



# Enhancing protection

## Developments in the legal recognition of defenders

2018 marks the 20th anniversary of the UN Declaration on Human Rights. The Declaration, adopted by consensus by the General Assembly in 1998 after almost 15 years of lobbying and advocacy by ISHR and other NGOs, elaborates binding international law so far as it applies to individuals, groups and associations promoting and defending human rights. Those advocating for the Declaration, together with those States that sought to weaken it, well understood that binding legal standards are a necessary, although by no means sufficient, element for the protection of defenders and a safe and enabling environment for their work.

While there remains a significant gap between the commitments made by States through the Declaration and their implementation on the ground, throughout 2017 ISHR contributed significantly to a number of positive developments in the legal recognition and protection of defenders at the international, regional and national levels.



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## IMPACT

### TIMELINE OF DEVELOPMENTS TO WHICH ISHR CONTRIBUTED IN 2017



#### JANUARY

- Mali's Cabinet of Ministers adopts draft National Law on Human Rights Defenders
- UN Working Group on Arbitrary Detention issues legal opinion holding that the International Covenant on Civil and Political Rights prohibits discrimination against human rights defenders in the same way as it prohibits discrimination on grounds such as race or gender

#### FEBRUARY

- President of Côte d'Ivoire adopts decree to implement Loi 2014-388, the first ever national human rights defender protection law in Africa

#### MARCH

- UN Human Rights Council adopts Norwegian-led consensus resolution extending the mandate of the Special Rapporteur on Human Rights Defenders

#### APRIL

- ISHR convenes high-level meeting of 45 representatives of civil society, national human rights institutions, parliaments and governments from 15 African countries for a two-day consultation on the development and implementation of national laws for the protection of defenders in Africa
- ISHR files third party intervention in support of indigenous human rights defender Daniel Pascual, calling on the Guatemalan Constitutional Court to interpret and apply national law and the constitution in conformity with the Declaration

#### MAY

- ISHR Director Phil Lynch addresses high-level conference of judges and jurists from Latin America and Europe on how the Declaration can be used by domestic and regional courts to interpret and apply domestic and regional law to enhance the protection of defenders

#### JUNE

- National Assembly of Burkina Faso adopts law on protection of defenders, following sustained advocacy and substantial inputs from ISHR and our partners, the Burkina Faso Coalition of Human Rights Defenders and the West African Human Rights Defenders Network

#### JULY

- ISHR submits intervention to the European Court of Human Rights against Russia, calling on the Court to explicitly rule that the rights to freedom of expression and association include the right to unhindered access and communication with international human rights bodies in line with the Declaration



## AUGUST

- ISHR intervenes with UN Human Rights Committee in a case regarding attacks against LGBTI rights defender Sasha Krikerik, asking the Committee to find Russia in violation of its obligations under the Declaration
- ISHR facilitates a two-day consultation with human rights defenders from six Latin American countries to exchange and develop strategies for the introduction, reform and implementation of national protection mechanisms for defenders in Brazil, Colombia, El Salvador, Guatemala, Mexico and Peru

## SEPTEMBER

- UN Human Rights Council adopts resolution – the first in 4 years – condemning acts of intimidation and reprisals against defenders and affirming the right to safe and unhindered access to and communication with international human rights bodies

- UN Committee on Migrant Workers makes groundbreaking recommendations to States regarding obligation to take specific measures to protect defenders of migrant, refugee and asylum seeker rights, in line with submissions by ISHR and national partners from Mexico, Korea and Indonesia

## OCTOBER

- UN experts initiate development of legal and practical guidance for business on respecting and supporting human rights defenders, with inputs from ISHR

## NOVEMBER

- African Commission on Human and Peoples' Rights adopts Guidelines on Freedom of Association and Assembly, drafted with substantial input from ISHR and providing authoritative guidance to States to ensure that law, policy and practice conform with regional and international human rights standards

- Facilitated by ISHR and ARC International, a group of 33 eminent international legal experts release the Yogyakarta Principles Plus 10, an authoritative set of new principles on international human rights law relating to sexual orientation, gender identity, gender expression and sex characteristics, including in relation to LGBTI rights defenders
- Just two weeks after their release, the Inter-American Court of Human Rights cites the Yogyakarta Principles Plus 10 extensively and approvingly in a significant decision on gender identity and non-discrimination

## DECEMBER

- UN General Assembly adopts consensus resolution on human rights defenders, drafted with significant inputs from ISHR
- Parliament of Mali adopts national law on protection of defenders, following two year advocacy campaign and provision of substantial technical assistance by ISHR and our local partner, the Coalition Malienne des Défenseurs des Droits Humains

## IMPACT

### ISHR'S MODEL NATIONAL LAW ON THE PROTECTION OF HUMAN RIGHTS DEFENDERS

■ Developed in consultation with over 500 defenders from every region, and settled and adopted by 29 of the world's leading human rights experts and jurists, ISHR's Model National Law was launched in 2016. It was used throughout 2017 to provide authoritative guidance to States on how to implement the UN Declaration on Human Rights Defenders at the national level and as an influential tool for civil society to promote, evaluate and report on implementation.

In 2017, ISHR commissioned a major independent evaluation of the relevance, effectiveness, impact and sustainability of its work. This is what the evaluation had to say about ISHR's Model Law.

*The Model Law initiative is an important development that provides human rights defenders with a concrete tool to advocate for better protection from their governments and provides guidance for governments in the best practices for developing legal standards on the protection of defenders. There was unanimous agreement among interviewees that this process is having a direct impact on the ground, and that it is building momentum that will continue to bear fruit in the months and years ahead. The Model Law project was praised by almost all interlocutors and identified as one of ISHR's most important accomplishments during the evaluation period. For example, an international NGO partner commented, 'ISHR's initiative on the Model Law really stands out as a particularly important effort and shows that they are always thinking about how best to translate international standards into national implementation and protection. The Model Law gives human rights defenders a tool for campaigning and conducting advocacy with their national authorities. By consulting with so many defenders, they have helped build momentum for implementation of the standards in the UN Declaration on human rights defenders.'*

*Defenders interviewed were unanimously positive about the value of having a Model Law on Protection of human rights defenders, which they see as giving more weight to their work, helping them to carry out advocacy with their own governments, and to hold their governments to account for their obligations under international law. As one defender underscored, 'In our countries [in Central America], we need to ensure that national governments apply standards for the protection of human rights defenders properly. But it is not enough to simply hand them the international standards, which are very general and not very like our national standards. Without a model law, governments are less likely to apply the most protective standard, and many judges will not use international standards. The Model Law makes our work and approach much stronger now.' An African defender also stressed that 'ISHR has provided us with a concrete framework to use in our efforts to gain greater legal recognition and protection for our human rights work. We have learned greatly from their experience and the guidance and support they have offered us in the Model Law process.'*



## LESSONS LEARNED

### NATIONAL LAWS ON THE PROTECTION OF HUMAN RIGHTS DEFENDERS

A conducive national legal framework is a necessary, although by no means sufficient, element of a safe and enabling environment for the work of human rights defenders. This requires both the absence of laws and policies which restrict or criminalise the work of defenders, together with the enactment and effective implementation of laws and policies which support and protect them.

At the national level, there are a number of jurisdictions which have taken or are taking steps to incorporate the Declaration into binding national law through the enactment of specific human rights defender laws and the establishment of specialised protection mechanisms. In some cases, these legislative efforts are drawing on the Model National Law developed by ISHR and endorsed by a panel of eminent legal experts in 2016.

Accordingly, in recent years, Côte d'Ivoire, Burkina Faso and Mali in West Africa, as well as Honduras and Mexico in Latin America, have adopted such laws. While it is too early to make any assessment as to the efficacy of the Burkinabe or Malian laws, in Côte d'Ivoire there is an empirical association between the enactment of Loi 388-2014 and a decline in threats and attacks against defenders.

By contrast, the rise in attacks and the prevalence of impunity in Mexico and Honduras, both of which have specific human rights defender protection laws, shows manifestly that laws alone are not enough. To be effective, such laws must be developed in close consultation with civil society. Their implementation must be adequately resourced and they must enjoy high-level political support.

In addition to issues regarding implementation, there is a disturbing trend in some jurisdictions, most notably the Democratic Republic of Congo, to develop laws that are purported to be for the protection of defenders but in fact contain provisions – such as requiring that defenders be registered and submit reports – which have the purpose, or would have the effect of restricting defenders' independence and work. In that jurisdiction, ISHR's Model Law is providing both national and international civil society with a useful tool against which to assess proposals for conformity with the Declaration.



While the Model Law is 'a' model, not 'the' model, there are a number of elements which are essential for any national law. At a minimum these include ensuring that the law:

- adopts an inclusive functional and not vocational definition of defenders
- comprehensively enshrines the rights set out in the Declaration and other relevant international human rights treaties without reservation or selectivity
- does not introduce conditions or seek to impose 'responsibilities' on defenders that may impair those rights
- provides for the direct inclusion and participation of defenders in the governance and decision-making structures of any protection mechanism
- contains provisions which recognise and respond to the particular vulnerabilities and protection needs of specific groups of defenders, such as women human rights defenders
- clearly articulates the obligations of both State and non-State actors (including business enterprises), and contains provisions for the enforcement of these obligations and penalties and remedies for their contravention.

Self-evidently, a national human rights defender protection law is not a panacea for the risks and restrictions facing many defenders. ISHR's extensive research and consultations do confirm, however, that the explicit legal recognition and protection of defenders is a necessary element of establishing and maintaining a safe and enabling environment for their work. It further confirms that defenders working in diverse countries and contexts consider that ISHR's Model Law is a valuable tool contributing to the development of legislation that implements the Declaration on Human Rights Defenders effectively at the domestic level.