

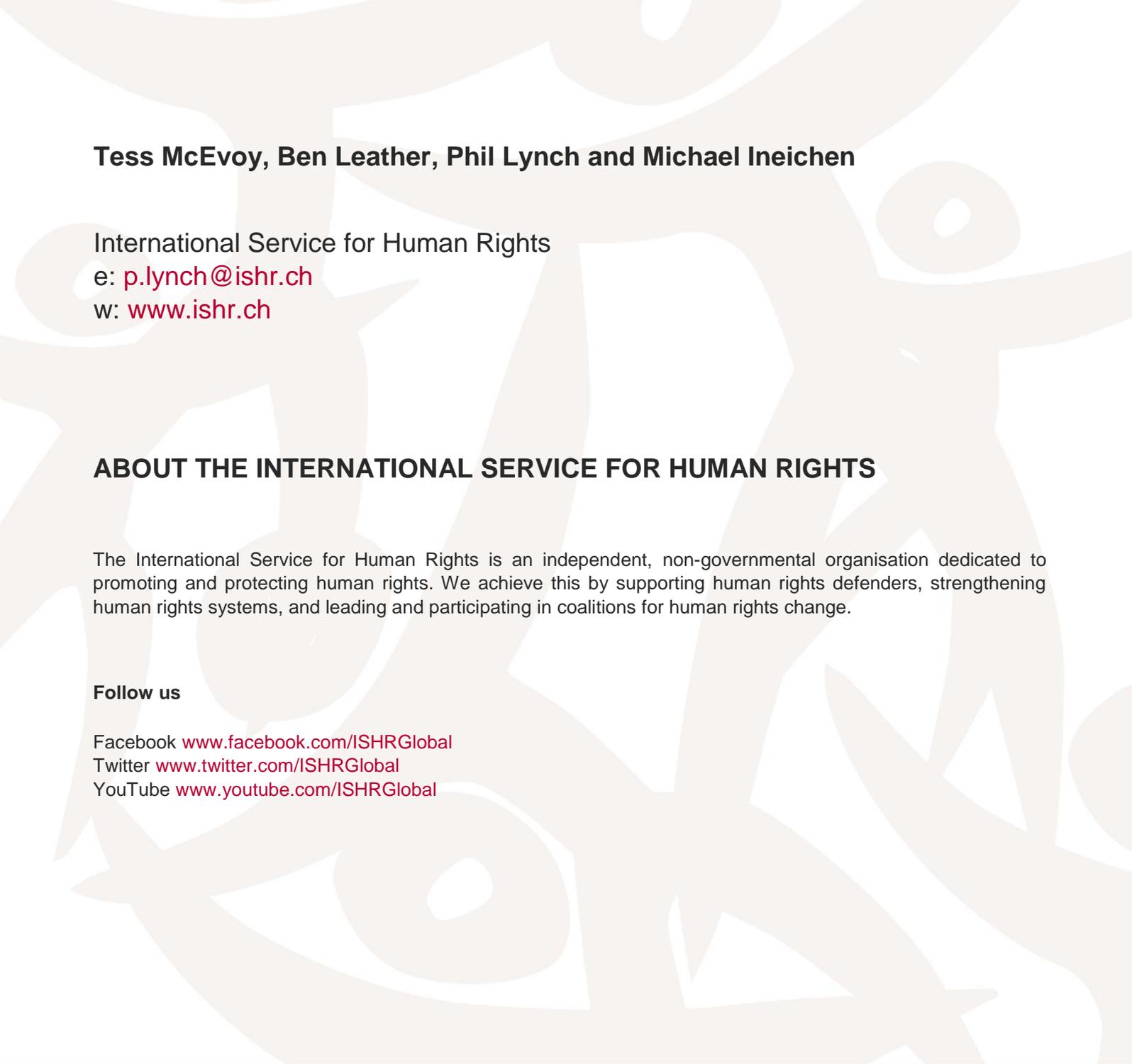
# **In the eyes of the law:**

**Human rights defenders demand national  
legal recognition and protection**

**Summary consultation report**

**February 2016**

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# I. ABOUT THIS REPORT

This report summarises the findings of consultations with more than 500 human rights defenders (defenders) from across the world regarding the need for – and the necessary components of – a model national law for the recognition and protection of defenders, and other elements required for a safe and enabling environment for them.

A detailed report of the consultations, entitled *In the eyes of the law: Human rights defenders demand national legal recognition and protection. Full consultation report*, presents the perspectives of the defenders on key elements which ought to be contemplated in a law for their protection, lessons that can be learnt from existing legislative initiatives, and other strategies that ought to be considered to guarantee the effective protection of defenders. It also documents the main risks and obstacles defenders identified as hindering their work, and outlines which groups of defenders face heightened or specific risks, together with the nature of those risks.

The consultations complement ISHR's existing research on good and bad practices in terms of safe and enabling legal environments for defenders, set out in ISHR's report [From restriction to protection](#)<sup>1</sup>, and form part of ISHR's Model Law Project. All documentation regarding this project can be found online at [www.ishr.ch/modellaw](http://www.ishr.ch/modellaw).

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

## 1. ENSHRINING THE DECLARATION INTO NATIONAL LAW

The adoption of the '*Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*' (the Declaration) in 1998 recognised at the international level the importance and legitimacy of the work of defenders, and their need for better protection.

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 legal restrictions. As the former UN Special Rapporteur on Human Rights Defenders, Margaret Sekaggya, wrote in her report to the March 2014 session of the Human Rights Council:

*'One of the key elements of a safe and enabling environment is the existence of laws and provisions .... that protect, support and empower human rights defenders... The adoption of laws that explicitly*

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

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

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

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

*guarantee the rights contained in the Declaration on Human Rights Defenders is crucial in that it could contribute to building an enabling environment and give these rights legitimacy.'*

This call has also been made by the Office of the High Commissioner for Human Rights:

*'To support and protect human rights defenders, parliaments should make the Declaration a national legal instrument in order to facilitate its application by national authorities and to ensure adherence thereto by the judiciary and State authorities.'* (Fact Sheet No 29, p. 33)

The UN Human Rights Council has also spoken on the need for specific national laws to protect defenders, adopting a landmark resolution in March 2013 which calls on States to amend laws which target or criminalise defenders, including those that restrict NGO access to foreign sources of funding, criminalise 'homosexual propaganda', or limit freedom of expression, assembly or association on discriminatory grounds. The Council went further again in September 2013, when it adopted a resolution calling on States to enact specific laws and policies to protect defenders from reprisals.

Based on the consultations conducted as part of this project, this report argues that specific legislative recognition and protection for defenders is a necessary element for their safety, and outlines the key requirements for such legislation.

Most recently, in 2015, the current Special Rapporteur on the situation of Human Rights Defenders, Michel Forst, reiterated the call to develop and further strengthen specific legislation for the recognition and protection of defenders; a call which was endorsed by several States in the Human Rights Council.

With States holding the primary responsibility to ensure defenders are able to conduct their work freely, UN experts, the Office of the High Commissioner for Human Rights and the Human Rights Council have frequently called upon 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.

However, this call has largely gone unanswered and only a few States have incorporated the Declaration comprehensively. In fact, 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 laws or policies for the protection of defenders have been developed, lack of resourcing or political will are impediments to their effective implementation. In addition, these existing laws contain substantive gaps and shortcomings, and implementation is inadequately prioritised in the laws.

## **2. ISHR'S CONSULTATIONS WITH HUMAN RIGHTS DEFENDERS**

In response to these gaps and trends, ISHR conducted regional consultations with 500 defenders from 111 countries to understand the risks and obstacles they face and the nature of the legal recognition and protection they need to carry out their work safely. The consultations were complemented by comprehensive legal research set out in ISHR's report entitled '[From Restriction to Protection](#)'.

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

As identified above, a comprehensive compilation report, *In the eyes of the law: Human rights defenders demand national legal recognition and protection*. Full consultation report can be found at [www.ishr.ch/modellaw](http://www.ishr.ch/modellaw).

### 3. THE CASE FOR A MODEL LAW

The call by defenders for specific legal recognition and protection of defenders was made clearly in each of the consultations. Such legislation would have normative, preventative, protective and educative value: enshrining and articulating the rights of defenders and the obligations of State and non-State actors; assisting to give official recognition to the legitimacy of the work of defenders; as well as educating law enforcement officers, public officials and the public at large about the importance of defenders and their protection needs.

**Defenders in all of the regional consultations considered that legal recognition and protection grounded in specific national legislation is key to establishing and maintaining a safe and enabling environment in which to conduct their work.** More specifically, the majority of defenders identified the need for a specific national law to implement the UN Declaration on defenders and promote and protect the work of defenders.

A model law for the protection of defenders 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 serve as a valuable tool for defenders advocating for stronger legal recognition and protection of their important work
- Provide defenders with a measure against which to gauge the coverage and effectiveness of existing laws and policies.

The model law aims to reduce the burden on both civil society and States, to ensure laws for the protection of defenders are indeed developed, and that they be effective in protecting defenders and in responding to their needs. Furthermore, the model law will assist in working towards the implementation of policies and procedures that combat impunity for attacks and harassment of defenders.

During the consultations defenders raised three caveats regarding the need for specific legislation for their protection.

- The insufficiency of such legislation. It goes without saying that legislative protection is but one element – albeit a necessary element – of a safe and enabling environment. This caveat is in part addressed by section II.8 of this report, section 3 of the Full consultation report, and is detailed in the [report of the Special Rapporteur on the Situation of Human Rights Defenders](#)<sup>5</sup>.
- Secondly, legislation can be used as a tactic to detract focus from abuses against defenders. Defenders reported that States can deliberately adopt weak laws for their protection, which lack appropriate substance and implementation and as such shield the State from criticism at the international level. This concern is in part addressed by the call for a specific focus on implementation in the text of the model law.
- Thirdly, specific legislation is not a priority where resources are limited. This concern is intended to be addressed in part by the elaboration of the model law itself. By providing a tool for defenders and a benchmark to measure existing and future laws, the model law seeks to improve the ‘cost-benefit’ rates for civil society to push for a HRD law.

While each of these caveats were raised and are important, on the balance the utility and value of the model law was clearly confirmed through the consultations.

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<sup>5</sup> Facing Risks and Threats for Defending Human Rights: The Voice of Human Rights Defenders, Michel Forst, Special Rapporteur on the situation of human rights defenders, <https://www.protecting-defenders.org/pdf.js/web/viewer.html?file=https%3A//www.protecting-defenders.org/sites/protecting-defenders.org/files/Report-the%20voice%20of%20human%20rights%20defenders.pdf>

In addition to the 500 defenders who attended the regional consultations, the model law's development has been supported by defenders attending the African Commission on Human and Peoples' Rights (the African Commission) in October 2013, defenders working on issues of corporate accountability at the November 2013 Peoples' Forum on Business and Human Rights in Bangkok, and by a meeting of international law experts in Vienna held in June 2013. The African Commission itself, in Resolution 196 of 2011, has also called on States to 'adopt specific legislation on the protection of human rights defenders.'

To date, some countries, including Côte d'Ivoire, Mexico and Honduras, have enacted legislation for the protection of defenders. In others countries, such as Burkina Faso, the Philippines and Indonesia different actors have prepared draft laws. These national laws and policies all recognise the work of defenders, incorporate some, but not all, of civil society's proposals, and provide for the protection of defenders and their activities to some degree. However, the deficiencies in the content, and the level and manner of implementation of those laws have emphasised the need for a model law. Lessons learned from these experiences can help to ensure a model law and future laws addresses each of the deficiencies. These lessons learned are discussed further in the Full consultation report, from the perspective of defenders working in those countries.

## **II. A SPECIFIC LAW FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS**

This section sets out what defenders consider necessary to ensure a national law that implements the UN Declaration on defenders effectively, promotes and recognises their vital and legitimate work, and penalises and ends impunity for attacks against defenders; they are elements which are essential in an effective model law.

For a law to be effective in protecting defenders closely, defenders consider that it is imperative that:

- defenders are consulted in the drafting and implementation of such a law;
- the rights of defenders are reaffirmed, and the obligations - not only of State actors but also of non-State actors – are clearly defined, including civil and criminal penalties for violations;
- it guarantees the establishment of a protection mechanism for defenders, with both preventative and reactive elements;
- it requires careful, explicit and public evaluation of consequential amendments of restrictive legislation necessary to ensure that such restrictive legislation does not nullify the effect of the law. This is discussed further in II6 below;
- it responds to the particular profile, threats and protection needs of all defenders, including women defenders, defenders living in isolated regions, entire communities of defenders, and those working on more 'sensitive' rights, such as the rights of LGBTI persons; and
- it provides for enforceable implementation mechanisms.

### **1. THE RIGHTS OF HUMAN RIGHTS DEFENDERS**

According to defenders, the law should enshrine all of the rights of defenders recognised in international law and the Declaration, including, but not limited to, the rights to:

- work to promote and protect human rights, both individually and in association with others;
- freedom of opinion and expression, including the right to disseminate information relating to human rights and human rights violations;

- freedom of association and assembly, including the right to form human rights organisations, NGO coalitions and networks, as well as to peacefully protest;
- access information on human rights and human rights violations, from both State and non-State actors;
- life and physical integrity, together with the right to freedom from arbitrary detention;
- access to legal counsel and to a fair trial;
- privacy and reputation and freedom from arbitrary or unlawful interference with family, the home or workplace;
- non-discrimination; and
- access and use resources, including from foreign sources.

## **2. THE OBLIGATIONS OF THE STATE**

According to defenders, the law must be clear in enshrining the obligations of the State, including the obligation to:

- guarantee the rights of defenders (including those outlined under II.1 above);
- make public statements in support of the law and the work of defenders;
- establish effective prevention measures, through which States can analyse patterns of threats and attacks against defenders in order to develop measures that address the root causes of violations;
- establish, mandate and adequately resource a specific protection mechanism for defenders that effectively ensures the protection of defenders and, when necessary, their associates (for example, colleagues, family members, friends and legal representatives). This is discussed further in II.5 below;
- guarantee the prompt and thorough investigation of violence, threats and attacks against defenders, by both State and non-State actors, with perpetrators held accountable and victims provided with access to effective remedies;
- facilitate access to information requested by defenders, from both State and non-State actors, pertaining to human rights, and guarantee the security and confidentiality of communications between defenders and their contacts;
- ensure the full and effective participation of defenders in the elaboration and implementation of the laws, and in the development and implementation of associated and other policies pertaining to their work;
- document and make public periodic reports as to the incidence and patterns of attacks and violations against defenders; and
- prohibit restrictions on the funding of NGOs, defenders, their networks or coalitions.

### **3. THE OBLIGATIONS OF NON-STATE ACTORS**

Given the current context in which defenders operate, defenders consider that it is essential that the law also enshrine the obligations of non-State actors, particularly of corporations and other business enterprises. This includes their obligations in relation to:

- respecting, upholding and not interfering with the rights of defenders (including those outlined at II.1 above);
- consulting defenders in due diligence and human rights impact assessments with a view to identifying, avoiding, mitigating and remedying human rights violations, as well as risks of violations; and
- providing and facilitating access to information requested by defenders pertaining to human rights.

### **4. ENFORCEMENT PENALTIES AND REMEDIES**

Defenders consulted stated clearly that the law should include provisions for the enforcement of the obligations of both State and non-State actors, including provisions:

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

### **5. THE ESTABLISHMENT AND MANDATE OF A PROTECTION MECHANISM**

Effective laws ought to create and mandate a comprehensive, specific and adequately financed protection mechanism, or mechanisms. These should ensure timely and effective preventative and reactive measures that guarantee the protection of defenders at risk. Some defenders believe that any mechanism ought to be granted the power to investigate violations against defenders. Colombia, Brazil and Guatemala have developed protection policies, mechanisms and entities created by decree and other normative initiatives.

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

- operates to protect and promote the work of defenders;
- responds to the individual protection needs of defenders in a timely, and sometimes urgent, fashion;
- analyses and makes recommendations as to systemic and structural factors that undermine or threaten the work of defenders;
- directly involves defenders in the development, governance and decision-making structures of the mechanism;
- includes specific, rather than generic, protection measures 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;

- provides for the protection of defenders' families, associates and organisations, where appropriate: and
- includes protocols regarding security, emergencies, and witness protection.

## **6. CONSEQUENTIAL AMENDMENTS TO RESTRICTIVE LEGISLATION**

An effective law for the protection of defenders is accompanied by a process of careful, explicit and public evaluation of consequential amendments required to restrictive legislation, to ensure that such restrictive legislation does not nullify the effect of the law.

A range of legislation exists across all regions which limits civil society space and the activities of defenders, either as a direct result of its restrictive content, or due to its arbitrary or abusive application. For a law for the protection of defenders to be effective, and not limited, it ought to ensure that consequential amendments be made to laws that have the potential to restrict the environment for human rights defence.

Further, States should put in place measures which prevent and sanction the arbitrary application of legislation against defenders. States should also modify or overturn laws that unreasonably restrict particular rights, for example laws which restrict freedom of expression, outlaw homosexuality or insufficiently protect the land rights of indigenous people.

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

A range of legislation, both through its contents and application, criminalises the work of defenders and paralyses their activities whilst they invest time and money in fighting the imposition of fines, arbitrary arrest, or administrative sanctions.

The criminalisation of defenders is particularly acute in respect of laws which suspend due process – for example, through the use of states of emergency or the sanctioning of extended pre-charge and pre-trial detention – or which explicitly criminalise the defence of certain rights or the rights of certain people, such as LGBTI persons.

### **Legislation restricting particular freedoms and rights**

A law for the protection of defenders should define a process for and require the repeal or amendment of laws which restrict rights and freedoms essential for defenders to conduct their work; bringing these laws in line with international human rights law. Laws requiring amendment are briefly referred to below.

- Laws restricting the right to freedom of assembly, including laws that impose excessive demands on the authorisation of demonstrations or prohibit demonstrations based on vague terms, such as 'disturbing the public order' or 'against business operations'.
- Laws restricting freedom of association, including laws that impose arbitrary and onerous reporting requirements, restricts the rights of NGOs to engage in advocacy or restrict the right to receive funding, including from foreign sources.
- Laws restricting freedom of expression, including laws that restrict the right to freedom of expression based on vague, ambiguous language around 'morality' and 'national security', or which contain offences such as defamation and hate speech.
- Laws restricting freedom of information, and in particular the right of defenders to obtain information pertaining to human rights.
- Counter-terrorism, national security and counter-insurgent legislation, doctrines and policies, including laws that contain vague concepts which can be used to restrict or criminalise the work of

defenders or enable protections generally available to them to be overridden under the guise of 'national security'.

## **7. FOCUS ON IMPLEMENTATION**

Once a law is enacted, States should ensure that it is implemented and enforced effectively. There needs to be political will, action taken to prevent violations, accountability for violations, and responses to violations that are specific to their nature.

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

Effective laws for the protection of defenders ought to stipulate a State's obligation to implement and enforce the law effectively, including provisions:

- guaranteeing adequate and sustainable financial resources for the law's effective implementation;
- ensuring public awareness, including the promotion of the law's importance – publicising its objectives and scope – by political actors, and the dissemination of information on how to access any protection mechanism the law might create;
- defining the process – which must include defenders – through which regulations will be established for the implementation of the law and its mechanism(s);
- obliging States to develop a specific entity within the government – whether focal points, ministries or offices – with a mandate to ensure the effective implementation of the law;
- guaranteeing periodic monitoring and evaluation of the implementation of the law, including through ongoing consultation with defenders; and
- establishing, in consultation with defenders, continuous and appropriate trainings for government officials – including those responsible for implementing the law.

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

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

While a law for the protection of defenders was deemed to be essential, defenders agreed that for such a law to guarantee a safe and enabling environment for their work, it must also acknowledge and reiterate other governmental measures necessary in this endeavour.

This provides an opportunity to strengthen other institutions with the potential to impact directly upon the work of defenders – such as the judiciary and national human rights institutions - as well as to articulate measures through which the State could strengthen civil society and provide greater public recognition to defenders, as a step towards their protection. These additional elements are discussed further in part 3 of the Full consultation report.

## **Enacting and strengthening enabling legislation**

As well as endorsing the notion of specific laws for their protection, the need to overturn any law and policies restricting their work, defenders highlighted the need for States to enact or strengthen other legislation that could strengthen a safe and enabling environment for their work.

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

- the right to freedom of assembly is protected, including that such laws protect, including that such laws protect the right to peacefully assemble, demonstrate and protest;
- the right to freedom of association is protected, including that such laws provide for the effective, expeditious and inexpensive formation of organisations, including those for the 'promotion and protection of human rights';
- the right to freedom of expression is protected, including that laws protect those who expose human rights violations, protect the right to access media and provide for independent regulation of the press;
- the right to freedom of information is protected, including that laws promote transparency and provide genuine access to information, including information pertaining to human rights and detention; and
- lawyers are not restricted from representing defenders, including accessing their clients, representing clients during interrogations, accessing information about charges and allegations, and information regarding the place, condition and basis of their clients' detention.

## **III. CONCLUSION**

The legal recognition and protection of human rights defenders is crucial to ensuring that they can work in a safe, supportive environment and be free from attacks, reprisals and unreasonable legal restrictions. This need is most effectively and comprehensively addressed by a specific law for the protection of defenders. Despite some caveats being raised by defenders, on the balance the utility and value of the model law was clearly confirmed through the consultations.

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