrines and policies***

Defenders considered that counter-terrorism and national security legislation should be amended to ensure they are reasonable, necessary and compatible with the UN Declaration on Human Rights Defenders and other relevant international human rights laws and standards. Further, legislation and oversight must guarantee that they cannot be used to unduly restrict or criminalise the work of defenders or arbitrarily subject defenders to detention or criminal trials, such as the Malaysian Security Offences (Special Measures) Act) which allows people to be arbitrarily detained for a 'security offence'.

## **B. Legal framework - enacting and strengthening enabling legislation**

In addition to endorsing the notion of specific laws for their protection, and the need to overturn any other policies restricting their work, defenders reiterated the need for States to seek means by which to enact or strengthen other legislation with the potential to contribute to a safe and enabling environment for their work, including laws pertaining to freedom of expression, association and assembly. The strengthening of the legal and constitutional recognition and protection of human rights in general was deemed as an essential step in protecting the work of defenders.

Defenders stressed that concrete steps should be taken to ensure the engagement and participation of defenders in the design of laws and policies with the potential to impact upon a safe and enabling environment for their work, and that indicators which measure the extent to which defenders' rights are protected by other legislation should be developed and implemented in parallel with the drafting of any specific bill for their protection. In this respect, the development of such legislation must be accompanied by a careful, explicit and public evaluation of consequential amendments to restrictive legislation necessary to ensure that such restrictive laws do not nullify the effect of any enabling legislation.

Defenders identified the need for these laws to recognise and respect diversity (and prohibit discrimination), including class, ethnicity, gender, sexual orientation and gender identity. For example, it was acknowledged that a country with stronger policies promoting gender equality and protecting women from sexual harassment and violence is a country where women defenders will likely face less risks.

Defenders recommended that legislation be established or strengthened with the effect that it protect:

- the right to freedom of assembly is protected, including that such laws protect, including that such laws protect the right to peacefully assemble, demonstrate, protest and collectively express, promote, pursue, and defend ideas;
- the right to freedom of association, including that such laws:
  - provide for the effective, expeditious and inexpensive formation of associations and organisations, including human rights organisations;
  - explicitly recognise the 'promotion and protection of human rights' as a charitable purpose; and
  - incorporate principles of non-discrimination among associations, including in respect of organisations working for the protection of the rights of LGBTI people or those located in rural areas;

- the right to freedom of information, including that such laws:
  - promote transparency and provide genuine access to information, including information pertaining to human rights in general and in respect of persons in detention and condition of detention; and
  - enable unjustified administrative decisions related to the regulation of associations to be appealed effectively;
- the right to freedom of expression, including that such laws:
  - protect the right to critique the State, its officials and religious authorities, whistle-blowers and those who expose human rights violations;
  - protect the right to access formal and informal media, including social networks; and
  - provide for the independent regulation of the press, ensuring that any registration is conferred by an independent, rather than governmental, authority.

### **C. Accountability for attacks**

Defenders repeatedly highlighted impunity as one of the greatest obstacles to protection. They suggested that legislation might provide a framework through which to guarantee the prompt and thorough investigation and prosecution of violence, threats and attacks against defenders, by both State and non-State actors, with perpetrators held accountable and victims provided with access to effective remedies.

Some defenders suggested that countries consider the federalisation of all crimes against defenders (as Mexico has done for crimes against journalists, however with mixed success). Others believed in the utility of Special Prosecutor offices for dealing with crimes against defenders which could be trained and capacitated to understand the political motives and identify the main actors behind violations against defenders. Defenders reported that Guatemala has had some positive experience in this respect. Defenders from Myanmar advocated for a complaint mechanism operating outside of the formal judicial system to deal with violations against defenders, whilst defenders from Nepal referred to the Constitutional Rights Watchdog that has established a thematic officer for defenders to address violations against them.

### **D. Strengthening existing institutions**

#### ***The Judiciary***

Across all regions, defenders were adamant that their protection could not be guaranteed without the existence of a strong, independent and properly capacitated judiciary with the ability to simultaneously prevent the criminalisation of defenders and ensure accountability for crimes against them.

Defenders believe that all officials working for the justice system, including the judiciary, lawyers should receive human rights training with a specific focus on the Declaration on Human Rights Defenders, the vital role of defenders in upholding fundamental freedoms and the rule of law, and the vulnerability of defenders to crimes including judicial harassment.

Defenders called for laws and rules of procedure to be amended. For example, defenders and cases relating to human rights should be provided more permissive standing requirements in public interest and representative proceedings and have the possibility of court fee waivers and protective costs orders in public interest cases. Some defenders recommended that specialised public prosecutors for crimes against defenders be developed and that criminal trials of defenders be held in open courts. Defenders highlighted the importance of ensuring the availability of independent judicial review to challenge the legality of detention of defenders.

Defenders also recommended that the judiciary be given powers to carry out detailed analyses of the context in which prosecutions against defenders are made and the sources of presented evidence. For example, defenders recommended the development of clear guidelines outlining the circumstances in which it might be necessary to reject or qualify evidence given by prejudiced parties (such as intelligence agencies, armed groups or witnesses).

Defenders also discussed legal representation calling for improved access to legal aid in cases of violations against defenders, and for the enactment and implementation of laws and policies that ensure that lawyers (including those acting for defenders) have adequate access to their clients, the right and ability to represent their clients during interrogations, access to information about the charges and allegations their clients face, and information regarding the place, condition and basis of their clients' detention.

Good practice examples were cited by defenders including the coordination and provision of pro bono legal services to defenders who have been arbitrarily detained in relation to their work.

### ***National Human Rights Institutions***

Defenders discussed the crucial role NHRIs can play in recognising and protecting defenders, and recommended that adequately resourced NHRIs, operating in conformity with the Paris Principles, should be established, and should:

- have a mandate to provide protection and support to defenders;
- be as accessible as possible, including those in remote areas;
- take a lead role in designing national human rights action plans which contemplate the protection of defenders and in the implementation of protection mechanisms;
- promote and protect the universality of rights and provide solidarity and public support to those defenders whose work is often delegitimised, for example those protecting LGBTI rights;
- receive funding from more than one source, rather than from the State alone; and
- be composed of members from diverse backgrounds (contemplating linguistic diversity where relevant) who are appointed through a process in which civil society participate and in which the principles of non-discrimination are paramount. However, defenders did not agree in regards to whether or not members should be required to have a legal background.

Good practices identified in respect of NHRIs supporting defenders, include:

- The active and positive role played by some NHRIs in promoting and protecting the work of defenders, including through prizes for defenders.
- The appointment, within NHRIs, of a focal point for defenders (for example, in Cameroon, Indonesia and Myanmar). However, defenders noted that in most cases this mechanism does not function properly.
- The development of a National Human Rights Commission in Nepal which established the Human Rights Defenders Directives in 2012 which aim to, among other things, strengthen the role of defenders, and ensure accountability for violations against defenders.
- The Korean National Human Rights Commission Act which enables the Korean NHRI to investigate discrimination and human rights violations, including against defenders, and provide access to remedies.
- The Malaysian NHRI (SUHAKAM), whose findings and reports of inquiries have been a point of reference in court cases pertaining to infringement of human rights.

## E. Strengthening civil society

According to many of the defenders consulted, a model law ought to include provisions through which the State would be obliged to strengthen civil society in general.

Defenders discussed the importance of public awareness and education campaigns about human rights defence and the need to protect defenders from violations. Such campaigns can be targeted at the general public as well as governmental institutions, authorities, officials and civil servants, including police and judges.

Defenders underlined the utility of civil society thematic networks, partnerships and coalitions to bolster regional solidarity, protection, capacity building, coordination and the sharing of good practices across regions.

Current good practice examples of collaboration within civil society include:

- The establishment of coalitions of defenders based around their shared identity, including:
  - International coalitions of women defenders which provide a means for: (a) information exchange; (b) coordination of joint urgent responses; and (c) construction and strengthening of knowledge.
  - National women defenders coalitions which have (a) facilitated the elaboration of women defenders networks; (b) documented violations against women defenders allowing for the identification of patterns beyond the national level; (c) provided visibility and awareness nationally.
  - A specific example includes the '*Red Mesa Mujeres*' in Mexico which has (a) accompanied and provided support for women defenders at risk; (b) increased women defenders' capacity for self-protection and self-implemented security measures, ensuring a mechanism for when the State fails; (c) contributed to negotiations around State protective measures by providing expertise, analysis and suggestions.
- The establishment of thematic networks of defenders, including:
  - 'Central Asia on the Move', a horizontal alliance of NGOs active on migration issues.
  - The Forum on Human Rights, a network of NGOs in Germany, which coordinates joint actions between human rights NGOs, particularly appeals and submissions to government and parliament.
  - An observatory network of NGOs in Guinea and in Senegal to observe public protests and demonstrations and to document violations and use of force against peaceful protesters.
- Strategic engagement by local defenders of international NGOs, for example:
  - International protective accompaniment by INGOs, supported by national and international networks, to raise the political cost of attacks against defenders.
  - The role played by international NGOs such as ISHR and FIDH in supporting and enabling national-level defenders to access and engage with the UN human rights mechanisms.
- The 'defender alert' - a network of 40-50 Indian organisations which send threat alerts on individual defenders at risk.
- In Israel, the compilation of human rights information and documents in a central database which is accessible to and enables information to be shared between human rights lawyers.

- The establishment of a community radio station by defenders in Chad, which is dedicated to the discussion of human rights issues.

Defenders were adamant that States should take steps to facilitate and support endeavours in strengthening civil society. They highlighted the need to resource these thematic networks, partnerships and coalitions. In particular, defenders asked that both States and philanthropic foundations increase financial support to defenders, networks and coalitions, including by supporting the establishment of a regional defender coordination network similar to those that exist in jurisdictions such as West Africa, the East and Horn of Africa.

Defenders highlighted the need for further and strengthened collaboration and cooperation across society, including among defenders, NGOs, NHRIs and Government officials to work towards an enabling environment for, and protection of, defenders. Current good practice examples of collaboration across different sectors of society include:

- Initiatives to include broader society in human rights defence has broadened the base of support for protection. For example, the #SomosDefensores National campaign for the recognition and protection of defenders in Guatemala, including participation of (a) embassies, to assist with buy-in by third States; (b) community radios, to ensure that the message reaches remote defenders, (c) authorities and (d) non-State actors.
- Collaboration between lawyers, the bar association and defenders to protect defenders from legal and judicial harassment in Niger.
- Partnerships between NGOs and police forces across Canada to provide training and educational programmes for police officers in relation to protecting LGBTI rights and combating discrimination and homophobia. This program has also been rolled out to police officers in Montenegro. In Greece, NGOs have collaborated with police on anti-racism initiatives.
- Coordination between NGOs and trade unions, churches and celebrities (with similar initiatives identified in Canada, Portugal and Germany).
- Seeking public answers to human rights defender related questions by parliamentarians, ministers and government officials (as carried out with success in Germany).

## **F. Public acts of support and recognition of human rights defenders**

Defenders discussed the need for public support for their legitimate work, which successive UN Special Rapporteurs have also highlighted. Defenders concluded that a law ought to contain provisions in this respect.

Defenders recommended that States promote and recognise the vital work of defenders publically, particularly with respect to the importance of a vibrant and pluralistic civil society and robust human rights advocacy in upholding human rights and the rule of law. Defenders also referred to the need for their role in promoting corporate responsibility and sustainable development to be publically recognised. High-level statements promoting the work of defenders and denouncing the misapplication of laws or violations or attacks against defenders were identified as essential – even in circumstances where the offender is a business with links to the government (such as companies in the extractive industry).

Defenders also discussed the need to recognise and counter stigmatisation, including being labelled as anti-development by States and businesses. Positive recognition, including human rights prizes, were suggested as methods to counter stigmatisation against defenders and NGOs engaged in defending human rights. Some defenders referred to the need to challenge military doctrines which target defenders as ‘the enemy within’, including through declassification of intelligence files and sanctioning officials which target defenders as an ‘enemy’.

Defenders agreed that providing training and education to government, police, military, security officials and the media on the situation and protection needs of defenders, in particular those facing particular risks - such as women defenders and defenders defending the rights of LGBTI people - is integral to developing public support for their work. Defenders also discussed the need to conduct training on the rights to freedom of expression and assembly and policing of protests. A good example identified in this regard was the training of military personnel in Bangladesh.

Some defenders identified that this public support could increase access to adequate health care for defenders who are subject to physical attacks.

Defenders argued that public support and protection could result from the appointments of government ministers or high-level officials for human rights with responsibility for promoting and protecting the work of defenders and acting as focal points or contact points within government. These focal points could also be responsible for consulting on and preparing public periodic reports on the situation of defenders to be debated in parliament and provided to the Special Rapporteur. Defenders also recommended establishing human rights desks in government ministries dealing with security forces, police and military. The selection process for recruiting staff to entities for the protection of defenders should take place in consultation with defenders, with strict background checks to avoid infiltration of malevolent actors.

### **G. Preventative measures**

Defenders were adamant about the need for the establishment of effective prevention measures. Defenders suggested that any model law should contain mechanisms through which States can analyse patterns of threats and attacks against defenders, and propose effective preventative measures aimed at addressing the root causes of violations. Measures discussed included legislative reform, anti-corruption measures, alterations to security strategies and anti-discrimination campaigns.

## **III. CONSULTATION CONCLUSIONS: THREATS AND OBSTACLES FACING DEFENDERS**

Whilst the above section of the report focuses on the solutions proposed by defenders, which could be articulated through a national law for their recognition and protection, the consultations carried out also asked defenders to map out the main challenges and threats which they confront in carrying out their activities. In this respect, ISHR will draft a model law which ought to respond to these problems detailed below.

What is more, participants identified specific groups of defenders who face distinct and sometimes heightened risks. It is clear that any law for the protection of defenders needs to contain elements which ensure that all measures for the protection and recognition of defenders can be interpreted in a way which responds to the needs of these specific groups.

### **1. KEY ISSUES, THREATS AND CHALLENGES FOR HUMAN RIGHTS DEFENDERS ACROSS THE REGIONS**

This section sets out the most prominent obstacles and risks which the consulted defenders identified as having a negative impact on their work. To one extent or another, these threats exist across all regions.

#### **A. Physical attacks**

Defenders are subject to harassment, defamation and threats, including physical attacks and threats thereof, especially via social media; psychological and physical torture; arbitrary detention, kidnapping, disappearances, torture and execution; destruction of property and theft of documents or data. Particular

groups of defenders are especially exposed to these risks, including: women defenders, defenders of LGBTI rights, and defenders working on business and human rights (see sections 0A, 0B and 0C below).

Defenders are also subject to sexual violence and gender-based violence, in particular women defenders and defenders of LGBTI rights (see section 0A and 0B below).

The attacks mentioned above are effected by State authorities, political parties, as well as non-State parties such as business, State-armed militias and organised crime and drug trafficking cartels.

Defenders in Latin America face elevated levels of enforced disappearances, arbitrary detention, torture and extra-judicial killings. One of the most insidious forms of abuse in Latin America is psychological torture which, by its nature, tends to reduce its visibility in society and renders it difficult to prove and address. The psychological and psychosocial impact of the enumerated challenges faced by defenders results in an attrition of active defenders as young people see the job as too dangerous.

Many of the risks, threats and challenges are not only imposed on defenders, but also on their relatives, family and associates, including pressure from security services or travel bans.

## **B. Impunity for violations against human rights defenders**

Attacks and harassment of defenders occurs with impunity, particularly by political and religious authorities, police, military or security forces. Inadequate action by States to prevent physical threats and attacks and investigate and ensure accountability then feeds into an already existing culture of impunity, worsening the situation.

Defenders discussed that this impunity resulted from a lack of separation of powers; a lack of independence of the judiciary, the weak rule of law, and a lack of legal recourse.

In addition, defenders spoke about 'social impunity' involving acceptance by society of stigmatisation and frequent attacks against defenders. Defenders identified that this results from the fact that attacks on defenders are not acknowledged as arising from the context of human rights defence and instead are seen as common crimes with the effect that only direct perpetrators face prosecution and not those planning the offence. Moreover, the testimony of a perpetrator is preferred above those of the victims. There are instances where, despite allegations against them of torture and serious assaults against defenders, military officials have been promoted.

## **C. Stigmatisation of human rights defenders**

Defenders are stigmatised as a means of devaluing and de-legitimising their work. Typical and broadly used examples include being labelled as:

- defenders of criminals and organised crime;
- political opposition;
- 'foreign agents', particularly where receiving international funding and support; traitors of the homeland; fascists and instigators of violence;
- agents that derail the peace negotiations, represent foreign and anti-African interests and values and spread 'western values';
- separatists;
- anti-development, particularly for defenders working on business and human rights; terrorist sympathizers, terrorists and threats to national security;
- benefactors of illegitimate financial gain from human rights defence;

- threats to sovereignty or enemies of the State;
- risks to 'destabilise' public order; and
- the enemy within.

In addition, women defenders and defenders working on issues such as LGBTI rights are labelled as being 'against tradition' 'against decency' (see section 0A and B0 below). Stigmatisation of these defenders is greater in relation to issues such as abortion, sexual diversity, ethnic minorities, forced displacement or extractive policies.

Defenders are misrepresented, disparaged and defamed in the media by being the subject of smear campaigns, such as through the creation of fake social media profiles that depict defenders as criminals, corrupt or dishonest.

Defenders are subject to stigmatisation by authorities and private actors, including business and the media, with no government response, increasing the likelihood for attacks, criminalisation and forced disappearances.

Defenders consider they are subject to stigmatisation as a justification for officials to restrict protests and political opposition and delegitimise the work of defenders. This stigmatisation also results in defenders losing the support of society, which is needed for their protection and to increase the impact of their work. Such stigmatisation ultimately leads to their designation as public and political enemies.

#### **D. Surveillance of human rights defenders**

Laws pertaining to the collection and maintenance of metadata are having a stifling effect on communications by and with journalists, who now refuse to communicate on sensitive human rights issues via phone or email and insist on meeting in person. In Honduras, for example, the Wiretapping Law allows authorities to intercept defenders' phone calls to track personal conversations with heavy fines imposed on companies that do not give open communication codes to authorities.

Defenders are routinely subject to surveillance, both online and offline, in the workplace, public spaces and at home. Cyber-attacks and social media trolling of defenders and NGOs (particularly by far-right and nationalist groups) appear to be worsening with threats and incitements often not taken seriously or adequately investigated by police. Surveillance and harassment also includes the infiltration of NGOs by security representatives 'recruiting' defenders to work for security services.

#### **E. The criminalisation of human rights defenders**

The criminalisation of the work of defenders is a central concern across the world.

For example, in Asia legislation enables police to arrest defenders for 24 hours without a warrant. In East Africa there is malicious prosecution of defenders. NGOs are often closed down on charges of 'tax evasion'. Further, individuals reporting cases of attacks against defenders often feel vulnerable as they can be criminalised. For example, LGBTI defenders who visit prisons in connection with the arrest of a fellow defender have been known to face arrest themselves.

In Venezuela and Bolivia, the States commonly discredit international organisations to the point where nationals could be charged with treason due to interaction with such institutions. In El Salvador and Costa Rica, it is more often the extreme political right that tends to de-legitimise international mechanisms and institutions.

The criminalisation of the certain rights defended in Latin America has an impact on their vulnerability, including sexual and reproductive rights (such as abortion) and the rights of LGBTI people.

Strategic litigation is often adopted by both the Thai authorities and private companies to discourage defenders from opposing developments, in particular in response to demonstrations.

## **F. The use of laws and policies to restrict the actions of human rights defenders**

Whilst a detailed analysis of how the general national legal framework might be altered to facilitate the work of defenders appears in section II.3, this subsection looks at some specific examples of how it is currently being used in some States to restrict their activities.

Legislation, including national security legislation, is interpreted or applied to restrict and undermine defenders and their association where State agencies apply wide discretion. Human rights defence work is criminalised through legislation such as the Indian Unlawful Activities Prevention Act which grants sweeping powers to the State by limiting the receipt of funding. Other examples include legislation pertaining to natural resources or development applied a restrictive manner to defenders.

Defenders identified the following factors which restrict their work:

- A lack of legislation relating to access to information or the lack of enforcement of freedom of information laws has imposed restrictions on communications.
- A range of laws with abstract terms open to arbitrary interpretation and application permit the “lawful” prosecution of defenders.
- Offences of apostasy, insulting Islam and blasphemy are punishable by imprisonment and death penalty. This has a chilling effect and criminalises human rights advocacy which challenge religious beliefs, traditions, practices or authorities.
- National security legislation, discourse and practices are used to threaten, criminalise and restrict defenders. This includes intelligence profiling of defenders as threats to national security under the guise of the ‘war on terror’.
- Counter-terror laws are frequently passed expediently and without adequate consultation. Such laws often impose discriminatory and disproportionate restrictions on rights to freedom of expression, association and movement. They also grant intelligence and police services extensive powers in relation to surveillance, interrogation, pre-charge and pre-trial detention, secret detention, and detention without charge. Further they lack adequate protections in relation to the right to a lawyer, judicial review and a fair trial. In Australia, for example, the recently enacted section 35P of the ASIO Act enables a government minister to declare an operation as a ‘Special Intelligence Operation’ thereby rendering it an offence punishable by imprisonment of 5-10 years for any person to report on that operation, regardless of its legality or human rights impacts.
- Laws, policies, discourse and actions explicitly and implicitly protect big business, whether legal, such as mining, or illegal, such as drug trafficking and organised crime restrict defenders. Legislation commonly promotes private economic interests, since economies are based on the exploitation of non-renewable resources. These laws enable business to operate outside international law without consequence. This can have the effect that activists, communities and defenders opposing business are left in a state of apparent illegality, in which there is a lack of free, prior and informed consultation (and laws requiring such consultation, creating the roots of conflict and repression).
- The use of states of emergency to restrict the rights of defenders, such as prohibiting protests, include legislation such as the Indian Armed Forces Special Powers Act granting additional powers to the Armed Forces in ‘disturbed areas’.

- The use of excessive penalties for minor offenses common in the context of public protests create disincentives. This is exacerbated by widespread abuses of authority by security and judicial authorities.
- The lack of legislation criminalising torture.
- Tax-related fiscal or administrative legal limitations and the misuse of tax and reporting codes are used to trump up charges, and fraud or loan deficiency charges against defenders.
- The misuse of criminal law and the planting of evidence.

## **G. Restrictions on the right to freedom of assembly**

In many jurisdictions, there is a tightening of legal restrictions on the right to freedom of assembly. This tightening includes undue restrictions imposed on assemblies, such as conditions imposed on the timing, place and conduct of demonstrations; governmental authorisation required for protests, which is routinely denied; prohibition of protests in or near parliament; and the imposition of disproportionately severe penalties on those associated with violence during a protest and or that 'hinder' business operations. In some countries the right to participate in public protests is neither constitutionally nor legally recognised.

Anti-protest laws are often tightened during major events, such as the G20. Defenders are prosecuted for participating in peaceful demonstrations for offences such as obstruction of. In Israel, the Military Law applied in the Occupied Territories prohibits assemblies of more than 10 persons gathering for political purposes but does not apply to Israeli settlers. Further in Israel, there is a civil prohibition of support for boycotts, divestments and sanctions under an over-broad anti-boycott law thereby making boycotts actionable by corporations, the government and even other citizens.

Defenders from some jurisdictions reported an increase in the level of force used by police against protesters, sometimes lethal, for which there is impunity. Participants also reported arbitrary arrest and prolonged detention of protesters, including children. In other jurisdictions, those who monitor or report on protests and police use of force have themselves been charged with 'obstructing police,' including journalists and lawyers.

## **H. Restrictions imposed on the right to freedom of expression**

Criminal and civil charges including slander, libel and defamation are abused in order to limit the right to freedom of expression. In some cases, defenders face criminal investigation for sharing opinions in media columns or blogs. Others suffer arbitrary interference from the right to freedom of expression, including the closure of websites at little or no notice, combined with a lack of independent media. Furthermore, governmental monopolisation of official media not only limits the right to freedom of expression but also facilitates the defamation of defenders. Examples of the restriction of freedom of expression include Guatemala's draft law seeking to punish criticisms of national and municipal authorities and Honduras loss of citizenship as a result for being found guilty of speaking ill of the country abroad.

## **I. Restrictions imposed on the right to freedom of movement**

Defenders' right to freedom of movement is restricted by stringent visa-requirements for travelling to Western Europe and other safe countries, a lack of safe and speedy means of obtaining a visa for a third country, travel bans on defenders and their families, passports being confiscated and the requirement or denial of exit visas. These restrictions mean that defenders under threat may not be able to leave their country on short notice or request visas for the Schengen space from a safer third country, which paradoxically may increase the risk of defenders having to leave their country.

Notwithstanding these restrictions, many defenders have been forced to flee or into exile as a result of threats they face in association with their work, which substantially hinders their work.

## **J. Restrictions imposed on human rights organisations**

### ***Civil society organisations***

There are severe limitations imposed on the establishment of independent NGOs, particularly those working on human rights. Such limitations include a decline in essential Government funding, foreign funds, and donor funds thereby constituting a particular challenge for maintaining the independence of NGOs. Defenders also reported challenges as a result of legislation which requires government approval prior to an organisation receiving foreign funding.

Other limitations include:

- Arbitrary limitations of the operations of NGOs including discriminatory laws regulating the content of NGO and defenders' work – such as restricting advocacy work, the Kyrgyzstan anti-LGBTI law and draft Russian legislation which prohibits paying salaries for human rights work.
- Complete denial of registration of NGOs or onerous registration requirements, where non-registered organisations are criminalised leading to an absence of independent NGOs.
- Onerous reporting and audit requirements.
- Vague and arbitrary standards which social organisations must comply with in order to avoid a revocation of their license to operate.

The space for civil society and the work of defenders in Western Europe, North America and others is constricting across the region, most particularly through reductions in access to funding as governments are highly selective of which NGOs and defenders they fund, consult and engage with. Relatedly, there is a lack of funding or support for affected communities to speak and advocate for themselves. For example, in Australia there has been governmental de-funding of key organisations working on indigenous rights, refugee rights and homelessness; the imposition of contractual prohibitions (gag clauses) against using government funds for any law reform work or policy advocacy; and the stripping of charitable status and tax concessions for some NGOs engaged in environmental rights advocacy. In Canada, laws regulating charities prohibit NGOs from undertaking more than 10% of their work on 'political activities', while the UK's recently enacted an anti-lobbying law stifling advocacy, particularly during electoral periods. In Israel, a proposed NGO Law will require foreign ministry and security ministry approval for foreign funding to NGOs, under conditions that would be highly restrictive or prohibitive for human rights NGOs.

This regional trend of the tightening of the legislative framework in which civil society organisations operate in Eastern Europe and Central Asia was suggested to be influenced by Russia and its 'Foreign Agents law' which imposes new and additional restrictions on NGOs that register as foreign agents. Similar laws are being considered in other countries such as Hungary, Tajikistan, and Uzbekistan.

In many jurisdictions there is concern that, overall, there is a negative governmental attitude or approach to human rights NGOs with a failure to appreciate the vital, critical and sometimes adversarial role of defenders and NGOs in upholding democracy and the rule of law. Grassroots activists and advocates are often sidelined or ignored in favour of consultations with government-organised NGOs or government-controlled or hand-picked advisory committees.

### ***National Human Rights Institutions (NHRIs)***

In some jurisdictions, NHRIs face - or have already experienced - significant funding cuts, cuts to commissioner posts, mandate restrictions, and political attacks. In others regions, absent, weak or non-independent NHRIs that fail to properly protect defenders have limited understanding of defenders, are overly bureaucratic, or fail to implement their mandates. Defenders in East Africa referred to the inadequacy of commissioners appointed to NHRIs.

## **K. Restrictions associated with challenges to traditional values**

In many States, the work of defenders, particularly women defenders, involves challenging 'traditional values' or religious beliefs and practices, which exposes them to threats and attacks from religious and political authorities and, in some cases, even their own families and communities. In Latin America, chauvinism ('machismo') and patriarchy result in a lack of gender perspective in public policies and protection mechanisms.

There is a rise of radical groups directly attacking defenders, including religious, homophobic, nationalist, terrorist and armed militia groups. Such attacks often take place with impunity. Defenders in Eastern Africa referred to the influence of politically appointed judges with religious beliefs that inform their approach to verdicts.

## **L. Restrictions associated with the legal system and the judiciary**

Defenders discussed the risks they face as a result of problems with the legal system and the judiciary, including:

- A lack of fair trials as a result of a general lack of an independent (and in some cases politically motivated and corrupt) judiciary.
- High barriers to accessing the legal system, including an absence of legal aid, a lack of public interest litigation, low priority given to defender cases and a lack of witness protection.
- Excessive periods of pre-charge and/or pre-trial detention, often without adequate access to a lawyer.
- The use of forced confessions.
- Lack of access to remedy.

Defenders testified that they are frequently subject to judicial harassment with the imposition of false or vexatious charges, many of which are upheld by a judiciary that lacks independence and do not comply with basic human rights principles of procedural fairness.

In some jurisdictions, the provision of legal services on a pro bono basis is considered a breach of legal professional rules of conduct or is discouraged by professional associations. Further, in Cyprus, lawyers can only practice as part of a law practice, not as part of NGOs.

## **M. Restrictions associated with lack of political support or freedom**

Given the absence of political freedoms in home countries of many defenders consulted, many restrictions and challenges are seen by defenders as anticipated and unsurprising, and any progress towards a safer and enabling environment was perceived as political in nature.

Many defenders work in environments where there is a lack of political support for their work or political will for their protection. This is evidenced by the rejection of UPR recommendations in a number of States relating to the protection of defenders and the rights to freedom of expression, association and assembly.

Reportedly, the political influence of Russia in Eastern Europe and Central Asia means that many governments 'import' the restrictive political and legal climate of independent civil society from Russia.. In conjunction with the influence of orthodox religious views, defenders across the region - in particular, groups such as women defenders, LGBTI defenders, and those advocating for free expression, assembly and association - are accused of bringing foreign (European) cultural influences and values to undermine their societies. The 'Russian influence' and the impact of the 'customs union' (now known as the Eurasian Union) is clearly visible throughout the region including in Hungary.

In many contexts, defenders face not only an absence of political support but also political opposition. These risks tend to be intensified during elections when defenders are frequently portrayed and attacked as subversive or as opposition activists.

Some States have established mechanisms which have deflected criticism from the international community, but which are essentially a smokescreen. Some examples include superficial 'consultations' in relation to the protection needs of defenders; the creation of laws, measures and mechanisms for the protection of defenders but without any real intent to implement them; investing considerable resources in specialised justice organs that don't result in change; and pseudo 'investigations' into aggressions against defenders which permit authorities to access the victim's offices, homes and documents as part of the 'investigation' in a manner which wastes resources but which can also represent harassment of the defender without any advances in the investigation.

Defenders reported on negative impacts from alliances between businesses, the State and de facto 'powers that be' including landowners, political backers, local and international organised crime groups.

## **N. Restrictions imposed by contexts of conflict and by non-State actors**

### ***Conflict Zones, militarisation and disputed territories***

Disputed territories and conflict zones were seen to pose particular challenges for defenders to operate. In States with continuing or recent conflict, defenders are forced to work in a heavily militarised environment and under significant restrictions on the rights to freedom of expression, association and assembly.

Defenders operating in areas of conflict or disputed territories face particular difficulties including that there is a lack of clarity about who has effective political control. Changing legislative framework also requires re-registration of lawyers, and NGOs. In other jurisdictions, the complete control of the State is evidenced in control of official media outlets, control and restrictions on social media, limitations on movement and the establishment of Government-operated NGOs (GONGOs).

Exacerbation of nationalist discourse and 'militarisation of public opinion' in conflict or disputed areas isolates defenders further with the effect that these defenders are considered by multiple sides of a conflict as the opposition and targeted accordingly by the State and armed militia, terrorist forces or extremist groups.

Physical and psychological wellbeing are constant challenges for these defenders, particularly those documenting violations at the frontline of a conflict. Physical threats to safety, and sometimes even death, including of associates, are commonplace. Resultantly, these defenders are isolated from the international community and are limited in number, as well as in expertise and experience - in terms of knowledge of how best to work and monitor safety, collect and protect information.

Security forces often have a central role in human rights violations in conflict zones. Security forces are often directly involved, or in a close relationship with perpetrators, which is compounded by the lack of police willingness, or capacity to investigate violations against defenders. The impact of militarisation in Latin America includes an increase in the risks of suffering abuses by security forces (both State and private) whose actions are not regulated sufficiently, criminal groups and members of society are increasingly well armed; an increase in private security forces working for and with big business (legal and illegal) and the State; an increasingly brutalised society with increased violence, facilitating aggressions; an increase in the creation of military police forces or the placement of ex-military officials in civilian posts and police forces; the use of paramilitaries in collusion with State security actors; and targeting social movements as part of counter-insurgency strategy.

### ***Organised Crime***

Insecurity and organised Crime contributes to deterioration of social fabric which increases risks for defenders and the polarisation of civil society under the pressure of organised crime and extreme violence. It also leads to an increase in general insecurity and violence, meaning that it is easier for States to disguise

attacks against defenders as ‘collateral damage’ of the drugs war, or worse, as an attack on somebody associated with organised crime. In the context of the ‘war on drugs’, States use a mutually exclusive discourse of ‘with us or against us’, often placing defenders alongside organised crime within that paradigm.

Public security strategies often alter with a surge in organised crime to become more militarised and contain new provisions in regards to pre-trial detention, the use of public force and the suspension of due process, for example. These provisions are often later used to criminalise defenders without accountability, whilst the use of military staff and doctrines in public security tasks can lead to an increase in violence against defenders, particularly when the authorities and the media claim that defenders ‘protect delinquents’ or are allied with criminal groups.

The collusion between criminal groups, business enterprises, de facto powers and authorities can lead to particularly high risks for those defenders working on issues of corruption or business and human rights.

## **O. Reprisals for interaction with international mechanisms**

The lack of government cooperation with the UN and other international mechanisms is particularly challenging, including the refusal to invite human rights experts to country visits, and the non-implementation of UN decisions and recommendations. Defenders frequently suffer reprisals for cooperating or seeking to cooperate with the UN human rights mechanisms, particularly among Gulf States but also, for example, in Venezuela.

## **2. RISKS FACED BY PARTICULAR GROUPS OF DEFENDERS**

While all defenders face risks and threats, particular groups of defenders may be especially exposed due to the nature of their work, the interests that they protect, or their identities. The inclusion of threats to specific groups of defenders in this section does not indicate that only this specific group of defenders are exposed to these risks. Rather that of the defenders who were consulted, these risks were identified as risks they faced.

Groups of defenders particularly at risk include women defenders; defenders of the rights of LGBTI people; defenders working on issues of business and human rights, particularly on the context of extractive industries; journalists and media workers (including social media activists and bloggers); lawyers; defenders working on minority rights; defenders working to combat impunity; defenders working for the rights of migrants and refugees.

Clearly, where a defender belongs to more than one of these particularly at-risk groups, his or her vulnerability increases exponentially.

### **A. Women human rights defenders**

Women and men who defend women’s rights frequently face discrimination, stereotyping and stigmatisation, defamation by being labelled as prostitutes, immoral or as working against ‘traditional values’. . They also suffer sexual harassment, sexual threats and attacks, particularly during protests or arrest and detention. Further, increasing cases of femicide in relation to defenders have been reported.

Means of harassment include social media to spread hate speech and to harass women defenders, ‘blackmailing’ with the recording and leaking of private relations, and the forcible removal of hijabs and veils. Such attacks are perpetuated by State and non-state actors, including family members and unofficial religious authorities and fundamentalist groups linked to the church. The rise of religious fundamentalism and extremism restricts and endangers the work of women defenders due to the clash, or perceived clash, between traditional values, religious beliefs and practices and women’s rights.

Women defenders suffer particular risks due to their work to confront patriarchy, privilege, traditional values and practices. Additionally, women defenders working on particular issues are also at heightened risk, such as those working on issues of sexual and reproductive rights, abortion and migrant rights.

In many jurisdictions, laws relating to violence against women and girls are both inadequate and inadequately enforced. They face restrictions to their ability to carry out their legitimate work due to their role of sole caregiver in a family making it difficult to travel in relation to their work and a lack of access to affordable childcare. Austerity cuts have also disproportionately impacted women defenders and women's rights organisations in some jurisdictions.

Defenders discussed the lack of support received by women defenders, including by other defenders. Some raised concerns that UN country teams that are not adequately qualified or gender sensitive are slow to respond to civil society efforts to implement UN commitments to protect women defenders and only cooperate with officially registered NGOs with which they have a relationship.

One factor which exacerbates the inadequacy of State responses to the risks facing women defenders is the lack of reliable registers of the aggressions against them and the absence of gender-specific analyses. Without such, States are unable to define adequate protection measures.

Various reasons were identified during the consultations as to why women defenders face particular risks in Latin America, including:

- that women defenders are more economically vulnerable due to traditional socio-economic structures and traditional roles obliging them to juggle responsibilities;
- that women defenders are subject to additional vulnerability of threats against their family;
- militarisation of public security strategies and of public space has increased the threat of sexual violence;
- chauvinist violence is institutionalised in many regions;
- a lack of gender sensitivity amongst justice operators;
- fellow members of civil society often fail to see women as legitimate interlocutors; and
- women defenders are often excluded, by State and civil society, from debates traditionally seen as 'patriarchal' such as security and militarisation.

## **B. Defenders of the rights of LGBTI people**

Defenders of the rights of LGBTI people (LGBTI defenders) face a wide range of risks including: intimidation and threats; a high-level of homophobia; discrimination on the grounds of sexual orientation or gender identity; physical and verbal hate crimes, violence and criminalisation; and physical, such as honour killings. LGBTI defenders reported being stigmatised and labelled as 'gender-ists', accused of spreading pornography, as undermining 'traditional values' and depicted as representing 'Western values' and pushing agendas of NGOs including Amnesty and Human Rights Watch. The media (including State owned media) as well as social media is used to spread hate speech and harass LGBTI defenders.

In some jurisdictions LGBTI defenders are isolated and exposed due to the lack of broad citizen support, as well as the solidarity or support of other defenders, with NGOs and NHRIs failing to express public support for LGBTI rights or to condemn attacks and restrictions against LGBTI rights defenders. The UN is also seen as weak on this issue. Similarly, religious groups, extremist groups and the military discredit, stigmatise and threaten LGBTI defenders. Religious groups are also cited to justify discriminatory attitudes, laws, policies and practices. LGBTI defenders also suffer challenges with identity documents when travelling or engaging with civil servants, especially trans-defenders. Further LGBTI rights defenders have a difficult task in obtaining justice for attacks against them due to the prejudices of justice operators and a lack of access to public legal aid.

There is a high prevalence of impunity for attacks against LGBTI defenders, with police frequently taking little or no action to prevent, investigate or prosecute such violence.

LGBTI defenders identified that they face particular risks due to:

- a lack of political and public support for their work;
- the fact that in many jurisdictions, 'homosexuality' is criminalised, in others States are considering discriminatory 'anti-homosexuality' legislation, and in others the law fails to recognise and protect LGBTI rights or to adequately protect against discrimination the lack of change in leadership, sustainability measures and governance structures;
- a lack of effective leadership, and inadequate inclusion of young people in decision making processes;
- a lack of visibility of LGBTI defenders; and
- prejudicial practises by institutions have an impact on the LGBTI population and therefore on the defenders of their rights.

### **C. Defenders working on business and human rights**

Defenders working on issues of corporate accountability, particularly in relation to extractive industries, face particular risks, including attacks ranging from stigmatisation, verbal harassment (including by phone, email and SMS), pressure on families and loss of employment; assaults, arbitrary arrests, extrajudicial executions and enforced disappearances. Defenders advocating in relation to major development projects and environmental degradation have been stigmatised as 'anti-business' and 'anti-development'. They are lobbied against and restrictions are imposed on their advocacy. They are the subject of surveillance, particularly those who protest major development projects and activities. They are also subject to excessive use of force when carrying out protests and demonstrations, including labour rights activists and communities resisting eviction and dispossession of lands, as well as strategic litigation against public participation and writs to silence dissent. Whilst natural resource exploitation predominates the debate, trade unions and those defending labour rights also suffer additionally for taking on business interests. Such additional risks are no less present when businesses are nationalised.

These attacks are carried out by both the State, private military and security forces as well as with organised crime rings. There is a high level of collusion between powerful State and non-State actors with vested economic interests in development and extractive projects.

The fact that the international discourse on business and human rights is overly influenced by business rather than the rights of communities is a significant obstacle to these defenders. States lack the capacity (and in some cases the will) to control business power and impact, they lack accountability mechanisms to deter businesses from abusing the human rights of defenders, further, where laws which could regulate business exist, they are weak or applied inadequately, if at all. The lack of separation and autonomy of powers also has a significant impact - the judiciary's lack of independence means that politicians and businesses conduct human rights violations with impunity. Further, the disintegration of the social fabric (caused by big business, organised crime and insecurity) makes communities less organised to resist, the activities of business.

The work of these defenders is also undermined by the lack of access to information and lack of transparency in extractive companies' operations, including as regards to the relationship between companies, governments and security forces. As well as difficulties in obtaining media attention due to media being State owned or State controlled.

### **D. Journalists and media workers**

Journalists, as well as bloggers, are particularly at risk of attacks. Physical attacks are frequent. Journalists are harassed – including during border searches, where their equipment is confiscated - intimidated and the subject of smear campaigns. Journalists are subject to false accusations, false or planted evidence, disproportionate fines, denial of access to legal representation, and forced committal to mental asylum.

In many jurisdictions, the work of journalists is undermined by the absence or weak enforcement of freedom of information, while the content of their work may be censored (or self-censored) by the operation of laws on libel, defamation, blasphemy and national security. Some jurisdictions contain criminal charges for 'defamation of public figures', which are routinely applied to silence journalists. The lack of independent media, further restricts the activities of journalists, in some countries official accreditation for covering official events, government activities is limited to non-independent media.

Journalists documenting and reporting on peaceful protests, together with the excessive use of force by police and security officials, are particularly targeted. Journalists working to expose or promote accountability for violations frequently face retaliation in the form of refusal, suspension or withdrawal of accreditation or licences. Independent journalists may also face expulsion or exclusion from conflict zones and other places where they are documenting violations. Many attacks on journalists often occur with impunity by unknown or non-State actors.

There is a lack of resources, including financial resources, for media workers leading to accrued vulnerability, this is exemplified in the downsizing of the Radio Free Europe office in Turkmenistan, which left many journalists without a job and without protection.

## **E. Human rights defenders working on minority rights**

### ***Human rights defenders working for the protection of Indigenous rights***

Defenders working to protect the rights of indigenous people are particularly vulnerable. Indigenous groups suffer disproportionately from the negative impact of the exploitation of resources by business, including their way of life - spiritual, cultural and organisational system. Indigenous defenders advocating against extractive industries are labelled as 'anti-development' often in isolated, rural areas, exposing them to even greater risks and lesser protections, which results in leaders needing to flee, leaving the movement disarticulated and vulnerable. Increased militarisation of indigenous communities is also causing entire communities to migrate.

The lack of free, prior and informed consultation is one of the greatest threats to indigenous life, and human rights work. The tactic used by business and governments to divide indigenous communities worsens the circumstances. Defenders often work within a legal framework which does not properly protect the rights - whilst the justice system appears to fail all defenders, in the case of indigenous defenders the national justice system itself is also an imposition, as their own justice systems exist in parallel.

The collective nature of indigenous groups can mean that attacks or criminalisation of one defender can essentially constitute an attack on a group of people, on their collective and autonomous struggle. Historic and institutional discrimination, marginalisation and racism exacerbate the risks. As does the fact that a large part of the world's strategic resources are to be found on indigenous land.

These threats come from the State, transnational businesses and organised crime groups, which have been said to be 'one set of *grupos facticos* protecting the oligarchy and willing to commit ethnocide'.

### ***Human rights defenders working for the protection of the rights of other minorities***

Defenders reported an intensification in the level of stigmatisation, defamation and intimidation against minority rights activists. These defenders are subject to racially discriminatory and inflammatory representations, are labelled as 'traitors' when supporting ethnic or religious minorities and often 'inherit' the discriminatory treatment of the groups they defend. Ultra-nationalist discourse feeds this discrimination against ethnic minorities. Defenders also reported an increase in hate mail, graffiti and vandalism of their offices.

Meetings and protests related to minority rights have been subject to physical violence and threats by far-right groups, which has a significant chilling effect on the exercise of the rights to freedom of assembly and association. In other jurisdictions, authorities have refused to register associations of minority rights activists, impeding their ability to operate, to raise funds, make political representations and the like.

These threats and attacks against defenders come from State and non-State actors. There is evidence of selectivity by governments as to which minority rights organisations they are willing to engage or consult with, tending to side-line the more grassroots organisations. For example, in some jurisdictions, Government-operated NGOs (GONGOs) have been created to give the appearance of community consultation on Roma rights with government, or the government has hand-picked an advisory committee of persons with whom it will consult, such as the Australian Government's Aboriginal Advisory Committee, while defunding a genuinely representative grassroots group, such as the National Congress of Australia's First Peoples.

## **F. Human rights lawyers**

Human rights lawyers are targeted and harassed as defenders working to promote human rights, the rule of law and the independence of the judiciary, and for their legal representation of and advocacy for other defenders. Harassment and attacks include physical attacks; disappearances, arbitrary detention and murder; defamation and stigmatisation as 'traitors' or 'terrorists'; threats of, or actual, criminal prosecution based on planted evidence, such as drugs and weapons; slander, especially in circumstances where lawyers have accused police of torture; fraud or tax evasion; offices being raided, communications intercepted and documents and files seized on the basis that they contain confidential information about other defenders; and limitations imposed on the ability to receive education abroad. Family members and colleagues are also subject to pressure in an attempt to prevent a lawyer from taking on a human rights case.

Institutional limitations also impact on human rights lawyers, such as restrictions on freedom of information; lack of functioning legal aid services; bias, hostility, lack of independence of the judiciary and the public prosecutor, which in some circumstances can lead to judicial harassment. These elements in combination with the imposition or invocation of emergency laws or national security legislation have been used to justify secret detention, preventative detention and military trials.

Limitations are imposed on the ability of lawyers to access their clients and on the right to freedom of movement. Lawyers' licences are threatened, particularly when defending sensitive cases, thus limiting the pool of lawyers willing to work on human rights cases.

## **G. Defenders working to combat impunity**

defenders working to combat impunity and promote criminal investigations and prosecutions, both at the national and international levels, reported being frequently subject to acts of intimidation and attacks, ranging from verbal threats to defamation, and from arbitrary detention to torture. They indicated that vital witnesses are also sometimes subject to intimidation and as a result retract evidence under pressure. The work of these defenders is often not widely supported, with many political officials and even the public, opting for 'peace' rather than accountability.

Participants reported that their work in this area is also made more difficult by the lack of independence of the judiciary and the absence or weakness of the rule of law.

## **H. Defenders working on refugee and asylum seekers' rights**

There is a worsening trend in political and mass media attacks against defenders working in the area of refugee and asylum seeker rights. These defenders discussed being regularly labelled or accused as supporting illegal migration, undermining national security, and even supporting terrorism. These defenders are subject to a lack of access to information or to their clients, especially those in immigration detention. Governments are often selective in terms of which organisations they will consult with on refugee and asylum seeker policy.

In many jurisdictions there is a lack of funding for NGOs working on refugee and asylum seeker issues, from both States and philanthropic entities. In Australia in particular, there has been defunding and mounting of political attacks against NGOs, NHRIs, whistle-blowers and others who expose violations in immigration

detention centres. Further, the lack of access to media or decision makers for asylum seekers themselves, means that someone else must speak for them. Relatedly, the lack of access to both merits and judicial review in refugee cases restricts the ability of lawyers to advocate and seek justice in such cases.

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