

MODEL LAW

**FOR THE
RECOGNITION**

AND

PROTECTION

OF

HUMAN RIGHTS DEFENDERS

NOTE ON TRANSLATIONS

This Model Law is currently available in three languages (English, French and Spanish). ISHR welcomes translations of this document into other languages. However, in order to ensure the integrity and relevance of the information contained herein, please contact us in advance if you plan to translate this document or contribute to its translation.

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INTRODUCTION AND PURPOSE OF THE MODEL LAW

This Model Law is intended to guide and assist States and other actors to ensure the full and effective implementation 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’ (the UN Declaration) at the national level.

The legal recognition and protection of defenders is crucial to ensuring that they can work in a safe, supportive environment and be free from attacks, reprisals and unreasonable restrictions. The legal recognition and protection of defenders also contributes to the broader goals of upholding human rights, and promoting democracy, good government, sustainable development and respect for the rule of law. Human rights defenders serve and pursue the interests of rights holders, victims of violations, and society as a whole.

States have the primary responsibility to ensure defenders are able to conduct their work freely and in a safe and enabling environment. In recent years, a wide range of UN experts and mechanisms – including Special Procedures, treaty bodies, the Human Rights Council and the Office of the High Commissioner for Human Rights – together with regional human rights bodies and experts, have called on States to implement laws that explicitly guarantee the rights reaffirmed in the Declaration, and to review and amend laws which restrict, stigmatise or criminalise the work of defenders.

Despite this, only a few States have incorporated the Declaration comprehensively into national law, while many States continue to implement legislation restricting the exercise of fundamental rights and freedoms; rights which are critical for defenders to carry out their legitimate work. In those countries where specific laws or policies for the protection of defenders have been developed, lack of resourcing or political will are impediments to their effective implementation.

In this context, this Model Law serves three primary objectives:

- to assist and provide technical guidance to States to develop laws, policies and institutions at the national level to support the work of defenders and protect them from reprisals and attacks;
- to provide a tool for defenders advocating for stronger legal recognition and protection of their important work; and
- to provide both States and defenders with a tool against which to measure and assess the coverage and effectiveness of existing laws and policies.

Process for development of Model Law

This Model Law is endorsed by 28 high-level experts. It was developed by the International Service for Human Rights over a three year period informed by the following key inputs:

- comparative legal research identifying both good practices and restrictive practices in the recognition and protection of defenders covering almost 40 national jurisdictions from all regions;¹
- face-to-face consultations with over 500 human rights defenders from more than 110 States from all regions, sub-regions and legal traditions;²
- a monitoring mission and comparative literature review;³ and
- extensive engagement with high-level human rights experts and jurists in drafting the model law, including a two-day meeting to finalise the draft.⁴

The Model Law was also prepared with substantial expert and pro bono assistance from Freshfields Bruckhaus Deringer.

How to use this Model Law

The Commentary on the Model Law is intended to act as a guide to aid legislators and defenders in the development of a law for the recognition and protection of human rights defenders. It is not intended to form a part of any such law.

This Model Law is intended to be used by a range of actors in a range of ways:

- by legislators and policy makers as a source of technical assistance to inform the development of a national law for the recognition and protection of human rights defenders or to review the scope and effectiveness of existing laws; and
- by defenders and other civil society actors to inform and guide the development of proposals for a national law for the recognition and protection of human rights defenders and as a checklist and accountability tool for contributing to the development and review of such laws and policies.

This Model Law is intended to be as comprehensive as possible, while recognising that it will require adaptation to national contexts, and national legal and constitutional frameworks.

Substantive provisions in this Model Law are intended, at a minimum, to provide a base line and to give full force and effect to relevant provisions of the UN Declaration. A range of provisions have also been incorporated or informed by good practice that may go beyond obligations or standards included under the UN Declaration or other international instruments.

The Model Law could be adopted in a range of ways, depending on the national legal context and tradition, including through a combination of legislation and regulations, or legislation and presidential or executive decree, or legislation and policy.

It is imperative that any national law on the protection of human rights defenders be developed and implemented in close consultation with defenders and other civil society actors and apply a gender perspective and a sensitivity to the particular situation and protection needs of women human rights defenders and other groups or categories of defenders who are exposed or at risk.

It is also imperative that any law for the protection of human rights defenders enjoy high-level political support and be accompanied by adequate resources for full and effective implementation.

The overall framework for the protection of defenders

It should be recognised that a specific law for the recognition and protection of human rights defenders based on this Model Law is a necessary, but not itself sufficient element of the framework for a safe and enabling environment for defenders. As well as endorsing the notion of specific laws for their protection, defenders consulted for this Model Law highlighted the need to review and amend any law and policy restricting their work. Further, while a law for the protection of defenders was considered essential, defenders at the consultations maintained that, for such a law to guarantee a safe and enabling environment for their work, it must be complemented and reinforced by a range of other measures. The main elements necessary for defenders to be able to operate in a safe and enabling environment are highlighted in the December 2013 Report of the former Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya,⁵ and include:

- conducive legal, institutional and administrative framework;
- fight against impunity and access to justice for violations against defenders;
- strong, independent and effective national human rights institutions;
- effective protection policies and mechanisms, including public support for the work of defenders;
- special attention for risks and challenges faced by women defenders and those working on women's rights and gender issues;
- non-State actors' respect and support for the work of defenders;
- safe and open access to the United Nations and international human rights bodies; and
- strong, dynamic and diverse community of human rights defenders.

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1. From restriction to protection, www.ishr.ch/sites/default/files/article/files/research_report_on_legal_environment_for_hrds_upload.pdf.
 2. In the eyes of the law: Human rights defenders demand national legal recognition and protection, Summary Consultation Report; In the eyes of the law: Human rights defenders demand national legal recognition and protection, Full Consultation Report.
 3. In Defense of Life: Civil Observation Mission (moc) Report on the situation of human rights defenders in Mexico 2015 prepared by a group of national and international organisations (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), see: 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); as well as Protection International's materials on its Focus web page: <http://focus.protectionline.org/> arising from a study of new and ad hoc national legislation and mechanism to protect defenders.
 4. From 10 to 11 May 2016 a group of high-level human rights experts and jurists from all over the world met in Bossey, Switzerland to discuss, comment and amend the draft Model Law.
 5. December 2013 Report of the former Special Rapporteur on the situation of human rights defenders, A/HRC/25/55.

SIGNATORIES TO THE MODEL LAW

At an Expert Meeting on 10 and 11 May 2016, the following human rights experts and jurists endorsed this Model Law in their personal capacities:

Alice Mogwe, Director, Ditshwanelo – The Botswana Centre for Human Rights.

Andrea Rocca, Head of Protection, Front Line Defenders.

Chris Sidoti, International human rights consultant, Board Member of the OHCHR Voluntary Fund for Technical Cooperation in the Field of Human Rights, and former Australian Human Rights Commissioner.

Claudia Virginia Samayoa, Founder and Coordinator of Unidad de Protección de Defensoras y Defensores de Derechos Humanos Guatemala - UDEFEGUA (Human Rights Defenders Protection Unit in Guatemala).

Clément Voule, Vice-Chair of the West African Human Rights Defender Network, and a member of the African Commission Working Group on extractive industries, environment & human rights violations.

Daniel Joloy, Mexican human rights defender and Senior Policy Adviser, Amnesty International.

Gerald Staberock, Secretary General, World Organisation Against Torture.

Guadalupe Marengo, Deputy Director, Head of Global Human Rights Defenders Team, Amnesty International.

Hassan Shire Sheikh, Chairperson of DefendDefenders.

James Savage, Program Officer, Enabling Environment for Human Rights Defenders, The Fund for Global Human Rights.

Jean-Daniel Vigny, Expert consultant on international human rights issues for the Swiss Ministry of Foreign Affairs.

Kamala Chandrakirana, Member of the UN Working Group on Discrimination Against Women in Law and in Practice, and former Chairperson and Secretary General, Indonesia's National Commission on Violence Against Women.

Luis Enrique Eguren Fernandez, Board Member, Protection International.

Margaret Sekaggya, Executive Director of the Human Rights Centre Uganda, former UN Special Rapporteur on the Situation of Human Rights Defenders, and former Chairperson of the Uganda Human Rights Commission.

Mauricio Angel, Head of Policy, Research and Training Unit, Protection International.

Michael Ineichen, Programme Manager (Corporate Accountability) and Human Rights Council Advocacy Director, International Service for Human Rights.

Michel Forst, UN Special Rapporteur on the Situation of Human Rights Defenders.

Navi Pillay, former UN High Commissioner for Human Rights.

Olga Abramenko, Expert, ADC Memorial.

Olivier de Frouville, Professeur de droit public, Directeur du C.R.D.H. Université Panthéon-Assas, and Member of the UN Human Rights Committee.

Otto Saki, Senior Legal Adviser, Africa Regional Office, International Commission of Jurists.

Patricia Schulz, Member of the UN Committee on the Elimination of Discrimination Against Women.

Philip Lynch, Director, International Service for Human Rights.

Reine Alapini-Gansou, Special Rapporteur on Human Rights Defenders in Africa, African Commission on Human and Peoples' Rights.

Sir Nicolas Bratza, former President of the European Court of Human Rights.

Vrinda Grover, human rights lawyer and activist, Board Member of the Fund for Global Human Rights, and Bureau Member of South Asians for Human Rights.

Wilder Tayler, Secretary-General, International Commission of Jurists.

Yanghee Lee, UN Special Rapporteur on the Situation of Human Rights in Myanmar.

LAW FOR THE RECOGNITION AND PROTECTION OF HUMAN RIGHTS DEFENDERS

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PART I. GENERAL PROVISIONS

Section 1 Purposes

The purposes of this Law are:

- (a) to recognise, respect, protect, promote and fulfil the right of everyone, individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms, at the national and international levels;
- (b) to affirm, promote and protect human rights and fundamental freedoms in [*country's name*];
- (c) to affirm [*country's name*]'s commitment to the effective implementation of the UN General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; and
- (d) to affirm [*country's name*]'s commitment to the effective implementation of [*relevant regional instruments and documents on the protection of human rights defenders*].

Commentary

Subsection (a) is adapted from Article 1 of the UN Declaration:

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

Subsections (b) and (c) are adapted from the statement of objects contained in the New Zealand Bill of Rights Act 1990.

Relevant regional instruments and documents in the African region include the Kigali Declaration, adopted by National Human Rights Institutions and members of the Commonwealth Forum of National Human Rights Institutions at a working session on the imperative to prevent and eliminate child, early and forced marriage, on 5–6 May 2015 in Kigali, Rwanda; the African Charter on Human and Peoples' Rights; Resolution 69 on the Protection of Human Rights Defenders In Africa adopted at the 35th Ordinary Session of the African Commission on Human and Peoples' Rights held from 21 May to 4 June 2004, in Banjul, The Gambia; The Grand Bay (Mauritius) Declaration and Plan of Action, 1999.

Relevant regional instruments and documents in the American region include the American Convention on Human Rights. The Reports of the Inter-American Commission on Human Rights entitled: "Criminalization of Human Rights Defenders" (2015); the "Report on the Situation of Human Rights Defenders in the Americas" (2012); and "Indigenous Peoples, Communities of African Descent, Extractive Industries" (2015) could also be included, as well as the decision of the Inter-American Court of Human Rights *Human Rights Defender et al. v. Guatemala* (28 August 2014).

Section 2 Definition of human rights defender

For the purposes of this Law, a “*human rights defender*” means any person who, individually or in association with others, acts or seeks to act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional and international levels.

Commentary

This Section reflects the definition of “human rights defender” used by the Office of the UN High Commissioner for Human Rights in Fact Sheet No 29, *Human Rights Defenders: Protecting the Right to Defend Human Rights* (2004), p 2 (available at <http://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>):

‘Human rights defender’ is a term used to describe people who, individually or with others, act to promote or protect human rights.

Similar definitions appear in domestic instruments, including the Article 2(1) of the Brazilian Bill and Article 2(a) of the Nepalese Bill.

The phrase “at the local, national, regional and international levels” was added to make clear that human rights defenders may act to promote or protect human rights within the State in which they are based (whether at the local, regional or national level) or beyond it. Language to this effect also appears in other instruments, such as in Article 1 of the UN Declaration:

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

See also Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights Defenders in the Americas (2011), p 4:

...every person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally”.

A number of domestic instruments contain a definition of “human rights defender” that is more detailed than that contained here. See, for example, Article 3(a) of the Philippines Bill and Article 5 of the Congolese Bill.

A less detailed definition is suggested in this Model Law to address the concerns expressed during the regional consultations and the expert meeting that a more detailed definition could be used as a basis for excluding persons from classification as a “human rights defender”.

During the regional consultations, it was suggested that no definition of “human rights defender” should be included in the Model Law.¹ The drafters of the Model Law decided that some form of definition should be included to provide guidance for the interpretation and application of a law for the recognition and protection of defenders. Consistent with views expressed in the regional consultations, the drafters of the Model Law considered that the inclusion of a definition will also make it harder to arbitrarily exclude anyone from classification as a “human rights defender”. To the extent that there is concern that the definition of “human rights defender” requires further clarification, additional detail could be included specifying a non-exhaustive list of the types of individuals who could fall within the definition of “human rights defender”. Such a provision is found in Article 2(a) of the

¹ See, for example, International Service for Human Rights, *Project report: Regional Consultation on Model National Law on the Recognition and Protection of Human Rights Defenders*, p 5.

Nepalese Bill. Those types of individuals could include:

- (a) human rights advocates;
- (b) human rights activists;
- (c) legal practitioners and justice operators;
- (d) judicial representatives
- (e) journalists and media workers;
- (f) trade unionists;
- (g) social workers; and
- (h) health workers.

The category of “human rights advocates” has been included above to make clear that “human rights defender” includes persons who publicly support or recommend change, as well as those who actively campaign for change (“human rights activists”).

Should a State preparing a law for the recognition and protection of defenders wish to include a more detailed definition, the following language could also be added “*human rights defenders can work or carry out their activities on a full-time or part-time basis, they can act on a paid or voluntary basis, and can act as part of their profession/occupation, but need not do so.*”

It is important that the status of a human rights defender does not require any form of registration. Similarly, as set out in A/HRC/20/27, unregistered associations should be able to operate.

The definition of “human rights defenders” does not include the words “through peaceful means”, as those words do not appear in Article 1 of the UN Declaration. It should be noted however that other sections of the UN Declaration and the Model Law do include such a requirement. Article 12(3) of the UN Declaration states that:

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

Further, Article 13 of the Declaration provides that:

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

PART II. RIGHTS OF HUMAN RIGHTS DEFENDERS AND RESPONSIBILITY TO DEFEND HUMAN RIGHTS

General Commentary to Part II

Part II draws on Articles 1, 3, 5-13 and 17 of the UN Declaration, as well as rights recognised in other international instruments.

Some existing domestic instruments include provisions addressing rights that go beyond those identified in the UN Declaration. Sections of this Model Law draw on such provisions.

At the same time, some rights that appear in existing domestic instruments have not been incorporated into the Model Law. For example, section 14 of the Philippine Bill includes a “right to establish sanctuaries for any human rights violation victim and/or their immediate families”. The drafters considered the detail in this provision to be too specific for inclusion in the Model Law.

Section 3

Right to promote and protect human rights and fundamental freedoms

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

Commentary

This Section sets out a general right that encompasses, but goes beyond, the more specific rights that follow in Section 4 to Section 18.

The Section draws on Article 1 of the UN Declaration, which provides that:

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

The phrase “at the local, national, regional and international levels” was added to make clear that human rights defenders may act to promote or protect human rights within the State in which they are based (whether at the local, regional or national level) or beyond it.

See also Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights Defenders in the Americas (2011), p 4:

Every person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally.

Section 4
Right to form groups, associations and organisations

- (1) Everyone, individually or in association with others, has the right to form, join and participate in groups, associations and non-governmental organisations, whether formal or informal and whether registered or unregistered, for the purpose of promoting and striving for the protection and realisation of human rights and fundamental freedoms.
- (2) The groups, associations and organisations referred to in subsection (1) include:
 - (a) groups, associations and organisations in [*country's name*];
 - (b) groups, associations and organisations in other countries; and
 - (c) groups, associations and organisations in multiple countries or at the regional or international levels.
- (3) The groups, associations and organisations in [*country's name*] referred to in subsection (2)(a) have the right to engage with:
 - (a) groups, associations and organisations in [*country's name*] and in other countries or at the regional or international levels; and
 - (b) coalitions or networks of groups, associations or organisations referred to in subsection (2), whether formal or informal and whether registered or unregistered.

Commentary

This Section draws on Article 5 of the UN Declaration, which provides in relevant part that:

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

...

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

The use of the language “groups, associations and organisations, formal and informal” referred to in subsection (1) includes community groups, minority groups, a collective of indigenous peoples, or people that come together to defend or advocate for human rights. The right to freedom of association equally protects associations that are registered and unregistered. Individuals involved in unregistered associations should be free to carry out any lawful activities, including the right to hold and participate in peaceful assemblies, and should not be subject to criminal sanctions (A/HRC/20/27, p 14, para 56).

Subsection (2) was added for the purpose of making clear that a human rights defender is not only entitled to form, join or participate in groups that are established, based or operating within the relevant State but that they are also entitled to form, join or participate in groups established, based or operating in other States or several States.

Subsection (3) was added to make clear that groups formed within the relevant State can become affiliated with groups established, based or operating in other countries. Subsection (3) was inspired by Article 6 of the Burkinabe Bill.

Subsection (3) also draws on the wording of Article 5 of the ILO Convention concerning

Freedom of Association and Protection of the Right to Organise:

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Section 5 Right to solicit, receive and utilise resources

Everyone, individually or in association with others, has the right to solicit, receive and utilise resources, including from domestic and international sources, including governmental, intergovernmental, philanthropic and private sources, for the express purpose of promoting and striving for the protection and realisation of human rights and fundamental freedoms.

Commentary

This Section draws on Article 13 of the UN Declaration, which provides that:

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

Article 3 of the UN Declaration provides that:

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

The reference to Article 3 of the UN Declaration was omitted from Section 6, in the same way that it has been omitted from Article 4(17) of the Honduran Law and Article 6 of the Burkinabe Bill.

In line with a suggestion made during the regional consultations,² the phrase “including from domestic and international sources” was added to make clear that this right includes a right to solicit, receive and utilise resources from international organisations, inter-governmental organisations and foreign sources (both governmental and private sector). This clarification is important given that in a number of countries there are laws which restrict access to foreign.³

This section also draws on Human Rights Council Resolution A/HRC/RES/22/6 which calls upon States to:

...ensure that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy, and that restrictions are not discriminatorily imposed on potential sources of funding aimed at supporting the work of human rights defenders other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the geographic origin of funding thereto.

² International Service for Human Rights, *Project report: Regional Consultation on Model National Law on the Recognition and Protection of Human Rights Defenders*, p 13

³ International Service for Human Rights, *From Restriction to Protection: Research Report on the Legal Environment for Human Rights Defenders and the Need for National Laws to Protect and Promote their Work* (2014), fn 121.

Section 6

Right to seek, receive and disseminate information

- (1) Everyone, individually or in association with others, has the right:
 - (a) to know, seek, access, obtain, receive and hold information about all human rights and fundamental freedoms, including information regarding how those rights and freedoms are given effect in the legislative, judicial and administrative systems of [*country's name*];
 - (b) to know, seek access, obtain, receive and hold such information from business enterprises as may be necessary for exercising or protecting, or assisting to exercise or protect, human rights or fundamental freedoms;
 - (c) to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
 - (d) to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other means, to draw public attention to those matters.
- (2) The right in subsection (1) may be exercised orally, in writing, in print, in the form of art or through any other media, whether online or offline.

Commentary

This Section draws on Article 6 of the UN Declaration, which provides that:

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

- (a) *To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;*
- (b) *As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;*
- (c) *To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.*

Subsection (1)(b) has been added to ensure that information related to human rights can be obtained from business enterprises and other relevant private actors where it is necessary for the exercise or protection of human rights and fundamental freedoms. The importance of being able to access information from private actors was raised in the regional consultations.⁴ This Subsection was incorporated based on Principle 21 of the Guiding Principles on Business and Human Rights which provides:

... Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should: (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences; (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular

⁴ See International Service for Human Rights, Consultation on the situation and protection needs of human rights defenders from Western European and Others Group States (22-23 June 2015, Florence, Italy), p 8; International Service for Human Rights, UN Special Rapporteur on Human Rights Defenders consultation on the situation and protection needs of human rights defenders across Francophone Africa (30-31 May 2015, Abidjan, Cote d'Ivoire), p 7).

human rights impact involved; (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

This was also reiterated in recent Human Rights Council resolution 31/32 on the protection of human rights defenders addressing economic, social and cultural rights. A similar provision is found in Section 32(1) of the South African Bill of Rights and in the Sierra Leone Access to Information Act of 2013.

The importance of access to such information from business enterprises as is necessary to promote and protect human rights or to pursue accountability for violations is also recognised in paragraph 86 of the March 2016 Report of the United Nations High Commissioner for Human Rights entitled “Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned”, which provides that:

Member States should:

(a) Enact clear laws, regulations and policies that guarantee the proactive disclosure of information held by public bodies, including those exercising public functions, and provide a general right to request and receive such information, subject only to clearly and narrowly defined exceptions in accordance with international human rights law and standards, guarantee the right to access information held by private bodies where it is essential to the exercise or protection of human rights; and provide a right to appeal to an independent body for any refusal to disclose information;

(b) Provide training for public officials on the implementation of the right of access to information and disseminate information to the public on the right to access and the processes for achieving it.

States drafting a law for the recognition and protection of human rights defenders may consider extending this provision to other private actors (as well as business), such as media organisations and other organisations.

In relation to subsection (1)(c), the words “as provided for in human rights and other applicable international instruments” have not been retained in the Model Law, given that they could be interpreted as words of limitation on the right to disseminate information. These words have similarly been omitted in a number of domestic instruments. See, for example, Article 3 of the Ivorian Law; Article 11 of the Congolese Bill; Article 4(7) of the Honduran Law.

In relation to subsection (1)(d), the word “appropriate” was omitted from the Model Law given that the term enables a subjective, and potentially arbitrary, decision to be made regarding whether or not a particular means chosen to draw attention to an issue of human rights and fundamental freedoms is suitable.

Subsection (2) was added to make clear that human rights defenders have the right to receive, provide and disseminate information in any form. The language of subsection (2) is based on Article 19(2) of the International Covenant on Civil and Political Rights (the **ICCPR**), which provides that:

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

Section 7

Right to develop and advocate for human rights ideas

Everyone, individually or in association with others, has the right to develop and discuss new ideas and principles which relate to human rights and fundamental freedoms, and to advocate their acceptance.

Commentary

This Section draws on Article 7 of the UN Declaration, which provides that:

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

Although Article 7 simply refers to “human rights”, the expression “human rights and fundamental freedoms” has been used in Section 8 for consistency with the remainder of the Model Law.

The reference “new ideas and principles that relate to human rights” are those that have developed and been recognised since the UN Declaration. Such rights include rights based on a person’s sexual orientation and gender identity. This includes the rights in the Yogyakarta Principles - a set of international principles that apply international human rights law to sexual orientation and gender identity.⁵

Section 8

Right to communicate with non-governmental, governmental and intergovernmental organisations

Everyone, individually or in association with others, has the right to freely communicate with non-governmental, governmental and intergovernmental organisations, including subsidiary bodies, mechanisms or experts with a mandate relevant to human rights and fundamental freedoms, as well as with diplomatic representations.

Commentary

This Section draws on Article 5 of the UN Declaration, which provides that:

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

...

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

For clarity, language has been added to Section 9 which specifies that the right to communicate with intergovernmental organisations includes communication with subsidiary bodies and human rights mechanisms or experts of such organisations. Additionally, language has been added to recognise the right to communicate with diplomatic representations, such as is envisaged by the EU Guidelines on Human Rights Defenders.

Section 9

Right to access, communicate with and cooperate with international and regional human rights bodies and mechanisms

In accordance with applicable international instruments and procedures, everyone, individually or in association with others, has the right to unhindered access to, and to

⁵ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

communicate and cooperate with, international and regional human rights bodies and mechanisms, including treaty bodies and special procedures or special rapporteurs.

Commentary

This Section draws on Article 9(4) of the UN Declaration, which provides that:

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

See also Article 7 of the Ivorian Law.

Note Section 15 deals with the separate but related issue of protection from intimidation or reprisal.

Section 10 **Right to participate in public affairs**

- (1) Everyone, individually or in association with others, has the right to participate effectively in the conduct of public affairs, including participation on a non-discriminatory basis in the government of his or her country, regarding human rights and fundamental freedoms.
- (2) The right in subsection (1) includes the right:
 - (a) to submit to any public authority, or agency or organisation concerned with public affairs, criticism on or proposals for improving its functioning with respect to human rights and fundamental freedoms;
 - (b) to make recommendations to any public authority regarding legislative or regulatory changes relating to human rights and fundamental freedoms;
 - (c) to draw to the attention of any public authority any aspect of its work that may hinder or impede the promotion, protection and realisation of human rights and fundamental freedoms;
 - (d) to draw to the attention of any public authority any action or omission by any actor, private or public, that may involve or contribute to a violation of human rights or fundamental freedoms; and
 - (e) to freely publish, impart or disseminate to others any information submitted to any public authority in the exercise of the rights set out in this Part II.

Commentary

This Section draws on Article 8 of the UN Declaration, which provides that:

1. *Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.*
2. *This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.*

The right to participate in the conduct of public affairs is a right held by all human rights defenders under the jurisdiction of a particular State developing a law for the recognition and protection of defenders, and thus it is the overarching right set out in subsection (1).

Subsection (2)(b) was added as the drafters considered that the ability to make recommendations regarding necessary legislative or regulatory changes is an important part of the work of human rights defenders which should be explicitly mentioned.

Subsection (2)(d) was drawn from Article 3(5) of the Nepalese Bill.

Subsection (2)(e) was included to clarify that information submitted to public authorities may be freely published and disseminated.

Given the potential for communications submitted in the exercise of the right contained in Section 10 to be disregarded by governmental bodies, the drafters considered whether a further subsection should be added stating that “any governmental body which receives a communication of the type referred to in this Section shall confirm its receipt in writing within 10 business days”. It was concluded that such a provision should not be included in the Model Law for two reasons. First, such a requirement would likely be too onerous for countries with limited public resources. Second, without such a provision, the “right to participate in the conduct of public affairs” could be interpreted more broadly (for example, as including a right to have governmental bodies to consider and respond to the proposals put to them).

Section 11

Right to peaceful assembly

- (1) Everyone, individually or in association with others, has the right to meet or assemble peacefully as well as to participate in peaceful activities concerning human rights and fundamental freedoms, free from interference that is arbitrary or unlawful by public authorities and private actors, at the local, national, regional or international level.
- (2) The right in subsection (1) includes the right to plan, organise, participate in and disseminate information regarding peaceful activities concerning human rights and fundamental freedoms, including demonstrations, protests, seminars and meetings, whether conducted in a public or private place.

Commentary

This Section draws on Articles 5 and 12 of the UN Declaration. Article 5 provides in relevant part that:

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

- (a) *To meet or assemble peacefully;*

Article 12 provides that:

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

...

3. *In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and*

fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

The UN Declaration does not explicitly state that human rights defenders have the right to hold demonstrations or protests. Some domestic instruments do include such a reference, such as Article 6 of the Burkinabe Bill and Article 3(5) of the Nepalese Bill.

The phrase “free from interference by public authorities and private actors” in subsection (1) makes clear that public authorities must not interfere in, and should prevent others from interfering in, the exercise of this right.

To address concerns about existing laws that may restrict the ability of human rights defenders to hold public demonstrations and protests, subsection (2) makes clear that the right to meet and assemble peacefully includes the right to plan, participate in and disseminate information regarding peaceful demonstrations and protests.

The drafters discussed that despite the positive relationship between an enabling environment for civil society and the interests of national security, counter-terrorism measures are increasingly being developed and used to target, restrict and criminalise the work of human rights defenders. Such regressive developments come despite the Council’s calls in Resolutions A/HRC/22/6 and A/HRC/25/18 for States to ensure that:

..measures to combat terrorism and preserve national security ... do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.

Principles set out in these resolutions should be kept in mind when developing a law for the recognition and protection of human rights defenders.

This provision should be interpreted and applied consistently with the 2016 report of the Special Rapporteur on freedom of peaceful assembly and association and the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/31/66) which provides practical recommendations for the management of assemblies, as well as the 2012 (A/HRC/20/27) and 2013 (A/HRC/23/39) reports of the Special Rapporteur on freedom of peaceful assembly and association which state that in a free and democratic society, no authorisation should be required to assemble peacefully. In accordance with these resolutions and reports, the exercise of the right to freedom of peaceful assembly, should be:

..governed at most by a regime of prior notification whose rationale is to allow State authorities to facilitate this exercise and to take measures to protect public safety and order and the rights and freedoms of others.

Section 12

Right to represent and advocate

- (1) Everyone, individually and in association with others, has the right to assist, represent or act on behalf of another person, group, association, organisation or institution in relation to the promotion, protection and exercise of fundamental rights and freedoms, including at the local, national, regional and international levels.
- (2) The right in subsection (1) includes the right:
 - (a) to complain about the policies and actions of public authorities with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to domestic judicial, administrative or legislative authorities or any other competent authority;

- (b) to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms; and
- (c) to attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and human rights and fundamental freedoms; and
- (d) to submit communications and information of the type referred to in Section 9.

Commentary

This Section draws on Article 9 of the UN Declaration which provides in relevant part that:

- 2. *To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.*
- 3. *To the same end, everyone has the right, individually and in association with others, inter alia:*
 - (a) *To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;*
 - (b) *To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;*
 - (c) *To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.*

Subsection (2)(c) reflects the importance of trial monitoring to the work of many human rights defenders. A similar provision can be found in Article 4(14) of the Honduran Law.

Section 13
Right to freedom of movement

- (1) Everyone lawfully within the territory, or subject to the jurisdiction, including the power or effective control, of [country's name] shall, within that territory or place of jurisdiction, have the right to liberty of movement and freedom to choose his or her residence and the right to carry out his or her human rights activities in the entire territory or place of jurisdiction.
- (2) No-one lawfully within the territory of [country's name] shall be expelled, by means of an individual measure or a collective measure, from the territory of [country's name] wholly or partially on account of his or her acts as a human rights defender.
- (3) No one shall be deprived of the right to enter or leave the territory of [country's name] on the grounds of or in association with his or her status, activities or work as a human rights defender.

Commentary

The right to freedom of movement is not addressed in the UN Declaration. A provision relating to freedom of movement was included in the Model Law as concerns relating to this right were raised in a number of the regional consultations.⁶

Subsection (1) draws on Article 12(1) of the ICCPR:

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

The words of Article 12(1) have been expanded upon to reflect the Human Rights Committee's General Comment No. 27, which provides an authoritative interpretation of that Article.

In addition to the above, the drafters considered it important to add provisions specifying that human rights defenders are not be expelled from or refused entry to or leave from countries wholly or partially on account of their activities as human rights defenders.

Section 14 **Right to privacy**

- (1) Everyone, individually or in association with others, has the right to privacy.
- (2) The right in subsection (1) includes the right of a human rights defender to protect his or her privacy, including through encryption, and be free from intrusion and interference that is arbitrary and unlawful in his or her family, home, places of work, possessions and correspondence, both online and offline.
- (3) “*Intrusion and interference*” within subsection (2) includes any form of surveillance, recording, search and seizure in association with his or her legitimate activity or work as a human rights defender.

Commentary

This Section draws on Article 12 of the Universal Declaration of Human Rights, which provides that:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation.

This formulation is largely replicated in the following - Article 17(1) of the ICCPR:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Article 16 of the Convention on the Rights of the Child:

No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

Article 14 of the International Convention on the Protection of All Migrant Workers and Members of Their Families:

⁶ International Service for Human Rights, *Regional consultation on the situation of human rights defenders* (28-29 October 2014, Tunis, Tunisia), p 2; International Service for Human Rights, *Regional consultation on the situation of human rights defenders: Eastern Europe and Central Asia* (4-5 November 2014, Tbilisi, Georgia), p 4.

No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, correspondence or other communications, or to unlawful attacks on his or her honour and reputation.

The facets of life in respect of which a human rights defender has the right to privacy have been expanded to include possessions and places of work.

The phrase “attacks upon his honour and reputation” was not included in this section as these interferences are addressed in Section 16 (Right to freedom from defamation and stigmatisation). The phrase “both online and offline” draws on the UN Resolution on the right to privacy in the digital age, which “[a]ffirms that the same rights that people have offline must also be protected online, including the right to privacy”.⁷

Subsection (3) specifies some forms of interference which may be impermissible. The drafters considered this necessary in light of examples given in the regional consultations of situations where human rights defenders had been blackmailed after their private relations had been taped.⁸

Section 15

Freedom from intimidation or reprisal

No person shall be subjected, individually or in association with others, to any form of intimidation or reprisal on the grounds of or in association with his or her status, activities or work as a human rights defender.

Commentary

This Section draws on Article 12(2) of the UN Declaration and on UN Human Rights Council (*HRC*) resolutions on the issue of intimidation and reprisal, together with the San Jose Guidelines adopted by the UN Human Rights Treaty Body Chairs.⁹ Article 12(2) provides that:

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

The text of the provision has been simplified by making reference to the defined term “intimidation or reprisal”. It should be noted that the definition of “intimidation or reprisal” includes action taken against a human rights defender’s family members, representatives or associates, or a group, association or organisation with which the human rights defender is associated. It should also be noted that the definition restricts “intimidation or reprisal” to action or omission “related to a human rights defender’s status, work or activity as a human rights defender”.

This Section also draws on Section 11 of the Philippine Bill.

This Section is one of the foundations for Section 26 of the Model Law.

⁷ UN General Assembly, *The right to privacy in the digital age*, 21 January 2014, A/RES/68/167, para 3.

⁸ International Service for Human Rights, *Regional consultation on the situation of human rights defenders: Eastern Europe and Central Asia* (4-5 November 2014, Tbilisi, Georgia), p 6.

⁹ Including UN Human Rights Council, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, 9 October 2013, A/HRC/RES/24/24.

In light of the definition of “intimidation or reprisal” in Section 38(2), the right in this section for every person to be free from intimidation or reprisal includes intimidation or reprisal against a group, association, organisation, community or network, whether formal or informal, with which that human rights defender is associated. This means that an organisation also has standing to file a complaint relating to the intimidation or reprisal (see Section 18(3)).

Further, given the definition of “intimidation or reprisal”, this Section would also capture situations such as the revocation of a visa for a non-national.

Section 16

Freedom from defamation and stigmatisation

No person shall be subject to any form of defamation, stigmatisation, or other harassment, whether offline or online, and whether by public authorities or private actors, in association with his or her status, activities or work as a human rights defender.

Commentary

This Section was included in response to comments made in the regional consultations that stigmatisation is one of the key challenges facing human rights defenders and can lead to a loss of support for the work of human rights defenders.¹⁰

No article in the UN Declaration addresses defamation and stigmatisation of human rights defenders. However, provisions addressing the issue are found in domestic instruments, such as Section 11 of the Philippine Bill and Article 12 of the Burkinabe Bill.

Section 17

Right to exercise cultural rights and to development of personality

- (1) Everyone, individually or in association with others, has the right to the unhindered exercise of his or her cultural rights in his or her activities and work as a human rights defender and to the free and full development of his or her personality.
- (2) The right in subsection (1) includes the right to challenge and change traditional customs and practices that violate human rights and fundamental freedoms.

Commentary

This section draws on Article 18(1) of the UN Declaration:

Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

The right set out in this section includes the right to:

¹⁰ International Service for Human Rights, *Regional consultation on the situation of human rights defenders* (26-27 January 2015, Guatemala City, Guatemala), pp 1-2. See also International Service for Human Rights, *Regional consultations on the situation of human rights defenders: Eastern Europe and Central Asia* (4-5 November 2014, Tbilisi, Georgia), p 3; International Service for Human Rights, *Project report: Regional Consultation on Model National Law on the Recognition and Protection of Human Rights Defenders*, pp 5, 6.

- (1) freely participate or not to participate in the cultural life of communities;
- (2) freely develop multiple cultural identities;
- (3) access cultural heritage, as well as that of others;
- (4) retain and use traditional languages and cultural institutions, land, sites and goods;
- (5) contribute to the creation, critiquing and development of culture; and
- (6) exchange cultural traditions and practices with people of other cultures.

This right should be protected with particular concern for the distinctive cultural rights of disadvantaged and marginalised groups, including women, children, older persons, persons with disabilities, ethnic and religious minorities, migrants, indigenous peoples and persons living in poverty.

Section 18 **Right to effective remedy and full reparation**

- (1) Everyone, individually or in association with others, has the right to an effective remedy and full reparation in the event of a violation of the rights in this Part II or a breach of obligations under Part III of this Law.
- (2) Anyone whose rights have been violated or who has been adversely affected by a breach of obligations has the right to apply to a court or tribunal of competent jurisdiction to obtain such effective remedy and full reparation.
- (3) Any of the following may file a complaint at the [*competent court or tribunal*] relating to the violation of rights under Part II of this Law or a breach of obligations under Part III of this Law:
 - (a) a human rights defender;
 - (b) an associate of the human rights defender;
 - (c) a legal or other representative of the human rights defender appointed to conduct the affairs of or to otherwise act on behalf of the human rights defender;
 - (d) a family member of the human rights defender;
 - (e) a group, association or organisation with which the human rights defender is associated;
 - (f) any person acting in the public interest and consistently with the purposes of this Law; or
 - (g) the Mechanism established under Part IV of this Law.

Commentary

Subsection (1) draws on Article 9(1) of the UN Declaration, which provides that:

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

Subsection (2) specifies that human rights defenders have a right to apply to a competent

court regarding a violation of Part II of the Law. The wording of subsection (2) is based on Section 24(1) of the Canadian Charter of Rights and Freedoms 1982.

Subsection (3) provides standing for a range of persons to seek relief under the section. A similar standing provision is set out under section 38 of the South African Constitution. Subsection (3)(f) is necessary to ensure that an application for relief may be brought even where a human rights defender has been disappeared or is being held incommunicado, or where a group or organisation with which they are associated has been closed or disbanded.

This section also relies on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, as well as the Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

Section 19 **Limitations on the rights of human rights defenders**

In exercising his or her rights in Part II of this Law, a human rights defender, individually or in association with others, shall be subject only to limitations that are prescribed by law, in accordance with international human rights obligations and standards, are reasonable, necessary and proportionate, and are solely for the purpose of securing due recognition and respect of the human rights and fundamental freedoms of others and meeting the requirements of public order and general welfare in a democratic society.

Commentary

This Section draws on Article 17 of the UN Declaration, which provides that:

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

The words “reasonable, necessary and proportionate” have been added to more fully reflect the test for permissible limitations under international law and to clarify that the evidentiary burden for establishing the permissibility of a limitation resides with the person or authority seeking to impose it.

The Section does not include limitations “for the purpose of ... meeting the just requirements of morality”. This phrase was omitted on the basis that it could be used to justify arbitrary limitations on the rights of human rights defenders, including women human rights defenders and others challenging “traditional values” or practices.

Section 20
Other rights and freedoms not affected

Nothing in this law shall affect any provisions which are more conducive to the recognition and protection of human rights defenders and which may be contained in domestic or international law or instruments.

Commentary

This Section is a “savings clause” which makes clear that, to the extent the rights set out in Part II are less extensive than the rights of human rights defenders under domestic or international law, human rights defenders are still entitled to those more extensive rights.

The wording of this Section 20 is based on article 37 of the Convention on Enforced Disappearances.

Section 21
Responsibility to defend human rights and fundamental freedoms

- (1) Everyone has an important role to play and a responsibility to promote and to strive for the protection and realisation of human rights and fundamental freedoms.
- (2) No-one shall participate, by act or omission, in a violation of human rights and fundamental freedoms or in undermining democratic societies, institutions and processes.

Commentary

This section is based on Article 18(2) and (3) of the UN Declaration:

(2) Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

(3) Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

PART III. OBLIGATIONS OF PUBLIC AUTHORITIES

Section 22

Obligation to respect, promote, protect and fulfil the rights of human rights defenders

Public authorities shall take all necessary measures to ensure:

- (a) that the human rights and fundamental freedoms in Part II of this Law are effectively guaranteed and ensured;
- (b) that all laws, policies and programs are consistent with the rights in Part II of this Law; and
- (c) that human rights defenders are able to undertake their activities and work in a safe and enabling environment free from restriction.

Commentary

Section 22 draws on Article 2(2) of the UN Declaration which provides that:

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

The wording of the provision has been altered to account for the fact that, at the national level, obligations of the State are fulfilled by public authorities.

The section is further informed by recent reports of the UN Special Rapporteur on the situation of human rights defenders which identified the elements of a safe and enabling environment for their work.

Subsection (b) requires a system to be established that verifies the compatibility of proposed legislation with the rights in Part II of this Law. Annexure II contains examples of provisions that could be included for that purpose, including those relevant for a common law system and those relevant to a civil law system.

Section 23

Obligation to facilitate the activities and work of human rights defenders

- (1) Public authorities shall take all necessary measures to facilitate and protect the exercise of the rights in Part II of this Law.
- (2) The obligation in subsection (1) includes the obligation:
 - (a) to permit and facilitate access, in accordance with the law, to places where a person is deprived of liberty;
 - (b) to permit and facilitate access to places and to information required by human rights defenders to exercise their rights under Part II in accordance with the law;
 - (c) to provide information about violations of human rights or fundamental freedoms that may have occurred within the territory or subject to the jurisdiction, including the power or effective control, of [*country's name*];
 - (d) to develop and implement policies and measures to promote, support and enhance the capacity of human rights defenders to promote and protect human rights and fundamental freedoms; and

- (e) to promote and publicly acknowledge the role, function, activities and work of human rights defenders as legitimate and important.

Commentary

Section 23 draws on Article 15 of the Ivorian Law.

Subsection (2)(d) draws on Sections 2(a) and 3 of the South African Non-Profit Organisations Act No 71 of 1997.

Subsection (2)(e) responds to the need, identified by the UN Special Rapporteur on Human Rights Defenders and also identified during the regional consultations, for public authorities to raise awareness and speak out in support of human rights defenders, as an important aspect of contributing to a safe and enabling environment for their work.

Section 24

Obligation to provide free access to materials relating to human rights and fundamental freedoms

Public authorities shall make freely available and accessible both offline and online:

- (a) international and regional human rights instruments;
- (b) the [*national constitution*], national laws and regulations;
- (c) research, studies, reports, data, archives and other information and materials within the possession of public authorities that relate to human rights and fundamental freedoms;
- (d) reports and information submitted by [*country's name*] to international and regional human rights bodies and mechanisms;
- (e) minutes, reports and communications of international and regional human rights bodies and mechanisms in which [*country's name*] is discussed;
- (f) documents and information related to the decisions or activities of national authorities with competence in the field of human rights and fundamental freedoms; and
- (g) all such other information as may be necessary to secure or enable the exercise of any human rights or fundamental freedoms under Part II or access to remedy for a violation of any such right.

Commentary

Section 24 complements Section 6 (Right to seek, receive and disseminate information).

The Section draws on Article 14 of the UN Declaration which provides that:

1. *The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.*
2. *Such measures shall include, inter alia:*
 - (a) *The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;*
 - (b) *Full and equal access to international documents in the field of human rights, including the periodic*

reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

Access to information has been recognised by the UN High Commissioner for Human Rights as one of the “essential ingredients” for a safe and enabling environment for human rights defenders and other civil society actors (see A/HRC/32/20). The High Commissioner has explicitly called on States to enact laws and policies providing for the proactive disclosure of information by, and a right of access to information held by, both public authorities and private actors where such information is necessary to the exercise or protection of human rights (see paragraph 86(a) of A/HRC/32/20).

Section 24 specifies particular categories of documents to which human rights defenders must have access to perform their work.

Section 25

Obligation not to disclose confidential sources

- (1) Public authorities shall not disclose or require disclosure of the identity of sources used by human rights defenders.
- (2) Notwithstanding subsection (1), public authorities may disclose the identity of sources used by human rights defenders if both the relevant source and the relevant human rights defender give informed consent in writing to such disclosure or if so required by an independent and impartial tribunal in accordance with international standards.

Commentary

Section 25 draws on Article 16 of the Ivorian Law.

Section 26

Obligation to prevent and to ensure protection against intimidation or reprisal

- (1) Public authorities shall take all necessary measures to ensure the prevention of, and protection against, any intimidation or reprisal by any other public or private actor.
- (2) The reference to “*measures*” in subsection (1) shall include protection measures available under Annexure I of this Law.

Commentary

This Section complements Section 15 (Right to freedom from intimidation or reprisal).

The Section draws on Article 12(2) of the UN Declaration which provides that:

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

The text of the provision has been simplified by making reference to the defined term “intimidation or reprisal”. It should be noted that the definition of “intimidation or reprisal” includes action taken against a human rights defender’s family members, representatives or associates, or a group, association or organisation with which the human rights defender is

associated. It should also be noted that the definition restricts “intimidation or reprisal” to action or omission “related to a human rights defender’s status and work as a human rights defender”.

For the sake of clarity, subsection (2) stipulates that the measures that public authorities have an obligation to take include the protection measures available under Annexure I.

Section 27

Obligation to ensure protection against arbitrary or unlawful intrusion and interference

- (1) Public authorities shall take all necessary measures to ensure the protection of human rights defenders against arbitrary or unlawful intrusion and interference in his or her family, home, places of work, possessions and correspondence, both offline and online.
- (2) “*intrusion and interference*” in subsection (1) includes any form of surveillance, recording, search and seizure in association with any person’s legitimate activity or work as a human rights defender without his or her consent.

Commentary

Section 26 addresses a concern raised in the regional consultations,¹¹ and complements Section 14 (Right to privacy). It draws on the wording of Article 13 of the Burkinabe Bill.

Section 28

Obligation to conduct investigation

- (1) Whenever there is reasonable ground to believe that a human rights defender has been killed, disappeared, tortured, ill-treated, arbitrarily detained, threatened or subject to a violation of any of the rights in Part II of this Law, whether by a public authority or private actor within the territory or subject to the jurisdiction, including the power or effective control, of [*country’s name*], the [*competent authority*] must ensure that a prompt, thorough, effective, independent and impartial investigation is conducted with due diligence and is prosecuted as appropriate.
- (2) An investigation pursuant to subsection (1) shall take into account:
 - (a) whether a motive for the violation of the rights of the human rights defender included his or her status, activity or work as a human rights defender;
 - (b) whether there have been previous violations of the rights of the human rights defenders or systematic violations of the rights of similarly situated human rights defenders; and
 - (c) whether the violation was perpetrated, aided, abetted or supported by multiple actors.
- (3) During an investigation pursuant to subsection (1), the [*competent authority*] shall consult with the Mechanism established under Section 34 and keep the victim, or his or her family, relatives or associates, informed of the status of the investigation.

¹¹ International Service for Human Rights, *Regional consultation on the situation of human rights defenders* (28-29 October 2014, Tunis, Tunisia), p 4.

- (4) [Country's name] should request such assistance from relevant international or regional human rights bodies or mechanisms as is necessary to conduct an investigation in conformity with subsection (1).
- (5) Where the [competent authority] is unable or unwilling to conduct an investigation pursuant to subsection (1), [country's name] shall request assistance to conduct such an investigation from relevant international or regional human rights bodies or mechanisms.

Commentary

Pursuant to this Section, when the work of a human rights defender gives reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred, the relevant authority will be obliged to investigate that potential violation.

The Section draws on Article 9(5) of the UN Declaration which provides that:

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

The word “thorough” was added to the description of the investigation to be conducted in light of a suggestion made during the regional consultations.¹² The terms “effective”, “independent” and “prompt” were added to reflect international jurisprudence regarding the conduct of investigations which may implicate State agencies or authorities.¹³

Subsection (2) addresses comments made during the regional consultations expressing concern that crimes against human rights defenders are not investigated in a way which contemplates that the motive for the crime may be their work as a human rights defender, that there may be systemic violations against defenders, or that there may be multiple perpetrators.

Section 29

Obligation to ensure effective remedy and full reparation

Public authorities shall take all necessary measures to ensure that an effective remedy and full reparation are available and provided for violations of the rights in Part II of this Law and for breach of the obligations in Part III of this Law.

Commentary

This Section complements Section 18 (Right to remedy and full reparation). The inclusion of an obligation to complement the right reflects that remedies may include non-judicial

¹² International Service for Human Rights, *Consultation on the situation and protection needs of human rights defenders from Western European and Others Group States* (22-23 June 2015, Florence, Italy), p 9: “States should ensure the prompt and thorough investigation and prosecution of attacks against human rights defenders by both State and non-State actors, with perpetrators held accountable and victims provided access to effective remedies”.

¹³ See, for example, *Pueblo Bello Massacre v Colombia* (31 January 2006) Inter-American Court of Human Rights Series C No. 140, para 142; *Pestaño v The Philippines*, Human Rights Committee, Views: Communication No 942/00, 98th sess, UN Doc CCPR/C/98/D/1619/2007 (11 May 2010); *McKerr v United Kingdom* (2002) 34 EHRR 20.

remedies and that the provision of remedies within the power of a public authority should not require recourse to a court or tribunal by a victim of a violation or his or her representative.

This Section draws on Article 9 of the UN Declaration, which provides in relevant part that:

2. *To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.*
3. *To the same end, everyone has the right, individually and in association with others, inter alia:*
 - (a) *To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;*

Section 30

Obligation to make intimidation and reprisal an offence

An act of intimidation or reprisal, whether by a public or private actor, against a person, on the grounds of or in association with his or her status, activities or work as a human rights defender, shall be an offence and should be prosecuted by the [competent authority] and subject to appropriate penalties which take into account the gravity of the offence.

Commentary

This section draws on the language of Article 4(2) of the Convention Against Torture:

(1) Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. (2) Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Penalties for acts of intimidation or reprisals should recognise and reflect that threats and attacks against human rights defenders may also amount to threats and attacks against the human rights, fundamental freedoms and democratic societies, institutions and processes they defend.

The Burkinabe Bill contains a number of provisions (Articles 19 to 29) which create offences related to the intimidation or reprisal of human rights defenders. These provisions could serve as a guide for any State which does not have existing offences in its domestic law relating to intimidation or reprisal.

This section may require adaptation to national contexts.

Section 31

Obligation to promote and facilitate human rights education

Public authorities shall promote, facilitate and adequately resource teaching, training and education about human rights and fundamental freedoms within all public authorities and to all persons within the jurisdiction or subject to the control of [country's name]. Teaching, training and education programs shall include information about this Law and the important

and legitimate work of human rights defenders.

Commentary

This section is intended to give effect to article 15 of the UN Declaration and to respond to concerns raised in the regional consultations regarding the lack of education or information about human rights and the important and legitimate work of human rights defenders

Section 32

Obligation to implement protection and urgent protection measures

Public authorities shall take all necessary measures to fully and effectively implement protection and urgent protection measures determined under Part IV of this Law.

Commentary

This section is intended and necessary to ensure that all those public authorities involved or implicated in the protection of human rights defenders are obliged and may be compelled to provide such protection as is necessary and within their power.

Section 33

Assistance to human rights defenders abroad

- (1) Public authorities shall take all necessary steps within their power in conformity with national and international obligations and standards to provide assistance to a human rights defender abroad who has been or may be subject to intimidation or reprisal on the grounds of or in association with his or her status, activities or work as a human rights defender.
- (2) The assistance referred to in subsection (1) may include, as required by the nature of the intimidation or reprisal and the nationality of the human rights defender concerned:
 - (a) receiving the human rights defender in the diplomatic mission in that country or visiting the human rights defender at his or her home or places of work, or places where a person is deprived of liberty;
 - (b) making official representations, whether public or confidential, in relation to the human rights defender;
 - (c) attending or observing trials or legal proceedings involving the human rights defender;
 - (d) monitoring and producing reports on the situation of the human rights defender;
 - (e) issuing emergency or replacement travel documents;
 - (f) obtaining medical care;
 - (g) providing details of local lawyers;
 - (h) providing details of local interpreters;

- (i) contacting the family members of the human rights defender;
- (j) arranging for someone to accompany the human rights defender to a safe location or providing other relocation assistance;
- (k) providing financial assistance; and
- (l) providing emergency funds to enable the human rights defender to travel to a safe location.

Commentary

Unlike the previous Sections of the Law, this Section deals with the State's treatment of, and assistance to, human rights defenders located outside of the State.

The Section refers to national law in addition to international law so as to ensure that in situations where a State's domestic law imposes more onerous obligations regarding the protection of nationals abroad than it is subject to under international law, the State will be required to comply with those more onerous domestic obligations.

For nationals or citizens of a country, such domestic or international law may compel or make it obligatory to provide assistance to that person when abroad. For non-nationals or non-citizens, assistance may not be obligatory but is increasingly recognised as good practice, as reflected in the European Union Guidelines on the Protection of Human Rights Defenders and national guidelines adopted by States including Switzerland, Finland, Ireland, Norway and the Netherlands.

PART IV. MECHANISM FOR THE PROTECTION OF HUMAN RIGHTS

DEFENDERS

Commentary

States should establish or mandate, adequately resource, and fully and effectively implement mechanism/s or programme/s for the protection of human rights defenders. Such mechanism/s or programme/s should be coordinated by an independent body, whether established and mandated specifically for this purpose or by way of conferring such a mandate within an existing body.

There is a range of mechanisms and programmes that a State could choose to implement, and different mechanisms and programmes may be appropriate in different States. Whatever specific mechanism or programme a State chooses to implement, it should adhere to the following minimum principles:

- (1) The mechanism or programme should be developed, implemented and evaluated in close consultation with human rights defenders and should directly involve human rights defenders in its development, governance and decision-making structures;
- (2) The mechanism or programme should be established, or the mandate conferred, in national legislation;
- (3) The mechanism or program should be independent of government and should not be subject to political, administrative or financial controls which are incompatible with its independence;
- (4) The mechanism or programme should be adequately and sustainably resourced;
- (5) The mechanism or programme should include measures to promote a safe and enabling environment for human rights defenders, contribute to the prevention of threats, risks and restrictions to human rights defenders, and provide both urgent and longer term protection to human rights defenders at risk;
- (6) The mechanism or programme should seek to identify and address both structural and systemic factors contributing to risk and provide for individualised assessment for particular defenders;
- (7) The mechanism or programme should be developed and implemented in such a way as to identify and address the particular situation and risks faced by particular groups of defenders, including women human rights defenders, and apply a gender perspective;
- (8) The mechanism or programme should include specific, rather than generic, protection measures that respond to the level and nature of risk, taking into account elements such as 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. These measures should be defined according to a clear risk analysis methodology and in consultation with the beneficiaries;
- (9) The mechanism or programme should focus on the holistic security of human rights defenders, their family members and associates, including physical security, digital security and psycho-social wellbeing;

- (10) Any plans or measures to protect human rights defenders should be designed and implemented to support and minimally interfere with their activities and work as human rights defenders;
- (11) All staff and other personnel involved in the implementation of a mechanism or programme should be adequately and properly vetted and trained, including in relation to the situation and protection needs of women human rights defenders and in relation to multiple, intersectional and systemic discrimination; and
- (12) The mechanism or programme should promote, contribute to ensuring, and report on the full and effective implementation of the Declaration, including through the provision of reports and advice to parliament and the government and through cooperation with relevant international and regional human rights mechanisms.

These core minimum principles have been developed having regard to, inter alia, the Commentary to the Declaration, the March 2016 Report of the Special Rapporteur on the situation of human rights defenders (A/HRC/31/55), a review of the provisions and operation of protection mechanisms in Brazil, Mexico and Honduras, and extensive inputs from human rights defenders in all regions through the regional consultations.

Part IV of this Law has been drafted in accordance with these core minimum principles and is offered as *a* model for their operationalisation. It is recognised, however, that different models or approaches are legitimate, and may be more appropriate, in particular national contexts and legal and constitutional frameworks. For example, a mechanism or programme could be established within an existing body, such as a national human rights institution in conformity with the Paris Principles, or the detailed operational provisions set out in this Part IV may be more appropriately codified in regulation, decree or policy.

Section 34

Establishment of Mechanism for the Protection of Human Rights Defenders

- (1) The [*competent authority*] shall maintain, designate or establish a Mechanism for the Protection of Human Rights Defenders, which shall have responsibility within the [*competent authority*] for coordinating the protection of human rights defenders. The Mechanism shall carry out its functions in close, cooperative consultation [*with the country's national human rights institution, where there is one and*] with civil society.
- (2) The Mechanism shall fulfil the following functions:
 - (a) prevent intimidation or reprisal;
 - (b) protect human rights defenders from intimidation or reprisal;
 - (c) assist in ensuring investigation of, and accountability for, acts of intimidation or reprisal;
 - (d) facilitate and promote inter-agency and inter-departmental coordination to prevent, protect against, investigate, and ensure accountability for acts of intimidation or reprisal; and
 - (e) promote and publicly acknowledge the legitimate and important role, function, activities and work of human rights defenders.

- (3) In fulfilling the functions in subsection (2), the Mechanism may:
- (a) monitor and respond to the situation of human rights defenders in [*country's name*], including risks to their security, and legal and other impediments to a safe and enabling environment that is conducive to their work;
 - (b) consult and work closely and cooperatively with human rights defenders in the implementation of this Law;
 - (c) coordinate the implementation of this Law, including by developing protocols and guidelines for this purpose, within a period no longer than [*180 days*] of the entry into force of this Law;
 - (d) carry out assessments of risks, vulnerability or conflict at the [*national, regional or local*] levels, with the aim of identifying specific needs for the protection of human rights defenders, including by undertaking gender based and collective risk assessments;
 - (e) aid, assist and inform investigations for the purpose of prosecuting the offences created under Section 28;
 - (f) monitor existing and draft legislation and inform the [*competent authority*] about the impact or potential impact of legislation on the status, activities and work of human rights defenders, proposing legislative modifications where necessary;
 - (g) advise all areas of government on the design and implementation of policies and programmes to guarantee and protect the rights of human rights defenders under this Law;
 - (h) monitor and prepare annual reports on the situation of human rights defenders in [*country's name*] and make recommendations to the relevant authorities on the appropriate measures to be taken to promote a safe and enabling environment for their work and to mitigate and prevent the risks facing them, including by tackling the root causes of violations against human rights defenders;
 - (i) propose and implement, or ensure the implementation of, prevention measures and protection measures to guarantee the life, integrity, liberty, security and the work of human rights defenders, giving particular attention to the situation and protection needs of women human rights defenders and other human rights defenders at increased risk;
 - (j) advise the [*competent authority*] on the desired profiles, selection procedure, income and training of all staff and security personnel with responsibility towards the protection of human rights defenders;
 - (k) receive and assess applications for protection measures and implement the appropriate protection measures, including emergency measures, in coordination with other relevant authorities;
 - (l) disseminate information to the public about protection programmes for human rights defenders and how to access them, and about the Mechanism's work, guaranteeing transparency in regards to resource allocation;
 - (m) disseminate information to authorities and to the public about the UN General Assembly Declaration on the Right and Responsibility of Individuals, Groups

and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and the vital and legitimate role, function and work of human rights defenders; and

- (n) prepare and submit reports and communications on the situation of human rights defenders in [*country's name*] to relevant international and regional human rights bodies and mechanisms.
- (4) The Mechanism shall respect and maintain the confidentiality of the personal data collected on human rights defenders and those referred to Section 38(2)(b) to (e). The Mechanism, together with independent experts and in consultation with civil society, shall develop obligatory information management and digital security policies for their staff and all other authorities with access to information received by the Mechanism.
- (5) The Mechanism, together with independent experts and in consultation with civil society, shall carry out periodic reviews of the implementation of this Law and the Mechanism's effective functioning. The first review shall be carried out within [*18 months*] of the entry into force of this Law.

Commentary

This Section is drawn from Article 14(3) of the UN Declaration, which provides that:

The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

The language “maintain, designate and establish” is taken from Article 17 of the Optional Protocol to the Convention Against Torture.

The value of such a national institution for the protection of human rights defenders has been underscored in several HRC documents. These include HRC Resolution 13/13, which:

*...[e]ncourages States to create and strengthen mechanisms for consultation and dialogue with human rights defenders, including through establishing a focal point for human rights defenders within the public administration where it does not exist, with the aim of, inter alia, identifying specific needs for protection, including those of women human rights defenders, and ensuring the participation of human rights defenders in the development and implementation of targeted protection measures.*¹⁴

The commentary to the UN Declaration recommends that States should put in place protection mechanisms to prevent violations against human rights defenders and that such mechanisms should exhibit a range of characteristics including being:

- (a) established and operated in consultation with human rights defenders;
- (b) established or defined by law;
- (c) adequately and sustainably resourced;
- (d) empowered to define and implement protective measures which address the specificities of the profile of defenders, including as to gender and place of residence; and

¹⁴ UN Human Rights Council, *Protection of human rights defenders*, 15 April 2010, A/HRC/RES/13/13, para 5.

- (e) staffed and resourced by persons receiving specific trainings on human rights, gender issues and the Declaration on Human Rights Defenders.

(See also Commentary page 21 and Report of the Special Rapporteur on human rights defenders A/HRC/13/22). Such a mechanism could be independently established or may be a function conferred by statute on a national human rights institution. In this regard, HRC Resolution 22/6:

*..[u]nderlines the value of national human rights institutions, established and operating in accordance with the Paris Principles, in the continued monitoring of existing legislation and consistently informing the State about its impact on the activities of human rights defenders, including by making relevant and concrete recommendations.*¹⁵

In the Report of the Special Rapporteur on the situation of human rights defenders (the **Special Rapporteur's Report**) (A/HRC/25/55, dated 23 December 2013), which elaborated on the main elements that are necessary for human rights defenders to be able to operate in a safe and enabling environment, the Special Rapporteur emphasised that national human rights institutions can play a crucial role in the protection of human rights defenders (see paragraph 79).

In order to play that crucial role, the Special Rapporteur also recommended that national human rights institutions fulfil the following functions (see paragraphs 80 – 82):

- (a) have a designated focal point for human rights defenders with responsibility to monitor their situation, including risks to their security, and legal and other impediments to a safe and conducive environment for defenders;
- (b) monitor legal and administrative frameworks which regulate the work of human rights defenders, and inform the State about the impact or potential impact of legislation on the work of defenders; and
- (c) disseminating information about protection programmes for defenders, where they exist, and ensuring that defenders are closely involved in the design, implementation and evaluation thereof.

The functions of the Mechanism in this Section are derived from the recommendations in the Commentary, the Special Rapporteur's Reports, and adopted from national legislation such as the Mexican Law and the Honduran Law.

Each State, in consultation with civil society, should determine the precise structure of the national mechanism for the protection of human rights defenders suited to its particular system of public governance. For ease of reference and simplicity, this Model Law establishes one such entity, referred to as the Mechanism for the Protection of Human Rights Defenders. Ultimately, more fundamental to this Model Law are the functions carried out by this national mechanism. States may allocate these functions to different entities that make up the national mechanism for the protection of human rights defenders.

Where the State has a national human rights institution that complies with the Paris Principles, this section could be drafted to allocate to that institution the responsibilities and functions described in the section. The institution should be given adequate resources to undertake effectively those additional responsibilities and functions. If that institution does not take on this role, then the section should require the national mechanism to work closely with the national human rights institution.

¹⁵ UN Human Rights Council, *Protecting human rights defenders*, 12 April 2013, A/HRC/RES/22/6, para 16.

Where a special national mechanism is established under this section, it should have the responsibilities and functions set out in the section. The section should also set out the role of any government body that may form a part of the national mechanism and its relationship vis-à-vis any other government bodies that are part of the national mechanism.

National mechanisms for the protection of human rights defenders in existing laws, such as the Mexican Law and the Honduran Law, typically consist of three main parts: (1) a governing body that makes the final decisions and gives the necessary approvals; (2) an advisory/deliberative body that deliberates the issues and advises the governing body; and (3) an executive body/secretariat that carries out the technical workings of the national mechanism and implements the decisions of the governing body.

It is important to underline that, regardless of the composition of the national mechanism for the protection of human rights defenders, ultimate responsibility rests with the Head of State or Head of Government, who must guarantee its implementation and effectiveness. One of the failures of States in the implementation of laws and policies for the protection of human rights defenders, identified by civil society, is the lack of high level political backing.

The Mexican Law

Under the Mexican Law, the mechanism for the fulfilment of the object of the Mexican Law is composed of three main entities: (1) the Governing Board; (2) the Advisory Council; and (3) the National Executive Coordination.

The Governing Board is the highest authority of the mechanism and the main decision-making body for the protection of human rights defenders and journalists. Civil society representation on the Board is guaranteed by the law. Article 8 of the Mexican Law outlines the powers of the Governing Board.

The Advisory Council is a consultative body of the Governing Board made up of civil society representatives. The powers of the Advisory Council are set out in Article 16 of the Mexican Law

The National Executive Coordination is the technical body responsible for coordinating with the States, agencies of the federal public administration and autonomous bodies. It consists of three auxiliary units: (1) the Case Reception and Rapid Reaction Unit; (2) the Risk Assessment Unit; and (3) the Prevention, Monitoring and Analysis Unit (see Article 17). Article 18 of the Mexican Law sets out the powers of the National Executive Coordination.

The Honduran Law

By way of comparison, under the Honduran Law, the National System for the Protection of Human Rights Defenders, Journalists, Social Communicators and Legal Practitioners (the **National Protection System**) consists of five entities (see Article 19): (1) The Secretary of State of the Department of Human Rights, Justice, Interior and Decentralisation (as the governing body); (2) the National Council for the Protection of Human Rights Defenders, Journalists, Social Communicators and Legal Practitioners (the **National Council of Protection**); (3) the Directorate-General of the Protection System; (4) the Technical Committee of the Protection Mechanism and (5) the Human Rights Department of the Secretary of State of the Department of Security.

The powers of the Secretary of State in the Ministry of Human Rights, Justice, Interior and Decentralisation as the governing body of the National System are not specifically spelt out in the Honduran Law.

The National Council of Protection was established as the deliberative and advisory body to

the National Protection System (see Article 20). Article 24 of the Honduran Law sets out the powers of the National Council of Protection.

The Directorate-General of the National Protection System, which is part of the organisational structure of the Secretary of State in the Ministry of Human Rights, Justice, Interior and Decentralisation, is the executive structure of the National Protection System (see Article 28). Article 29 sets out the powers and duties of the Directorate-General of the National Protection System.

The Technical Committee of the Protection Mechanism is responsible for carrying out the dictates of risk analysis, deliberation and decisions on requests for protection submitted to the Directorate-General (see Article 31). Article 32 sets out the power of the Technical Committee.

In order to protect the privacy of human rights defenders, their families and their associates, it is necessary for the national human rights institutions to maintain the confidentiality of the data collected on these individuals. Under Article 31 of the Honduran Law, the members of the Technical Committee are required to maintain strict confidentiality of all information on the procedure for protection and case analysis, on pain of punishment by a fine.

Section 35 **Consultation with civil society**

The [*competent authority*] shall consult with human rights defenders and other civil society actors in relation to all aspects of the work of the Mechanism.

Section 36 **Resources**

- (1) The [*competent authority*] shall provide adequate financial resources to the Mechanism to enable it to fulfil its functions and exercise its powers fully and effectively.
- (2) To fulfil the purposes of this Law and for the purpose of obtaining financial resources additional to those in subsection (1), the [*competent authority*] shall establish a Fund for the Protection of Human Rights Defenders.
- (3) The Fund's resources shall be used exclusively for the implementation of protection measures and prevention measures and other acts authorised under this Law.
- (4) Provided that there is no actual or apparent conflict of interest, the Fund may receive:
 - (a) grants and loans from the public sector and the private sector;
 - (b) contributions from domestic and foreign persons, groups, associations and organisations and institutions; and
 - (c) [*amounts derived from the movable and immovable assets of the Mechanism*].
- (5) The Fund may be utilised by the Mechanism and other entities authorised by the Mechanism.
- (6) The Fund shall be administered with full transparency and a report of the Fund's use shall be included in the Mechanism's annual report.

Commentary

In the Special Rapporteur's Report (at paragraph 131), it was recommended that national institutions established for the protection of human rights defenders be "adequately resourced to be able to operate independently and to be credible and effective", and be provided with "material resources to ensure the physical and psychological protection of defenders".

In HRC Resolution 22/6, States are called upon to: "ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the [UN Declaration] ..., other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto".¹⁶

This Section draws on the following sources: (a) Articles 48 and 49 of the Mexican Law; (b) Article 16 of the Nepalese Bill; and (c) Article 66 of the Honduran Law and an analysis jointly undertaken by CEJIL-PI in that regard.¹⁷

Section 37 **Training and vetting**

- (1) All persons involved in the Mechanism, including security and law enforcement officials, shall be appropriately vetted and shall receive training prior to the commencement of their involvement, together with continuing training designed to ensure full and effective implementation of the Law.
- (2) The training under subsection (1) shall include training on human rights and fundamental freedoms, including the situation and protection needs of victims and of more vulnerable human rights defenders, specifically those working on sexual orientation, gender identity and sex characteristics issues, those acting or working in rural and remote areas and women human rights defenders.

Commentary

In HRC Resolution 13/13, States are called upon to:

*..allocate resources for the effective implementation of necessary protection measures, including specific training for persons involved in their implementation.*¹⁸

In the Special Rapporteur's Report (at paragraph 88), it was recommended that:

..[s]ecurity and law enforcement officials involved in protection programmes should receive specific training on human rights and gender issues. The physical protection of defenders should not be outsourced to third parties unless these have received specific training.

Rather than set out the specific training programmes that States should provide under this Section, the drafters of the Model Law preferred to leave it to the discretion of the States to design their own training programmes for the purposes of the Model Law, in consideration of

¹⁶ UN Human Rights Council, *Protecting human rights defenders*, 12 April 2013, A/HRC/RES/22/6, para 9(b).

¹⁷ www.ishr.ch/sites/default/files/article/files/analysis-ley-de-proteccion-para-defensores-as_translated_final.pdf

¹⁸ UN Human Rights Council, *Protection of human rights defenders*, 15 April 2010, A/HRC/RES/13/13, para 11.

the particular risk assessment of the human rights situation in each State and in consultation with civil society.

Subsection (2) clarifies that training should include the situation and protection needs of groups of defenders who are particularly vulnerable. These defenders may vary in different national contexts.

PART V. DEFINITIONS AND SCOPE OF APPLICATION OF THIS LAW

Section 38 Definitions

- (1) For the purposes of this Law, “*human rights and fundamental freedoms*” includes the rights and freedoms recognised in or declared by international and regional human rights instruments and customary international law and by national laws consistent with those instruments and that law.
- (2) For the purposes of this Law, “*intimidation or reprisal*” means any form of violence, threat, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary or abusive action or threat related to a person’s status, work or activity as a human rights defender, including proposed, attempted or imputed work or activity, directed at:
 - (a) the human rights defender;
 - (b) an associate of the human rights defender;
 - (c) a legal or other representative of the human rights defender appointed to conduct the affairs of or to otherwise act on behalf of the human rights defender;
 - (d) a family member or relative of the human rights defender;
 - (e) a group, association, organisation, community or network, whether formal or informal, with which the human rights defender is associated; or
 - (f) the home, property or possessions of the human rights defender or any of the other persons or entities in subsections (b) to (e) above.
- (3) For the purposes of this Law, the following definitions also apply:
 - (a) “*associate*” of a human rights defender means a person with whom the human rights defender acts to promote and protect human rights and fundamental freedoms;
 - (b) “*Fund*” means the Fund for the Protection of Human Rights Defenders established under Part IV. Section 36(2);
 - (c) “*Mechanism*” means the Mechanism for the Protection of Human Rights Defenders established under Part IV;
 - (d) “*protection measures*” means the measures available under Part IV of this Law and includes urgent protection measures;
 - (e) “*public authority*” means a person or body performing a function of a public nature that is conferred or imposed by or pursuant to law or delegated, contracted or procured by a governmental authority or agency.

Commentary

Subsection (1)

The drafters included a broad definition of “human rights and fundamental freedoms”. The drafters considered that defining “human rights and fundamental freedoms” with reference to a codified list of international instruments relating to human rights may be restrictive.

However such instruments would include:

- (a) the Universal Declaration of Human Rights;
- (b) the UN General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;
- (c) the International Convention on the Elimination of All Forms of Racial Discrimination;
- (d) the International Covenant on Economic, Social and Cultural Rights;
- (e) the International Covenant on Civil and Political Rights;
- (f) the Convention on the Elimination of All Forms of Discrimination against Women;
- (g) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (h) the Convention on the Rights of the Child;
- (i) the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
- (j) the International Convention for the Protection of All Persons from Enforced Disappearance;
- (k) the Convention on the Rights of Persons with Disabilities;
- (l) the Declaration on the Rights of Indigenous People;
- (m) relevant regional human rights instruments, such as the African Charter on Human and Peoples' Rights, and the American Convention on Human Rights; and
- (n) other relevant human rights instruments adopted after the enactment of this Law.

Customary international law should be specifically included.

To account for the fact that some human rights defenders may act to promote rights and freedoms which are still emerging and which are yet to be recognised in any international instrument, any definition which lists the particular international instruments should not be exclusive (“Human rights and fundamental freedoms’ shall *include...*”).

The content of many human rights and fundamental freedoms has been elucidated by decisions of national and international bodies that have interpreted and applied the international human rights instruments listed above, as well as in customary international law. Given the importance of those decisions, a sentence could be included in the definition of “human rights and fundamental freedoms” providing such decisions may be referred to when interpreting the meaning of “human rights and fundamental freedoms”.

Subsection (2)

The definition of “intimidation or reprisal” is based on Article 12(2) of the UN Declaration:

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

A human rights defender’s ability to promote and protect human rights will not only be impaired if the human rights defender himself or herself is threatened, but also if those close to the human rights defender are threatened. For this reason, the definition of “intimidation or

reprisal” in subsection (3) includes actions taken against a human rights defender’s family members, representatives or associates, or a group, association or organisation with which the human rights defender is associated.

The drafters made the decision not to define the term family member in subsection (2)(d). This was on the basis that defining this term may in effect restrict its application. The term family member should be interpreted as broadly as possible and in the context of the culture and custom in the relevant State.

No domestic instrument relating to human rights defenders defines who is considered to be a “family member” of a human rights defender. Article 5 of the Convention on the Rights of the Child provides:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

This broad definition of family reflects the wide variety of kinship and community arrangements within which children are brought up around the world. See UNICEF, *Implementation Handbook for the Convention on the Rights of the Child* (2007), Commentary on Article 5, p 76. Section 3A(1) and (2) of the Victorian Magistrates’ Court Act 1989, and §701 of the US Securities Act 1933.

Any definition of family member included by a State adopting a law on the recognition and protection of human rights defenders should rely on these instruments and be broad and acknowledge ties that arise not only from blood relations, but also from marriage and other unions.

Subsection (3)

The definition of “associate” included in subsection (3)(a) is broad so as to encompass the variety of working relationships that may exist between a human rights defender and those with whom they act to promote and protect human rights.

The definition of “public authority” is a simplified version of the definition of “public body” used in Section 4 of the Victorian Charter of Human Rights and Responsibilities Act 2006.

It is likely that the definition of “public authority” in Section 38(3)(e) will need to be elaborated to suit the particular circumstances of any State adopting a law on the recognition and protection of human rights defenders.

Section 39

Non-discriminatory application

This Law applies to all human rights defenders under the jurisdiction, territory, or control of [country’s name] without distinction of any kind, such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth, disability, sexual orientation, gender identity, sex characteristics or other status.

Commentary

This Section has been included in line with a suggestion made in the regional consultations.¹⁹ The Section is an added protection aimed at ensuring that all human rights defenders are able to enjoy the rights and protections under this Law.

Provisions similar to Section 39 are found in Article 2 of the Universal Declaration of Human Rights:

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

Article 1(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (the ***Migrant Workers Convention***):

The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

Article 2(2) of the International Covenant on Economic, Social and Cultural Rights:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The language of the Migrant Workers Convention was used in Section 39 as it includes the most extensive list of impermissible bases of discrimination. The attributes of disability, sexual orientation, gender identity and sex characteristics were added to this list to reflect international human rights norms and jurisprudence, including the Convention on the Rights of Persons with Disabilities,²⁰ and the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity,²¹ respectively.

¹⁹ International Service for Human Rights, *Project report: Regional Consultation on Model National Law on the Recognition and Protection of Human Rights Defenders*, Section 6.8.1.1.

²⁰ See, for example, Convention on the Rights of Persons with Disabilities, Article 5(2): “States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds”.

²¹ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Principle 2: “Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity”.

ANNEXURE 1. POTENTIAL ADDITIONAL PROVISIONS TO MANDATE, RESOURCE AND IMPLEMENT A MECHANISM FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS

Commentary

This Annexure contains a range of provisions which could be incorporated into the Model Law, or into regulations or a decree, to provide further guidance as to the operationalisation of Part IV of the Law.

Section 1

Application for protection measures

- (1) A human rights defender and those specified in Section 38(2)(b) to (e) may make an application for protection measures in writing or orally in person [*using the prescribed form*] or through an emergency hotline established for that purpose and available on a 24 hours basis every day of the week.
- (2) To the extent that making an application in writing is not practicable in the circumstances, an application for protection measures may be made orally in person or over the [*emergency hotline established for that purpose*].
- (3) The [official who receives an application] shall:
 - (a) obtain the details necessary for an application for protection measures or urgent protection measures; and
 - (b) transmit a written record of the application to the Mechanism without undue delay and within [*6 hours*] of the application; and
 - (c) where it appears there is a risk of an imminent act of intimidation or reprisal, immediately transmit a record of the application to the Mechanism.

Section 2

Assessment of application for protection measures

- (1) Unless the procedure for urgent protection measures under Section 4 applies, the Mechanism shall within [*two weeks*] of the receipt of an application for protection measures:
 - (a) prepare a comprehensive risk analysis to determine whether there is a real risk that an act of intimidation or reprisal will occur, including by applying a gender perspective and taking into account the specific situation and protection needs of women human rights defenders and other human rights defenders at increased risk, and by identifying the root causes of violations; and
 - (b) determine whether the application for protection measures should be approved.
- (2) If an application for protection measures is approved, within the same [*two week*] period the Mechanism shall:

- (a) develop the protection plan and define the protection measures to be put in place;
 - (b) specify the timeframe and manner of implementation of the protection plan and measures; and
 - (c) identify the beneficiary or beneficiaries of the protection measures.
- (3) The beneficiaries of protection measures may be human rights defenders and those specified in Section 38(2)(b) to (e).
 - (4) Protection measures shall only be implemented with the consent of the beneficiary or beneficiaries.
 - (5) A decision of the Mechanism under subsection (1) or (2) shall be communicated to the applicant in writing and shall include the reasons for the decision.
 - (6) The applicant shall be consulted regarding the risk analysis under subsection (1)(a) and the plan and the measures defined under subsection (2)(a).
 - (7) With the express consent of the beneficiary or beneficiaries, the Mechanism shall share the risk analysis with the authority responsible for investigating any alleged criminal offence against human rights defenders and those identified in Section 38(2)(b) to (e).

Commentary

This section is largely drawn from Article 27 of the Mexican Law.

It is fundamental to the scheme of this Model Law that the beneficiary of the protection measures has the right to a comprehensive risk analysis on which he or she, or his or her representative, is consulted.

In the Special Rapporteur's Report (at paragraph 88), it was recommended that:

...human rights defenders be consulted throughout the setting up or review of protection programmes and the structure of such programmes should be defined by law. Protection programmes ... should also assess the safety of the defenders' family members and relatives.

The Special Rapporteur (at paragraph 89) also commended the Mexican Law for its guarantee of:

...the right of the beneficiary to participate in the analysis of his/her risk and the definition of his/her protective measures.

Under Article 25 of the Mexican Law applications shall only be processed where they are supported by the prospective beneficiary (of the protection measures sought), save where that beneficiary's ability to consent is seriously impaired.

Section 3

Development of protection plans and measures

- (1) Within [*six months*] of the entry into force of this Law, the Mechanism shall develop, in consultation with civil society, a non-exhaustive list of protection measures based upon international best practice. The list shall be reviewed and updated every [*six*] months.

- (2) The protection measures that the Mechanism and relevant public authorities may implement in relation to human rights defenders and those specified in Section 38(2)(b) to (e) include:
- (a) provision of cellular devices, radio, satellite phones or other communication equipment;
 - (b) installation of cameras, locks, lights or other safety measures at the home or places of work of the beneficiary;
 - (c) provision of bullet-proof vests;
 - (d) installation of metal detectors;
 - (e) provision of armoured vehicles;
 - (f) setting up of emergency telephone lines;
 - (g) assignment of armed or unarmed protection personnel;
 - (h) provision of, or access to, legal aid;
 - (i) provision of cyber security advice, support and infrastructure;
 - (j) making public or private statements or representations of support;
 - (k) attending or observing trials or legal proceedings;
 - (l) provision of a safe house;
 - (m) provision of alternative identity documents;
 - (n) travel assistance;
 - (o) relocation outside the area of risk;
 - (p) evacuation
 - (q) provision of psychosocial support and including counselling for trauma, stress management and well-being; and
 - (r) financial assistance or income support.
- (3) The Mechanism shall consult and agree with the beneficiary or beneficiaries on the development and implementation of protection plans and measures.

Commentary

This Section largely draws on Article 33 of the Mexican Law and paragraph 4.2 of the Guatemalan Catalogue, expanded by reference to threats identified as common in the regional consultations.

It is important to link the mechanism for the protection of human rights defenders with investigations into the risks posed to the human rights defenders. Providing the beneficiary's risk analysis to relevant investigative authorities, with the express consent of the beneficiary, would facilitate investigations into criminal activity directed at a beneficiary.

Section 4 **Urgent protection plans and measures**

- (1) Where it appears from an application for protection measures under Section 1 that there is a risk of an imminent act of intimidation or reprisal, the Mechanism shall, without undue delay and no later than [*six hours*] from the receipt of the application determine whether there is a real risk that an imminent act of intimidation or reprisal will occur.
- (2) If there is a real risk that an imminent act of intimidation or reprisal will occur, without undue delay and within the same [*six hour*] period the Mechanism shall develop an urgent protection plan and the Mechanism and relevant public authorities shall implement urgent protection measures with the agreement of the beneficiary or beneficiaries.
- (3) Urgent protection measures include:
 - (a) evacuation;
 - (b) temporary relocation outside the area of risk;
 - (c) escort by specialised security personnel;
 - (d) measures to protect property; and
 - (e) other measures determined by the Mechanism to be necessary to protect the beneficiary or beneficiaries.

Commentary

The Special Rapporteur's Report (at paragraph 89) commended the Mexican Law for defining an "extraordinary process for emergency response in less than 12 hours".

This Section largely draws on Articles 26 and 32 of the Mexican Law.

Section 5 **Re-assessment and termination of protection measures**

- (1) The Mechanism shall periodically re-assess and, as it considers appropriate, continue, modify or terminate the protection measures implemented under this Law and for this purpose may:
 - (a) interview the beneficiaries of protection measures;
 - (b) request from beneficiaries reports on how protection measures have been implemented;
 - (c) request from beneficiaries information on advances in investigations and legal processes, if any;
 - (d) determine whether new circumstances exist that might increase the risk of an act of intimidation or reprisal; and
 - (e) carry out intermediary risk analyses, including in relation to context and root causes.
- (2) If protection measures involve evacuation, a safe return plan shall be developed in consultation with the beneficiary.

- (3) If the Mechanism proposes to modify or terminate protection measures it must:
 - (a) provide adequate notice of that intention to the beneficiary or beneficiaries; and
 - (b) afford due process and an adequate opportunity for the beneficiary or beneficiaries to respond.
- (4) If the Mechanism determines that the beneficiary of the protection measures deliberately and repeatedly made improper use of the protection measures, it may modify the protection measures.
- (5) The Mechanism may terminate protection measures if it determines that there is no longer a real risk that an act of intimidation or reprisal will occur.

Commentary

This Section largely draws on paragraphs 3.2.2.4 and 3.2.2.5 of the Guatemalan Catalogue. The Section also draws on Articles 36 and 37 of the Mexican Law.

Section 6
Review of decision of the Mechanism

- (1) An applicant for protection measures under Section 1 may apply to the [*relevant court, tribunal or other independent competent authority*] for review of:
 - (a) the Mechanism's decision not to approve the application for protection measures;
 - (b) the Mechanism's decision to modify or terminate protection measures;
 - (c) the protection measures selected by the Mechanism;
 - (d) the Mechanism's assessment and decision under Section 2 to Section 4; and
 - (e) the implementation of the protection measures.
- (2) An application for review under this Section shall be made within [*30 days*] of the communication of a decision of the Mechanism.
- (3) Notwithstanding a decision by the Mechanism not to approve or to withdraw protection measures, a human rights defender and those specified in Section 38(2)(b) to (e) may file a new application for protection measures if new facts arise.
- (4) In relation to subsection (1), where the [*relevant court, tribunal or other independent competent authority*] is satisfied that there has been poor or unsatisfactory implementation of protection measures, the [*relevant court, tribunal or other independent competent authority*] may also:
 - (a) institute [*disciplinary proceedings*]; and
 - (b) impose a [*fine of up to \$X*].

Commentary

In the Special Rapporteur's Report (at paragraph 89), the Mexican Law was commended for establishing a complaints procedure and ensuring that public officials who do not implement the measures ordered by the mechanism will be legally sanctioned.

This Section largely draws on Chapter XI of the Mexican Law.

Some guidance may also be drawn from Articles 54 and 55 of the Honduran Law.

Section 7 **Promotion and prevention measures**

- (1) The Mechanism shall promote recognition of and support for the work of human rights defenders and prevention of acts of intimidation or reprisal.
- (2) In order to fulfil the objective of subsection (1), the Mechanism shall:
 - (a) make public statements and increase public awareness, especially through information and education and by making use of all press organs to promote the important and legitimate work of human rights defenders;
 - (b) propose prevention measures;
 - (c) conduct national monitoring of acts of intimidation or reprisal in order to collect and organise data relating to such threats and produce reports of the findings;
 - (d) identify patterns of aggression against human rights defenders;
 - (e) make public statements and otherwise combat acts of discrimination, stigmatisation or defamation of individual human rights defenders, groups of human rights defenders and those specified in Section 38(2)(b) to (e); and
 - (f) evaluate the effectiveness of prevention measures, protection measures and urgent protection measures that have been implemented.
- (3) The prevention measures under subsection (2)(b) shall include the design of early warning systems and contingency plans to avoid acts of intimidation or reprisal.

Commentary

It is important for the Mechanism to propose promotion and prevention measures, and continually conduct national monitoring of threats to the life, physical integrity, security and freedom of human rights defenders, so as to identify patterns of aggression, map the risks posed to human rights defenders, and evaluate the effectiveness of prevention measures, protection measures and urgent protection measures that have already been implemented.

This Section is informed by the Principles relating to the Status of National Institutions, particularly in relation to raising public awareness, together with Article 23 and Chapter VIII of the Mexican Law.

ANNEXURE II. POTENTIAL ADDITIONAL PROVISIONS TO ENSURE THE COMPATIBILITY OF OTHER LAWS WITH THE MODEL LAW

Commentary

In addition to enacting a specific law for the protection of human rights defenders, States should review and amend those laws which restrict or criminalise human rights defenders' important activities and work.

Drawing on existing human rights legislation, this Annexure sets out a mechanism for determining the compatibility of other legislation with the rights set out in Part II of the Law and interpreting other legislative provisions compatibly with this Law.

These provisions may not be necessary or appropriate in those jurisdictions where comprehensive and effective pre-legislative or legislative processes exist to identify and avoid any incompatibility between national law and international human rights law

Section 1

Interpretation consistent with this Law to be preferred

- (1) So far as it is possible to do so consistently with its purpose, a statutory provision shall be interpreted and applied in a way that is consistent with the rights in Part II of this Law.
- (2) This Section applies to statutory provisions whenever enacted.

Commentary

This Section draws on interpretive provisions of domestic human rights laws, including Section 3 of the UK Human Rights Act 1998 and Article 39(2) of the South African Constitution.

Subsection (2) makes clear that statutory provisions enacted before the Law are also to be interpreted in accordance with the rule set out in subsection (1).

Section 2

Declaration of incompatibility

In any proceeding in which a court or tribunal determines whether a statutory provision can be interpreted and applied in a way that is consistent with the rights in Part II of this Law, if the court or tribunal is satisfied that the statutory provision is incompatible with one or more of those rights, the court or tribunal may make a declaration of that incompatibility, or such other order, including as to invalidity, as may be appropriate and within the power of the court.

Commentary

This Section is based on Section 4 of the UK Human Rights Act 1998.

The applicability of this provision, together with Section 3, should be considered in light of the constitutional framework of the State.

Section 3
Effect of declaration of incompatibility

- (1) A declaration of incompatibility under Section 2:
 - (a) does not affect the validity, continuing operation or enforcement of the statutory provision in respect of which it is given; and
 - (b) is not binding on the parties to the proceedings in which it is made.
- (2) Within [120 days] of the making of a declaration of incompatibility under Section 2, the [Minister administering the statutory provision in respect of which the declaration is made] shall present a report to the [competent authority]:
 - (a) bringing the declaration of incompatibility to the attention of the [competent authority]; and
 - (b) advising on the government's response to the declaration of incompatibility.

Commentary

This Section specifies the consequences of a declaration of incompatibility under Section 2.

Subsection (1) is based on Section 4(6) of the UK Human Rights Act 1998.

Subsection (2) draws on Section 92K of the New Zealand Human Rights Act 1993.

While the provisions in Section 3 have been drawn largely from common law systems operating within the traditions of Westminster-style parliamentary supremacy, the competent authority to which the Minister may present a report on the declaration of incompatibility need not be the Parliament, so long as it is a competent authority to which the Minister may be held accountable under that particular political system of governance.

Section 4
Statement of compatibility

- (1) A competent authority that proposes to make a statutory provision must cause a statement of compatibility to be prepared in respect of that proposed statutory provision.
- (2) A member of the [legislature] who introduces [draft legislation], or another member acting on his or her behalf, must cause the statement of compatibility prepared under subsection (1) to be laid before the [legislature/competent authority] when the [draft legislation] is introduced.
- (3) A competent authority or the [legislature] must cause the statement of compatibility under subsection (1) to be released publicly at least twenty-eight days before the proposed statutory provision is made and give members of the public the opportunity to comment on the proposed statutory provision during that period.
- (4) A statement of compatibility required under subsection (1) must state:
 - (a) whether, in the opinion of the member of the [legislature] or the competent authority, as the case may be, any part of the [draft legislation or proposed statutory provision, as the case may be] is incompatible with the rights in Part II of this Law; and

- (b) if, in that opinion, there is an incompatibility, the nature and extent of the incompatibility.

Commentary

This Section aims to draw potential incompatibilities with Part II of the Law to the attention of the Legislature and the public before incompatible statutory provisions are enacted. The Section draws on existing provisions in national human rights instruments, such as section 6 of the New Zealand Bill of Rights Act 1990.

These provisions may not be necessary or appropriate in those jurisdictions where comprehensive and effective pre-legislative or legislative processes exist to identify and avoid any incompatibility between national law and international human rights law.

Section 5
Review of legislative compatibility

- (1) The [*Minister for Justice/Attorney-General/other relevant or responsible Minister*] must cause a review to be made of the compatibility of all existing statutory provisions with this Law and must cause a report of that review to be laid before the [*legislature/competent authority*] within [*three years*] of the entry into force of this Law.
- (2) The review under subsection (1) must include consideration as to the amendments, revisions or repeals that would be required to ensure the compatibility of existing statutory provisions with this Law.

Commentary

This Section aims to draw existing incompatibilities with this Law to the attention of the legislature or other relevant authority in order to provide an opportunity for such statutory provisions to be amended or repealed, with a view to ensuring that the Law has full force and effect. The drafters considered that such a provision is necessary given the existence of a range of laws, provisions and regulations the operation and enforcement of which may be incompatible with the Law or undermine its purpose, intent or effectiveness.

These provisions may not be necessary or appropriate in those jurisdictions where comprehensive and effective pre-legislative or legislative processes exist to identify and avoid any incompatibility between national law and international human rights law.

**APPENDIX: LIST OF EXISTING DOMESTIC INSTRUMENTS RELATING
TO HUMAN RIGHTS DEFENDERS**

| SHORT TITLE | FULL TITLE |
|-----------------------------|---|
| Belgian Proposition | Proposition de Résolution Relative á la Protection des Défenseurs des Droits Humains (2012) |
| Brazilian Bill* | Programa de Proteção aos Defensores dos Direitos Humanos da Secretaria de Direitos da Presidência da República |
| Brazilian Decree | Decreto N° 6.044, de 12 de fevereiro de 2007. Política Nacional de Proteção aos Defensores dos Direitos Humanos |
| Burkinabe Bill | Avant-Projet de Loi Portant Protection des Défenseurs des Droits Humains au Burkina Faso (2012) |
| Colombian Decree* | Decreto 4065 (2011): Creación de la Unidad Nacional de Protección |
| Congolese Bill | Avant-projet de loi sur la protection des défenseurs des droits humains (2008) |
| Congolese Ministerial Order | Arrêté ministériel numéro 219/CAB/MIN/J&DH/2011 du 13 juin 2011 portant création, organisation et fonctionnement d'une cellule de protection des défenseurs des droits de l'Homme |
| Guatemalan Agreement* | Acuerdo sobre la Creación de un órgano de Análisis (2008) |
| Guatemalan Catalogue* | Catálogo de Medidas para la Prevención de los Abusos de Derechos Humanos y Protección de los Defensores de los Derechos Humanos y otro Grupos particularmente Vulnerables (2008) |
| Guatemalan Policy* | Política Nacional de Prevención y Protección para los Defensores de los Derechos Humanos y Otros Grupos Vulnerables (2009) |
| Honduran Law | Ley de Protección para las y los Defensores de los Derechos Humanos, Periodistas, Comunicadores Sociales y Operadores de Justicia (2015) |
| Indonesian Bill | Peraturan Presiden Republik Indonesia Nomor 23 Tahun 2011 Tentang Rencana Aksi Nasional Hak Asasi Manusia Indonesia Tahun 2011-2014 |
| Ivorian Law | Loi no. 2014-388 de 20 Juin 2014 Portant Promotion et Protection des Défenseurs des Droits de l'Homme |
| Mexican Law | Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas (2012) |

| | |
|--------------------|---|
| Mexican Regulation | Reglamento de la Ley Para la Protección de Personas Defensoras de Derechos Humanos y Periodistas (2012) |
| Nepalese Bill* | Draft Bill 2066 on Human Rights Defenders (2009) |
| Philippine Bill | An Act Defining Certain Rights of Human Rights Defenders and Providing Penalties for Violations Thereof in Implementation of the 1998 UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights or Otherwise Known as the UN Declaration on Human Rights Defenders (2011) |

* Documents prepared by NGOs

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