

Good practices in the legal and policy framework at the national level to ensure the right to participation at the international level

Submission by ISHR to the 2019 UN Secretary-General's report on "cooperation with the United Nations, its representatives and mechanisms in the field of human rights"

Introduction

ISHR has prepared this submission in response to the [call made by the Office of the United Nations High Commissioner for Human Rights](#) inviting representatives of civil society to provide information on preventing and addressing acts of intimidation and reprisals related to cooperation with the United Nations.

Following the presentation of the annual report of the Secretary-General on reprisals to the Human Rights Council on 19 September 2018,¹ some Member States and civil society organizations suggested during the interactive dialogue that information on good practices be collected.

This submission focuses on the call in particular to provide information on good practices in the legal and policy framework at the national level to ensure the right to participation at the international level, including unhindered access to and communication with international bodies, in particular the UN.

This submission puts forward arguments for a legislative response by individual States by which the right of unhindered access to and communication with international bodies, and the obligation to prevent and ensure protection from intimidation and reprisals, are clearly set out in national law. After presenting arguments for why States ought to address this issue in their national legislation, this submission highlights examples in which laws of a more general application have been used to set out the relevant rights and obligations. Next it sets out the relevant provisions of the Model Law for the Recognition and Protection of Human Rights Defenders. Lastly, this submission provides a brief review of the evolving landscape of national human rights defender laws and policies and the extent to which these have addressed the right to unhindered access to and communication with international bodies, and the obligation to prevent and ensure protection from intimidation and reprisals.

In reviewing existing laws and policies, the goal is not to produce any kind of ranking but rather to highlight whether and how this issue is being addressed by different States. It is hoped that by highlighting some variations and similarities, as well as pointing to gaps and showcasing some good practices, that the review might constitute a useful resource for those working to strengthen the legislative and policy foundations of protection from reprisals.

¹ Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, Report of the Secretary-General, [A/HRC/39/41](#) (13 August 2018).

The need for a legislative response at the national level

The Special Rapporteur on Human Rights Defenders has repeatedly stressed the need to adopt legislative measures to ensure that human rights defenders enjoy a safe and enabling environment, including through legislation formally guaranteeing the rights in the Declaration on Human Rights Defenders.² 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.'³

However, despite the fact that 20 years have passed since the General Assembly adopted the Declaration on Human Rights Defenders by consensus, relatively few States have moved to fully incorporate its provisions into domestic law. A number of States maintain that defenders' rights are adequately protected under more general measures, constitutional or otherwise, and push back against the notion of legislating a specific right to unhindered access to and communication with international bodies and a specific obligation to prevent and ensure protection from intimidation and reprisals.

While on the one hand it is true that the relevant rights and obligations are in fact protected under broader rights such as freedom of expression and freedom of movement, these arguments ignore strong evidence that, where human rights are specifically recognised and protected in national law, they are more likely to be respected and realised in practice. Put another way, while the specific recognition and protection of human rights in law is not sufficient to ensure the realisation of rights, the absence of specific laws makes the realisation of specific rights much less likely.⁴ The arguments against specificity also ignore important normative and educative benefits of specific laws and policies in this context—including that specificity has functions beyond proscribing and prescribing behaviour and is a key aspect of building an 'enabling environment'.⁵

A State's responsibility to promote and protect the rights of defenders includes creating and sustaining an 'enabling environment'⁶ for their work. In that regard, the Special Rapporteur has noted that the

² UN Special Rapporteur on the Situation of Human Rights Defenders, [Commentary to 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](#), (July 2011), chapter 4. See also Report of the Special Rapporteur on the situation of human rights defenders, [A/73/215](#) (23 July 2018) at para 72.

³ [Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights](#), Office of the High Commissioner for Human Rights, at p. 33.

⁴ See e.g. Human Rights Committee, General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc [CCPR/C/21/Rev.1/Add.13](#) (26 May 2004), para 13. See also Emilie Hafner-Burton, "Making Human Rights a Reality" (Princeton University Press, 2013); and Australian Public Service Commission, *Changing Behaviour: A Public Policy Perspective* (2007) 29; and [Ending Reprisals: The role of national laws and policies in protecting those who cooperate with the United Nations](#), International Service for Human Rights, 2013, at page 17.

⁵ [Ending Reprisals: The role of national laws and policies in protecting those who cooperate with the United Nations](#), International Service for Human Rights, 2013, at page 17.

⁶ On the concept of the 'enabling environment' see also CIVICUS, "[State of Civil Society 2013: Creating an Enabling Environment](#)" (2013), page 18. The Council has also urged States to promote a safe and enabling environment, for example in its resolutions on Protection of Human Rights Defenders [A/HRC/RES/13/13](#) (9 April 2010) and

primary element of an ‘enabling environment’ is the enjoyment of the rights and freedoms set out in the Declaration on Human Rights Defenders. Other relevant elements include the legislative context, policies related specifically to human rights defenders, perceptions of human rights defenders, and open support for defenders on the part of public authorities and the political establishment.⁷ All of these elements are more likely to be present where defenders’ rights are specifically recognised and protected in national law.

The need for specificity has also been underlined in recent Human Rights Council discussions and resolutions on reprisals, as well as annual reports of the Secretary-General on reprisals. In 2012, a panel discussion of the Human Rights Council recommended, inter alia, that a study be carried out on good practices in addressing reprisals, including through national legislation. More recently, in its 2014 and 2017 resolutions on reprisals, the Human Rights Council urged States to take all appropriate measures to prevent the occurrence of acts of intimidation or reprisal, including, where necessary, by adopting and consequently implementing specific legislation and policies.⁸

In 2013, the Secretary-General recommended that States adopt ‘appropriate legislation’ to prevent and ensure accountability for reprisals and intimidation.⁹ In 2014, the Secretary-General called on States to take ‘all appropriate measures to prevent the occurrence of intimidation or reprisals, including, where necessary, by adopting and implementing specific legislation and policies...’. In 2015, the Secretary-General asked States to follow up on the call he made in 2014.¹⁰ In 2016, 2017, and 2018, the Secretary-General recommended that States adopt and implement ‘measures’ to prevent and recurrence of reprisals,¹¹ which would include legislative measures.

While the starting assumption is that good laws are a necessary but not sufficient part of the solution, it must be acknowledged that laws, whether specific or not, are at most only one aspect of ensuring that rights are promoted, fulfilled, respected and protected. Several factors in any given context will contribute to whether those laws lead to meaningful guarantees, including but not limited to: an independent and qualified judiciary, political will to enforce the laws, respect for rule of law generally, cultural attitudes, rules relating to implementation, corruption within the legal system, dissemination and awareness building among judges, lawyers and the general public, and whether additional

[A/HRC/RES/22/6](#) (15 March 2013), Human Rights, Democracy and the Rule of Law [A/HRC/RES/19/36](#) (19 April 2012).

⁷ Report of the Special Rapporteur on the Situation of Human Rights Defenders (14 August 2008) [UN Doc A/63/288](#) Annex para 3. See also Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (31 July 2013) UN Doc [A/HRC/24/29](#), para 52.

⁸ Cooperation with the United Nations, its representatives and mechanisms in the field of human rights (9 October 2013), [A/HRC/RES/24/24](#) at OP 4 and (6 October 2017) [A/HRC/RES/36/21](#) at OP 4.

⁹ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights (31 July 2013) UN Doc [A/HRC/24/29](#), para. 52.

¹⁰ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights, (17 August 2015) [A/HRC/30/29](#) at para 49.

¹¹ Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights, (5 October 2016) [A/HRC/33/19](#) at para 48; [A/HRC/36/31](#) at para 68; Report of the Secretary-General on Cooperation with the United Nations, Its Representatives and Mechanisms in the Field of Human Rights, (13 August 2018) [A/HRC/39/41](#) at para 85.

legislation, institutions or procedures are needed to make the rights actionable.¹² In that regard, while good practices are pointed to in terms of the content of the laws and policies, a fuller assessment of their worth would require them to be examined in light of their implementation. Any such assessment would need to investigate first-hand what defenders think constitutes good practice and what measures have truly led to their greater protection.¹³

General laws that support or enable the work of human rights defenders

While this report recommends that States should enact specific laws to promote, protect and respect the work of human rights defenders, it is also clear that laws of more general application have a role to play in ensuring that human rights defenders can operate in a safe environment free from hindrance and insecurity. This is particularly the case where those laws contain provisions that are specific or adapted to the situation of defenders. This section highlights a number of good practice examples in that regard.

Laws providing for unhindered access to and communication with international bodies

A small number of States have acted to codify this right either in constitutional provisions or in legislation. Thus, for example, Article 56 of the Constitution of Montenegro provides that ‘everyone shall have the right of recourse to international institutions for the protection of rights and freedoms guaranteed by the Constitution’, while Article 7(1) of Indonesia’s Act Concerning Human Rights (No 39 of 1999) provides that everyone has the right to use all effective national legal means and international forums against all violations of human rights guaranteed under Indonesian law. In similar terms, Article 46(3) of the Constitution of the Russian Federation provides that ‘Everyone shall have the right to appeal, according to international treaties of the Russian Federation, to international bodies for the protection of human rights and freedoms, if all the existing internal State means of legal protection have been exhausted.’ In the Maldives there is a Bill proposing amendments to Law Number 6/2006 (the Human Rights Commission Act) would afford the Commission unfettered authority to “seek assistance from relevant international partners (including bilateral and regional partners and international organizations) in protecting and promoting human rights; and submit reports to international organizations, committees, bodies, working groups and other organs, in the Commission’s capacity as a National Human Rights Institution, in relation to the obligations imposed upon the state by human rights treaties and conventions Maldives is a party to.”

While included as illustrations of good practice, all of these examples demonstrate deficiencies. In all three cases, the constitutional or legislative provision limits the right of recourse to international bodies to violations of those rights that are specifically recognised or guaranteed by the State (as against those rights that are recognised under international human rights law or that fall within the jurisdiction of the international mechanism). Thus, the right to communicate with international bodies is circumscribed by reference to what is protected under national law. The Russian provision contains a further limitation; namely that the right to communicate with international bodies only appears to apply following the

¹² See further Emilie Hafner-Burton, “Making Human Rights a Reality” (Princeton University Press, 2013).

¹³ Ending Reprisals: The role of national laws and policies in protecting those who cooperate with the United Nations, International Service for Human Rights, 2013, http://www.ishr.ch/sites/default/files/article/files/isshr_reprisals_report-09_13_updated.pdf, at page 24.

exhaustion of domestic remedies, notwithstanding that the exhaustion of domestic remedies is only an admissibility requirement for individual communications to treaty bodies, and not for other mechanisms such as the UN Human Rights Council's Special Procedures. Furthermore, given evidence of reprisals in Russia against those who engage with the UN human rights system,¹⁴ the Russian example demonstrates that the recognition of rights in law is a necessary but by no means sufficient factor contributing to the realisation of those rights in practice.¹⁵

Laws providing protection against intimidation and reprisals

A small number of States have provided protection for unhindered access in legislation regarding specific international bodies. For example, legislation in Austria and Australia,¹⁶ provides specifically for protection from reprisals for cooperating with the UN Subcommittee on the Prevention of Torture, which monitors places of detention pursuant to the Optional Protocol to the Convention against Torture. In Austria the Ombudsman Board Act of 1982, Chapter 3, para 18 states that 'Nobody shall be penalised or otherwise disadvantaged due to providing information to the Subcommittee on the Prevention of Torture, the Ombudsman Board or the commissions set up by it.'

By contrast, a significant number of States have enacted specific provisions to prohibit victimisation or reprisals against a person or group in association with their engagement with domestic human rights or other complaints mechanisms, or in retaliation for the exercise of protected rights or freedoms (particularly for having submitted a complaint in relation to discrimination). The recognition by States that domestic human rights mechanisms are only effective if those accessing them are protected from intimidation and reprisals lends strong support to the call for analogous protection for engaging with international human rights bodies.¹⁷

A number of jurisdictions have enacted laws to protect and prohibit reprisals against human rights defenders and others working on particular types of egregious human rights violations, including enforced and involuntary disappearances, and torture and other forms of cruel, inhuman or degrading treatment. In the Philippines, for example, a law to combat enforced or involuntary disappearances requires the State to protect lawyers, human rights defenders and others working on cases of alleged

¹⁴ See, e.g., 'Cooperation with the United Nations, its representatives and mechanisms in the field of human rights: Report of the Secretary-General', UN Doc A/HRC/27/38 (27 August 2014), para 43. See also see <http://www.ishr.ch/news/russia-reprisals-against-ngos-breach-international-law-and-obligations-human-rights-council>.

¹⁵ [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](#), International Service for Human Rights, November 2014, at page 18.

¹⁶ [Monitoring of Places of Detention \(Optional Protocol to the Convention against Torture\) Act 2018](#), A2018-3, section 16.

¹⁷ For example see [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](#), International Service for Human Rights, November 2014, at page 20

enforced disappearances from any form of intimidation or reprisal for this work.¹⁸ Uganda has enacted a similar law in relation to torture. Pursuant to section 21 of Uganda's Prevention and Prohibition of Torture Act 2012, the State has a legal responsibility to ensure that any person making a complaint or giving evidence in relation to alleged torture 'is protected against all manner of ill-treatment or intimidation as a consequence of his or her complaint or any evidence given'.

A Model Law for the Recognition and Protection of Human Rights Defenders

In 2016, [ISHR launched a Model National Law on the Recognition and Protection of Human Rights Defenders](#), which was developed in consultation with over 500 human rights defenders and adopted by 28 leading human rights experts and jurists, including all current and former holders of the mandate of Special Representative or Special Rapporteur on the situation of human rights defenders. The [Model Law](#) is intended to guide and assist States and other actors to ensure the full and effective implementation of the Declaration on Human Rights Defenders at the national level. In this context, the 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.

Relevant sections of the Model Law, including commentary

This section brings together the provisions of the Model Law relevant to the right to participation at the international level, including unhindered access to and communication with international bodies, and protection from reprisals, together with the relevant commentary.

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:

...

¹⁸ [Philippines Anti-Enforced or Involuntary Disappearance Act of 2012](#), section 24.

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

For clarity, language has been added to Section 8 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 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 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. 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.

In light of the definition of “intimidation or reprisal” in Section 38(2), the right in this section for every person to be freedom 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 from a non-national.

Section 26: Obligation to prevent and to ensure protection against intimidation or reprisal

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.

The reference to “measures” in subsection 0 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 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.

Relevant sections in national laws and policies on defenders

While the vast majority of States do not have specific laws or policies on human rights defenders, several States have adopted such laws and policies in recent years (including Brazil, Burkina Faso, Colombia, Cote D'Ivoire, Guatemala, Honduras, Mexico) or are developing or have proposed such laws and policies (including, Mongolia, Nepal, Niger, Paraguay, Peru, Philippines, Sierra Leone, and Uganda).

While much valuable work is being done to evaluate how well defenders are protected by these laws and policies,¹⁹ little has been said on the need for them to provide specifically for the right of unhindered access to and communication with international bodies and the State's obligation to protect against intimidation or reprisals.

This section examines the extent to which States that have devised, or are devising, laws or policies for defenders have provided for the relevant rights and obligations in those laws or policies. The aim is to point to some of the characteristics of this evolving legislative landscape, some good practices, as well as gaps remaining to ensure full realisation of these rights.²⁰

At the outset it is useful to note that several of the older laws and policies on the protection of defenders do not create rights or obligations but rather create protection mechanisms. As such they do not address the rights and obligations related to engagement with international human rights bodies and mechanisms.²¹

¹⁹ [2017 FOCUS report, Public policies for the protection of Human Rights Defenders](#), Protection International (2017); Americas: [The Situation of State Protection Mechanisms for Human Rights Defenders](#), Amnesty International, October 2018.

²⁰ [Ending Reprisals: The role of national laws and policies in protecting those who cooperate with the United Nations](#), International Service for Human Rights, 2013, at page 23.

²¹ These include the Mexican Law for the Protection of Human Rights Defenders and Journalists, approved in 2002; the Brazilian Protection Programme for HRDs (PPDDH in Portuguese), established in 2004; the Colombian National Protection Unit (UNP in Spanish), created in 2011; the Guatemalan Coordinating Unit for the Protection of Human Rights Defenders, Administrators and Justice Officials, Journalists and Social Communicators (UDEFEQUA), created

Regarding the right to communicate with NGOs, governmental and intergovernmental organisations, as reflected in Section 8 of the Model Law, in the bill being considered in the **Philippines**,²² section 10 incorporates the Model Law language; in the **Burkinabe** law only the right to be affiliated with non-governmental organisations is mentioned in Article 6;²³ the **Ivorian** law states that defenders have the right to communicate with persons, associations, governmental organisations, NGOs or international organisations that pursue the same goals (Article 3);²⁴ the **Honduran** law speaks of the right to communicate with NGOs and intergovernmental organization (Article 4(5));²⁵ the law in **Mali** (Article 3(3)) and draft law in **Niger** (Article 5)²⁶ state that defenders have the right to communicate with persons or organisations, including governmental, non-governmental or intergovernmental, pursuing the same goals.²⁷

Regarding the right to access, communicate with and cooperate with international and regional human rights bodies and mechanisms, as reflected in Section 9 of the Model Law, the the draft law being developed by civil society in **Uganda**²⁸ and the bill being considered in the **Philippines** (section [11]12) incorporate the Model Law language; Article 7 of the **Ivorian** law says that human rights defenders have the right to address competent international institutions and organisations without any restrictions to receive and examine communications related to human rights, while conforming to applicable international procedures and instruments; the law in **Mali** similarly states that in conformity with applicable procedures and international instruments, defenders have the right to communicate without restriction to international bodies competent to submit, receive and examine communications regarding human rights (Article 7); the draft law being developed by civil society in **Mongolia** contains language in Article 6.1.5. stating defenders have the right to access, communicate with and cooperate with national, international and regional human rights bodies and networks;²⁹ and the draft law being developed by civil society in **Sierra Leone** sets out that human rights defenders have the right to submit without restriction communications relating to human rights to international bodies competent to receive and consider such matters in accordance with the applicable international procedures and instruments in Part II, Section 2(VI).³⁰

in 2004; the Guatemalan the Agency of Analysis of Attacks Against Human Rights Defenders, created in 2008; and the Guatemalan General Directive 05-2018, which in 2018 approved a protocol for the investigation of crimes committed against human rights defenders.

²² Draft Bill, An Act Defining the Rights and Fundamental Freedoms of Human Rights Defenders, Declaring State Responsibilities and Instituting Effective Mechanisms for the Protection and Promotion of these Rights and Freedoms, Philippines [consolidated version of the Human Rights Defenders Protection bills of House Bill No. 1617 of Rep. Zarate et al and House Bill No. 8128 of Rep. Lagman].

²³ Projet De Loi N° ...-2017/An Portant Protection Des Defenseurs Des Droits Humains Au Burkina Faso.

²⁴ Loi No 2014-388 portant promotion et protection des defenseurs des droits de l'Homme.

²⁵ Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials, 2015.

²⁶ Avant-Projet De Loi De Protection Des Defenseurs Des Droits Humains en Republique du Niger.

²⁷ Loi No2018-003/Du 12 Janvier 2018 Relative aux Defenseurs des Droits de l'Homme.

²⁸ A Bill for an Act Entitled the Human Rights Defenders' Protection Act, 2018.

²⁹ Draft Law on the Legal Status of Human Rights Defenders.

³⁰ The Human Rights Defenders Act, 2017.

Regarding freedom from intimidation and reprisals, as set out in Section 15 of the Model Law, in the bill being considered in the **Philippines**, section [17]18 incorporates the Model Law language; Articles 5 and 6 of the law in **Mali** provide that defenders cannot be sued, arrested, detained for opinions and reports issued within the scope of their activities and cannot have their homes searched (except if caught in the act of committing an offence) without the Public Prosecutor's authorization and the relevant ministry having been informed; the **Mongolian** draft law contains a provision stating that public authorities, NGOs, business entities and their competent officials have an obligation not to interfere with activities of human rights defenders in any way without grounds specified in the relevant laws (Article 8.1.2); and the **Nepalese** draft includes provisions stating that except in criminal cases, defenders should not be arrested while they are fulfilling their professional responsibilities, no case should be filed in the court against human rights defenders, and s/he will not be asked to be witness against his wishes and forcefully compel him/her to make public the information that s/he has received in his capacity (Chapter 5, Art 9(4) and (5)).³¹

Regarding the obligation to prevent and to ensure protection against intimidation or reprisals, as set out in Section 26 of the Model Law, the bill being considered in the **Philippines** incorporates the relevant language from the Model Law in Section 26[27] as does the draft being developed by civil society in **Sierra Leone** (Part IV, Section 11, XIX); the **Burkinabe** sets out that the government protects human rights defenders against a range of violence, intimidation and harassment directed towards them (Articles 12 and 14)³²; in the **Ivorian** law only the protection of women human rights defenders from harassment, violence and/or against all forms of discrimination is addressed (Article 9); in the law in **Mali**, the State has the obligation to promote and protect the rights of defenders and to take legislative and regulatory measures to give effect to those rights (Articles 13 and 14) and to protect defenders, members of their families, and collaborators (Article 17); in the **Nepalese** draft law, there is a provision stating that local administration or government bodies have the responsibility to provide as much possible security as it is in its reach if such a request is made by human rights defenders while collecting and disseminating information on their visit to and from the places where human rights violation has taken place or a strong probability of such violation exists (Chapter 5, Art 9, 2); the draft law being developed by civil society in **Niger** contains a range of provisions spelling out the protection obligations of the state, including generally (article 21), when refusing to divulge sources (article 23), including family members (article 24), on its territory (article 25), from arbitrary interference (article 26), from non-state actors (article 27); and the draft law being developed in **Mongolia** states that defenders have the right to be protected from any assault, to have his/her violated rights restored, to file a complaint and to have a restitution ensured (6.1.18.).

Regarding the obligation to make intimidation and reprisals an offence, as set out in Section 30 of the Model Law, the bill being considered in the **Philippines** states that anyone found guilty of committing intimidation or reprisal against a defender shall be subject to penalties as provided for the appropriate crime, in addition to administrative and/or civil sanctions which take into account the gravity of the offense upon the discretion of the court or competent authority; the **Burkinabe** law in Articles 20, 21, 22, 23, and 24 makes it an offence to intimidate, arbitrarily detain, hold prisoner, threaten to death or

³¹ Nepal: Human Rights Defenders Bill 2066 (2009) [Draft proposal].

³² Including extrajudicial executions, acts of torture or similar practices, arbitrary arrest and detention, enforced disappearance, death threats, harassment, defamation and forcible confinement, arbitrary searches and intrusions into their homes and workplaces.

torture a defender; the law in **Mali** states that violations against defenders shall be sanctioned in accordance with applicable laws (article 19); the draft law in **Mongolia** spells out that is an offence to breach any part of the law (Article 14); Section 10 of the draft law being developed by civil society in **Uganda** makes it an offense to intimidate a human rights defender; and the draft law in **Sierra Leone** states that violations against defenders shall be sanctioned in accordance with applicable laws (Part IV, Section 11, XIX).

Conclusions and Recommendations

Despite the fact that the vast majority of countries have neither enacted laws nor created institutions that recognize and protect the rights of human rights defenders, the legal recognition and protection of human rights defenders remains a crucial step to ensuring that defenders 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.³³ However, while the creation of specific laws and policies for the protection of human rights defenders is an excellent starting point, legislation alone is insufficient. It is but one element, albeit a necessary element, of a safe and enabling environment. Furthermore, it is clear from the analysis above that existing and draft laws and policies vary substantially in scope and design and that deficiencies remain in a number of instruments. Finally, even where there are no deficiencies in the legislation itself, implementation gaps no doubt remain a significant issue in a number of places.

Current efforts in a number of countries to enact laws and policies present meaningful opportunities to secure legislative protection of the rights at issue and codify the relevant obligations. Any national law on the protection of human rights defenders should conform to international law, comprehensively enshrining the rights set out in the Declaration, and drawing on the Declaration on as a baseline rather than a ceiling. It must include comprehensive references to the right to communicate with non-governmental, governmental and intergovernmental organisations; the right to access, communicate with and cooperate with international and regional human rights bodies and mechanisms; freedom from intimidation and reprisal; as well as the obligation to prevent and to ensure protection against intimidation or reprisal; and the obligation to make intimidation or reprisal an offence. States must also review and amend laws that restrict, stigmatise or criminalise the work of defenders.

Deficiencies in the content, and the level and manner of implementation of existing and draft laws emphasise the Model Law's potential in assisting and providing 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 attack; 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.

Regarding methodology, any national law on the protection of human rights defenders should be developed and implemented in close consultation with defenders and other civil society actors. Finally, any law for the protection of human rights defenders must enjoy high-level political support and be accompanied by adequate resources for full and effective implementation.

³³ [In the eyes of the law: Human rights defenders demand national legal recognition and protection, Summary consultation report](#), International Service for Human Rights, February 2016 at page 12.

