

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.