

This compilation of documents has been prepared by the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa of the African Commission on Human and Peoples' Rights, Commissioner Rémy Ngoy Lumbu, with the assistance of the Centre for Human Rights, Faculty of Law, University of Pretoria. The aim of this compilation is to bring together all the most relevant documents concerning the protection of human rights defenders in Africa, adopted under the auspices of the United Nations, the Council of Europe, the European Union, the OSCE and the African Union. This publication, which appears for the first time in 2018, is timely for two particular reasons: The year 2018 marks 20 years since the adoption by the UN General Assembly of the Declaration on Human Rights Defenders. In 2018, human rights across the world, and in Africa, have increasingly made the target of government attack and recrimination.

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COMPENDIUM  
 ON THE LEGAL  
 PROTECTION OF  
 HUMAN RIGHTS  
 DEFENDERS IN  
 AFRICA



# **Compendium on the legal protection of human rights defenders in Africa**

**Prepared by**

**Commissioner Prof Rémy Ngoy Lumbu**

Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa,  
African Commission on Human and Peoples' Rights

**in collaboration with the Centre for Human Rights,  
Faculty of Law,  
University of Pretoria**

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# Preface

Human rights only make sense if two conditions are met. In the first place, victims must be able to seek remedies when their rights have been violated. In the second place, there must be people capable of taking up the cause of those whose rights have been violated. There are two premises along the two major axes in international human rights law. The first is the justiciability, reviewability, controllability or verifiability of these rights. The second is the relevant law and the availability of persons who ensure the exercise of these rights.

This Compendium is written in the framework of the rights of human rights defenders, more specifically the legal protection of these human rights defenders.

As the whole world celebrates, on 9 December 2018, twenty years of the existence 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, also known as the ‘United Nations Declaration on Human Rights Defenders’, it is opportune to bring together a holistic tool that is as up-to-date as possible, and to make it available to human rights defenders and others, with a view to usefully and effectively supporting the rights of human rights defenders.

Signatory states to declarations and state parties to international treaties are the first defenders of human rights. Their failures in the field have led individuals to take up the issue. Today, we find human rights defenders in the public or state sector (including Heads of State, Ministers, Parliamentarians, Magistrates and civil servants), as well as in the private sector (men, women and children).

This collection is intended to be a toolbox to support the implementation of human rights policies by human rights defenders in the public or state sector (in eg drafting laws, draft laws or regulatory acts); and to support human rights defenders in the private sector in finding resources to defend their work when their actions provoke reprisals by Government agents.

Based on Resolution 69 of 2004 of the African Commission on Human and Peoples’ Rights, the fifth pillar of the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa is indeed about ‘raising awareness and promoting the implementation of the UN Declaration on Human Rights Defenders in Africa’.

This text, which dates from 9 December 1998, is rightly considered the basic matrix from which the legal rights of human rights defenders was born. It inaugurates a collective consciousness that has since then had an impact both nationally and internationally.

Since 1998, the African Union has produced two Declarations, the first in 1999 ('Grand Bay Declaration and Action Plan') and the second in 2003 ('Kigali Declaration'). This legal framework is reinforced by the Guidelines on Freedom of Association (2017).

The Council of Europe, through its Council of Ministers, on 6 February 2008, adopted an important document titled 'Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities'. The European Union is also included. Since 8 December 2008, it has had also the 'EU Guidelines on Human Rights Defenders' in place. In addition, the Organization for Security and Co-operation in Europe published its 2016 'Guidelines on the Protection of Human Rights Defenders'.

In the same vein, complementing these Declarations and Guidelines, legal protection for human rights defenders emerges from the resolutions of the African Union (African Commission on Human and Peoples' Rights) and United Nations (General Assembly). Example are: Resolution 69 of 2004 creating the mandate of the Special Rapporteur; and Resolution 273 on the extension of the mandate of this Rapporteur. Other resolutions place special emphasis on vulnerable human rights defenders. Examples are: Resolution 104, which protects human rights defenders during election time; Resolution 275, dealing with the protection against violence and other human rights violations on the basis of real or assumed gender identity or sexual orientation; and Resolution 336 on measures to protect and promote the work of women human rights defenders. At the level of the United Nations, General Assembly Resolution 68/81 on women human rights defenders is the main reference tool in this field.

However, some vulnerable advocates, in particular children, remain unprotected. There are still important challenges at this level, and there indeed is a missing link. We all have a collective responsibility, in the exercise of our professional responsibilities, to ensure that child human rights defenders are also protected and respected.

Finally, this right human rights defenders to protection increasingly comes under national laws and regulations. A specialised corpus juris is gradually emerging from the African states. International law for the defense of human rights defenders is intended to be domesticated. West Africa is a pioneer in this area. The Ivory Coast (2014), Burkina Faso (2017) and Mali (2018) have

provided their countries with laws on human rights defenders. Other regions should follow suit with this revolution in the protection of human rights defenders, based on the Model Law for the Recognition and Protection of Human Rights Defenders, which the Commission has made available to the Member States, with the help of its partners, including the International Service for Human Rights (ISHR-SIDH). As there are no official English translations of these national laws, these texts are only included in the French version of this *Compendium*.

The right of defense of the human rights defender has matured in Africa today. My hope is that it would gain in application and lead to the improvement of the well-being of Africans in all 55 AU member states.

In conclusion, I would like to thank Professor Frans Viljoen of the Centre for Human Rights of the University of Pretoria (South Africa) for the valuable collaboration that the Centre provided in the publication of this commemorative book marking 20 years of the United Nations Declarations on human rights defenders.

**Prof Rémy Ngoy Lumbu**

Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa, African Commission on Human and Peoples' Rights





## **A. Declarations and Guidelines**

## **United Nations: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998**

**Adopted by General Assembly Resolution 53/144 of  
9 December 1998**

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming also the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or

threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Declares:

### **Article 1**

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.

### **Article 2**

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. 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.

### **Article 3**

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.

### **Article 4**

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

### **Article 5**

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;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations.

### **Article 6**

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.

### **Article 7**

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.

### **Article 8**

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.

### **Article 9**

1. 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.

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.

4. 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.

5. 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.

#### **Article 10**

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

#### **Article 11**

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

### **Article 12**

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. 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.
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.

### **Article 13**

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 14**

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.



3. 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.

#### **Article 15**

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

#### **Article 16**

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

#### **Article 17**

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.

#### **Article 18**

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

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.

#### **Article 19**

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

#### **Article 20**

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

## **OAU: Grand Bay (Mauritius) Declaration and Plan of Action, 1999**

### **The First OAU Ministerial Conference on Human Rights, meeting from 12 to 16 April, 1999, in Grand Bay, Mauritius**

Considering that the promotion and protection of Human Rights is a matter of priority for Africa, and that the Conference provides a unique opportunity to carry out a comprehensive analysis and reflection on the mechanisms for the protection of Human Rights to guarantee Human Rights for accelerated development of the continent;

Recalling the Declaration on the Political and Socio Economic Situation in Africa and the Fundamental Changes Taking Place in the World adopted by the Assembly of Heads of State and Government of the OAU in 1990, as well as the Declaration establishing within the OAU, a Mechanism for Conflict Prevention, Management and Resolution adopted by the Assembly of Heads of State and Government of the OAU in Cairo (Egypt) in June 1993;

Acknowledging that observance of human rights is a key tool for promoting collective security, durable peace and sustainable development as enunciated in the Cairo Agenda for Action on relaunching Africa's socio economic formation adopted by the extraordinary session of the Council of Ministers held in Cairo, Egypt, from 25 to 28 March, 1995;

Taking note of the growing recognition that violations of human rights may constitute a burden for the international community;

Reaffirming its commitment to the purposes and principles contained in the OAU Charter, UN Charter, the Universal Declaration of Human Rights as well as, the African Charter on Human and Peoples' Rights;

Deeply concerned by acts of genocide and other crimes against humanity perpetuated in certain parts of Africa;

Emphasizing that respect for Human Rights is indispensable for the maintenance of regional and international peace and security and elimination of conflicts, and that it constitutes one of the fundamental bedrocks on which development efforts should be realized;

Considering the democratization processes taking place on the Continent and the expressed desires of African peoples to live in a state of law which secures the full enjoyment of Human Rights and fundamental freedoms for all peoples, regardless of their gender, race, place of origin, religion, social status, ethnic background, political opinions or language;

Further considering the importance of the right to development, the right to international peace and security and the principles of solidarity and Friendly relations between States provided for in the African Charter on Human and Peoples' Rights;

Recalling the determination of the collective leadership in Africa to establish conditions which will ensure social justice and progress and thus enable African peoples to enjoy better standards of living in greater freedom and in the spirit of tolerance towards all;

Reiterating the need to constructively examine Human Rights issues in a spirit of justice, impartiality and non selectivity, avoiding their use for political purposes;

Recognizing the progress achieved by African States in the domain of Human Rights and the significant contribution of the African Continent to the universalization of these rights;

Further recognizing the contribution made by African NGOs to the promotion and protection of Human Rights in Africa;

Recalling the recommendations made by the Second Conference of National Human Rights Institutions held in Durban in 1998;

Determined to consolidate the gains made in Africa in the promotion and protection of Human and Peoples' Rights;

Solemnly adopts the Grand Bay (Mauritius) Declaration and Plan of Action

1. The Ministerial Conference affirms the principle that Human Rights are universal, indivisible, interdependent and inter related and urges governments, in their policies, to give parity to economic, social and cultural rights as well as civil and political rights;
2. The Conference also affirms that the right to development, the right to a generally satisfactory healthy environment and the right to national and

international peace and security are universal and inalienable rights which form an integral part of fundamental Human Rights;

3. The Conference further affirms the interdependence of the principles of good governance, the Rule of Law, democracy and development.

4. The Conference recognizes that the development of the rule of law, democracy and Human Rights calls for an independent, open, accessible and impartial judiciary, which can deliver justice promptly and at an affordable cost. To this end, such a system requires a body of professional and competent judges enjoying conducive conditions.

5. The Conference recognises that the core values on which Human Rights are founded, particularly

(a) respect for the sanctity of life and human dignity

(b) tolerance of differences

(c) desire for liberty, order, fairness, prosperity and stability,

are shared across all cultures. In this connection, integrating positive traditional and cultural values of Africa into the Human Rights debate will be useful in ensuring their transmission to future generations.

6. The Conference notes that Women and Children's rights issues remain of concern to all. Therefore it welcomes the decision to elaborate a Protocol to the African Charter for the more effective protection of women's rights and calls on the OAU to convene a meeting of Government experts to examine the instrument. It urges all African States to work assiduously towards the elimination of discrimination against women and the abolition of cultural practices which dehumanize or demean women and children. The Conference also recommends to States to take the necessary measures to stop the practice of child soldiers and to reinforce the protection of civilian populations, particularly children in conflict situations. The Conference further recommends that States adopt measures to eradicate violence against women and children, child labour, sexual exploitation of children, trafficking in children and to protect children in conflict with the law as well as refugee children.

7. The Conference notes that the rights of people with disability and people living with HIV AIDS, in particular women and children are not always observed and urges all African States to work towards ensuring the full respect of these rights.

8. The Conference is aware that violations of Human Rights in Africa are caused among others by:

- (a) Contemporary forms of slavery
- (b) Neo colonialism, racism and religious intolerance
- (c) Poverty, disease, ignorance and illiteracy
- (d) Conflicts leading to refugee outflows and internal population displacement
- (e) Social dislocations which may arise from the implementation of certain aspects of structural adjustment programmes
- (f) The debt problem
- (g) Mismanagement, bad-governance and corruption
- (h) Lack of accountability in the management of public affairs
- (i) Monopoly in the exercise of power
- (j) Harmful traditional practices
- (k) Lack of independence of the judiciary
- (l) Lack of independent human rights institutions
- (m) Lack of freedom of the press and association
- (n) Environmental degradation
- (o) Non-compliance with the provisions of the OAU Charter on territorial integrity and inviolability of colonial borders and the right to self-determination
- (p) Unconstitutional changes of governments
- (q) Terrorism
- (r) Nepotism
- (s) Exploitation of ethnicity.

There is therefore the need to adopt a multi-faceted approach to the task of eliminating the causes of human rights violations in Africa.

9. While welcoming the improvements which have taken place in addressing the refugee problem, the Conference believes that the high number of refugees, displaced persons and returnees in Africa constitutes an impediment to development. It recognizes the link between human rights violations and population displacement and calls for redoubled and concerted efforts by States and the OAU to address the problem.

10. The Conference recognizes that the development and energization of the civil society, the strengthening of the family unit as the basis of human society, the removal of harmful traditional practices and consultation with community

leaders should all be seen as building blocs in the process of creating an environment conducive to human rights in Africa and as tools for fostering solidarity among her peoples.

11. Deeply concerned about the acts of genocide, crimes against humanity and other war crimes being perpetuated in certain parts of Africa, the Conference appeals to African States to ensure that such acts are definitively eradicated on the Continent and recommends that these serious acts of violation be adequately dealt with.

12. Also concerned by the scourge of terrorism as a source of serious Human Rights violation, especially the most basic of such rights the right to life the Conference urges African countries to formulate and implement an African Convention for Cooperation in combating this scourge.

13. The Conference reaffirms the commitment of Africa to the promotion, protection and observance of Human Rights obligations. In this framework, the Conference requests those states which have not yet done so to give consideration to the ratification of all major OAU and UN Human Rights Conventions, in particular

- (a) The African Charter on Human and Peoples' Rights;
- (b) The African Charter on the Rights and Welfare of the Child;
- (c) The Convention Governing Specific Aspects of Refugee Problems in Africa;
- (d) The Protocol on the Establishment of an African Court on Human and Peoples' Rights;
- (e) International Covenant on Economic, Social and Cultural Rights;
- (f) International Covenant on Civil and Political Rights;
- (g) United Nations Convention on the Rights of the Child;
- (h) United Nations Convention on Refugees and its Protocol;
- (i) Convention on the Elimination of All Forms of Discrimination Against Women;
- (j) The Four Geneva Conventions governing the Treatment of War Wounded, Prisoners of War and Civilians as well as the Two Additional Protocols;
- (k) UN Convention Against Torture;
- (l) UN Convention on the Elimination of All Forms of Racial Discrimination
- (m) The Statute of the International Criminal Court.

14. The Conference recognizes the necessity for States to give effect to the African Charter, International Humanitarian Law and other major international Human Rights instruments which they have ratified, in their national legislations for wider effect throughout Africa.

15. The Conference reiterates the fact that the primary responsibility for the promotion and protection of Human Rights lies with the State. It therefore urges States to establish national human rights institutions and to provide them with adequate financial resources and ensure their independence.

16. The Conference recognizes that the reporting obligation of States Parties under the African Charter on Human and Peoples' Rights provides an important mechanism and an opportunity for African governments to engage in a process of continuous dialogue with the African Commission. Accordingly, the Conference recommends that States Parties take appropriate measures to meet their reporting obligations under the Charter.

17. The Conference recognizes the importance of promoting an African Civil Society, particularly NGOs rooted in the realities of the Continent and calls on African governments to offer their constructive assistance with the aim of consolidating democracy and durable development.

18. The Conference calls upon all international organizations governmental, inter governmental and non-governmental to cooperate and harmonize their initiatives with the OAU and its relevant organs as well as the various sub-regional blocs within Africa for a more co-ordinated approach to the implementation of Human Rights in Africa and for maximum effect of such programmes and initiatives.

19. The Conference notes that the adoption of the UN Declaration on the Protection of Human Rights Defenders by the 54th Session of the UN Commission on Human Rights marks a significant turning point and calls on African governments to take appropriate steps to implement the Declaration in Africa.

20. The Conference appeals to the Secretary General of the OAU and the African Commission on Human and Peoples' Rights to develop appropriate strategies and take measures to sensitize and raise the awareness of African populations about Human Rights and International Humanitarian Law through formal and non-formal educational processes comprising among others, a special module in school curricula.



21. The Conference recognizes that the media are important actors for building bridges between governments and peoples; it, therefore, urges States Parties to guarantee a free and independent press within their national borders to enable it play a role in the promotion of human rights in Africa. To this end, the Conference appeals to the Secretary General of the OAU to look into the possibility of providing assistance to media organizations on the Continent.

22. To ensure that Human Rights considerations are integrated into all OAU activities, the Conference recognizes the need for Human Rights to be reflected in the programmes of the Continental Organization.

23. The Conference noting that the working of the African Commission on Human and Peoples' Rights is critical to the due observance of Human Rights in Africa, believes that there is a need to evaluate the structure and functioning of the Commission and to ascertain the extent to which it is implementing the Mauritius Plan of Action during the period of 1996 2001, and to assist it to remove all obstacles to the effective discharge of its functions. There is also an urgent need to provide the Commission with adequate human, material and financial resources.

The Conference notes that under the African Charter on Human and Peoples' Rights, it is the Assembly of Heads of State and Government that is authorized to take decisive action on the activity reports of the African Commission on Human and Peoples' Rights and expresses the hope that the Assembly would consider delegating this task to the Council of Ministers.

The Conference underscores the fact that co-operation between the African Commission and national human rights institutions will greatly enhance respect for Human Rights in Africa. In that regard, the Conference welcomes the decision by the African Commission on Human and Peoples' Rights to grant affiliated status to National Human Rights Institutions.

Concerned by the fact that the external debt burden is crippling the development efforts of Africa and undermining the fostering and sustenance of respect for Human Rights, the Conference appeals to the international community, especially multilateral financial agencies, to alleviate the external debt and take all steps necessary to reduce this burden on States to enable them to fully realize the economic emancipation of their peoples and enhance the maximum enjoyment of Human Rights by African peoples.

The Conference requests the Secretary General of the OAU to submit this Declaration to the Assembly of Heads of State and Government, all African national governments, the African Commission on Human and Peoples' Rights, the UN High Commissioner for Human Rights and other relevant UN organs and agencies and to examine the feasibility of making this conference a regular feature of OAU activities.

The conference recommends to States to formulate and adopt national action plans for the promotion and protection of human rights.

Finally, the Conference requests the Secretary General of the OAU to submit a Report to the next Session of the Council of Ministers on the outcome of this Conference.

## **AU: Kigali Declaration, 2003**

### **The 1st African Union (AU) Ministerial Conference on Human Rights in Africa meeting on 8 May 2003 in Kigali, Rwanda**

Solemnly adopts this Kigali Declaration

Reaffirming its commitment to the objectives and principles contained in the Constitutive Act of the African Union, Lomé, Togo 2000, the African Charter on Human and Peoples' Rights, Nairobi, Kenya 1981, the Solemn Declaration of the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), Lomé, Togo 2000, the New Partnership for Africa's Development (NEPAD) of the AU, Lusaka, 2001 Zambia, the Declaration on the Code of Conduct on relations between States adopted in Tunis, Tunisia in June 1994, all relevant AU Declarations and Decisions as well as the UN Charter [of] 1948 and the Universal Declaration of Human Rights and the Vienna Declarations of 1989 and 1993;

Recalling the Grand Bay Declaration and Plan of Action adopted by the OAU Ministerial Conference on Human Rights in Africa held in Grand Bay, Mauritius, from 12 to 16 April 1999, and reaffirming its commitment to the purposes and principles therein;

Reaffirming that respect for human rights is indispensable for the maintenance of national, regional and international peace and security and that it constitutes the fundamental bedrock for sustainable development;

Reaffirming further the principles enshrined in the Constitutive Act of the African Union, in particular, the prohibition of genocide, war crimes and crimes against humanity; and determined to fight the ideology of genocide and all its manifestations;

Recalling the report of the International Panel of Eminent Persons (IPEP) entitled 'The Preventable Genocide' endorsed by the 36th Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Lomé, Togo, in July 2000 and the decision of the Assembly requesting the Secretary General to actively pursue the implementation of the recommendations contained in the Report;

Deeply concerned by the continuing discrimination against women and girls, as well as harmful traditional practices in some parts of Africa that endanger the life or health of women and children;

Deeply concerned that in spite of the progress made in resolving conflicts on the Continent, the continuing armed and civil conflicts in some parts of Africa lead to gross violations of human rights and international humanitarian law, and create massive movements of refugee populations and internally displaced persons.

The Conference:

1. Reaffirms the principle that all human rights are universal, indivisible, inter-dependent and inter-related.
2. Notes with satisfaction the achievements made by Member States in the promotion and protection of human and peoples' rights, especially since the adoption of the Grand Bay Declaration and Plan of Action, and recognizes the need for Member States to build upon these achievements for the benefit and welfare of all African peoples;
3. Reaffirms the right to development, and calls upon the international community to support Member States in their continuing efforts to realize this right.
4. Urges Member States and regional institutions to accord the same importance to economic, social and cultural rights and civil and political rights, and apply, at all levels, a rights-based approach to policy, programme planning, implementation and evaluation.
5. Calls upon Member States to guarantee genuine independence, accessibility, affordability and due process of the Justice systems on the Continent, as a prerequisite to the entrenchment of the rule of law and democracy.
6. Reiterates the rejection of impunity and reaffirms the commitment to prosecute those responsible for genocide, war crimes and crimes against humanity, and appeals to all Member States to fully cooperate with and provide political and financial support to the International Criminal Tribunal for Rwanda, particularly, as regards the arrest of suspects/accused, the protection of witnesses/victims, the enforcement of sentences and the compensation of victims and their beneficiaries.

7. Welcomes the Decision of the 2nd Ordinary Session of the Executive Council of the AU held in N'Djamena, Chad, in March 2003 that 7 April 2004, the 10th Anniversary of the Rwandan Genocide, be commemorated by the AU as a day of remembrance of the victims of genocide in Rwanda, and reaffirmation of Africa's resolve to prevent and fight genocide on the continent.

8. Reiterates the recommendation of the Executive Council to the United Nations, the international community at large and civil society to commemorate 7 April as a day of reflection on the Rwandan Genocide and of a renewed commitment to the prevention of genocide in the world.

9. Expresses its concern about the scourge of terrorism as a source of serious violations of human rights, particularly the right to life and to security, and urges the Member States to implement the Convention on the Prevention and Combating of Terrorism adopted by the 35th Ordinary Session of the Assembly of Heads of State and Government of the OAU held in Algiers in July 1999.

10. Notes the important contribution made by the Durban World Conference Against Racism, Xenophobia and Related Intolerance and calls on all Member States to strengthen their efforts to combat the scourge of racism, xenophobia and related intolerance and discrimination.

11. Takes note with satisfaction of the on-going efforts to address the plight of refugees, asylum seekers and internally displaced persons, and calls upon Member States to recognise forced displacement as a grave violation of fundamental rights to peace, security and dignity, and to take all necessary measures to address the problem.

12. Further calls upon all Member States to implement all the relevant international and African instruments relating to the protection of refugees, internally displaced persons and returnees, and in particular to discharge their obligations under the AU Convention Governing the Specific Aspects of Refugee Problems in Africa.

13. Calls upon the Member States that have not yet ratified the AU Convention Governing the Specific Aspects of Refugee Problems in Africa and any of the relevant international treaties to do so as soon as possible.

14. Requests the relevant organs of the AU, in the exercise of their peace building and conflict resolution functions, to ensure the inclusion of human rights, humanitarian principles and other legal protection measures in peace

agreements, in order to facilitate the voluntary repatriation and reintegration of refugees, returnees and former combatants in their countries of origin.

15. Welcomes the signing of a Memorandum of Understanding between the African Commission on Human and Peoples' Rights and the United Nations High Commissioner for Refugees (UNHCR), and calls upon the international community and other stakeholders to support the efforts of the African continent to address the problems of refugees, returnees and internally displaced persons in a spirit of international solidarity and burden sharing.

16. Notes with great concern that the rights of women and children in spite of the progress achieved, remain insufficiently protected in many African countries; welcomes the progress made towards the adoption of the Draft Protocol on the Rights of Women in Africa, and calls upon Member States to take all necessary measures for its early adoption, signature and ratification, and upon coming into force, its timely implementation by States Parties to it

17. Calls upon Member States to fulfill their obligations under international law and, in particular, to take the necessary measures to put an end to the practice of child-soldiers and to ensure the protection of civilian populations, particularly children, women, elderly persons and persons with disability in situations of armed conflict.

18. Calls upon Member States that have not yet ratified the African Charter on the Rights and Welfare of the Child to do so as soon as possible, and further calls upon the AU Policy Organs to provide an adequate Secretariat and the necessary financial and material resources to the African Committee of Experts on the Rights and Welfare of the Child to enable it carry out its mandate effectively.

19. Notes also with great concern the plight of the vulnerable groups including persons with disability in general and calls upon Member States to provide adequate support to the African Rehabilitation Institute (ARI) in Harare, Zimbabwe.

20. Further calls upon Member States to develop a Protocol on the protection of the rights of people with disabilities and the elderly.

21. Notes also with great concern the alarming rate at which HIV/AIDS is spreading as well as the persistent prevalence of Malaria, Tuberculosis and other related infectious diseases in Africa, and urges Member States to take measures to reinforce prevention programmes relating thereto and to promote and protect the rights of people living with HIV/AIDS.

22. Encourages Member States to exert more efforts jointly with the international community, particularly the World Health Organization (WHO) to eradicate HIV/AIDS, Malaria, Tuberculosis and other related infectious diseases which constitute an impediment to the socio-economic development of the Continent and an obstacle to the enjoyment of economic, social and cultural rights.

23. Notes with satisfaction that the African Charter on Human and Peoples' Rights has been ratified by all Member States, and calls upon the AU policy organs to provide the African Commission with suitable Headquarters, an appropriate structure and adequate human and financial resources for its proper functioning, including the establishment of a Fund to be financed through voluntary contributions from Member States, international and regional institutions.

24. Calls upon the AU Policy Organs to review the operation and composition of the African Commission on Peoples' Rights with a view to strengthening its independence and operational integrity and ensuring appropriate gender representativity and to report on the progress made to the appropriate AU Organs as soon as possible.

25. Urges Member States which have not yet done so to incorporate in their domestic legislation, provisions of the African Charter on Human and Peoples' Rights, its protocols, international humanitarian law in particular the Four (4) Geneva Convention (1949) and their Additional Protocols (1977) and other major international human rights instruments, which they have ratified, and to honour their obligations thereon, including reporting, where applicable.

26. Notes with concern that the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights which requires fifteen (15) ratifications to come into force, has been ratified by nine (9) Member States only, and, therefore, appeals to those Member States that have not yet done so, to sign and/or ratify the Protocol to enable it to come into force by July 2003 as required by Dec. AHG/Dec.171 (XXXVIII).

27. Reiterates that the primary responsibility for the promotion and protection of human rights rests with Member States and, therefore, urges those Member States which have not yet done so, to establish independent national human rights institutions, provide them with adequate financial and

other resources for their proper functioning, and guarantee their independence.

28. Recognizes the important role of civil society organizations (CSOs) in general and human rights defenders in particular, in the promotion and protection of human rights in Africa, calls upon Member States and regional institutions to protect them and encourage the participation of CSOs in decision-making processes with the aim of consolidating participatory democracy and sustainable development, and underscores the need for CSOs to be independent and transparent.

29. Recognizes the media as important vehicles for the realization of the right to information, and therefore, urges Member States to guarantee, through appropriate legislative and policy measures, a free and independent press.

30. Mindful of the fact that the legal norms contained in the international and regional human rights conventions and the establishment of human rights protection and promotion mechanisms cannot by themselves guarantee entrenchment of the principles of human rights and their observance by all, and appeals to Member States to make the teaching of human rights a permanent feature in their school curricula, especially for law enforcement agents. To this end, it calls upon Member States to step up their efforts with a view to a better and wider dissemination of the human rights culture, and urges them to popularize the international and regional conventions.

31. Calls for African solidarity with the peoples whose fundamental rights are grossly violated.

32. Welcomes the creation by the AU Assembly in Durban (South Africa) in July 2002, of a Portfolio within the AU Commission responsible for the issues of democracy, human rights, governance and civil society that would contribute to spearheading efforts aimed at promoting human rights on the Continent.

33. Recognizes that implementation, monitoring and evaluation are critical to the effective realization of the Grand Bay Declaration and this Declaration, requests the Chairperson of the AU Commission to coordinate the follow up of the implementation of these declarations and urges Members States to submit reports on implementation to the AU Commission.

34. Expresses its satisfaction at the holding of this Conference, requests the Chairperson of the AU Commission to submit a report to the next Ordinary



Session of the Executive Council on the outcome of this Conference, and recommends that the Ministerial Conference on Human Rights be held at intervals of not more than four years.

# **African Commission on Human and Peoples' Rights: Guidelines on Freedom of Association and Assembly in Africa, 2017**

**Adopted at the Commission's 60th Ordinary Session held in Niamey, Niger, from 8 to 22 May 2017**

## **Preamble**

Recalling its mandate to promote and protect human and peoples' rights under the African Charter on Human and Peoples' Rights (the African Charter);

Recalling further its mandate under Article 45(1)(b) of the African Charter 'to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation';

Recalling further Resolution 69 (XXXV) 04 on the Protection of Human Rights Defenders in Africa, Resolution 119 (XXXXII) 07 on the Situation of Human Rights Defenders in Africa, and Resolution 196 (L) 11 on Human Rights Defenders in Africa;

Bearing in mind Resolution 125 (XXXXII) 07 on the renewal of the mandate of the Special Rapporteur on Human Rights Defenders in Africa, Resolution 151 (XLVI) 09 on the need for the conduct of a study on freedom of association in Africa, Resolution 186 (XLIX) 11 on the appointment of members for a Study Group on Freedom of Association in Africa, Resolution 229 (LII) 12 on the extension of the deadline for the study on freedom of association and extension of the scope of the study to include freedom of peaceful assembly in Africa, Resolution 248 (LIV) 13 on the renewal of the mandate of the Special Rapporteur on Human Rights Defenders in Africa, Resolution 261 (LIV) 13 on the extension of the deadline for the study on Freedom of Association and Assembly in Africa, and Resolution 273 (LV) 14 on the extension of the scope of the mandate of the Special Rapporteur on Human Rights Defenders in Africa to include reprisals against human rights defenders;

Recalling that during the 56th Ordinary Session, held from 21 April to 7 May 2015 in Banjul, The Gambia, the African Commission on Human and Peoples' Rights launched the Report of the Study Group on Freedom of Association and Assembly in Africa;

Recalling Resolution 319 (LVII) 15 on the drafting of Guidelines on Freedom of Association and Assembly in Africa;

Noting Articles 10 and 11 of the African Charter, guaranteeing the rights to freedom of association and assembly, and noting further that the rights to freedom of association and assembly are inextricably intertwined with other rights;

Noting further Articles 60 and 61 the African Charter, mandating the Commission to draw inspiration from regional and international instruments and practice on human and peoples' rights; Guidelines on Freedom of Association and Assembly in Africa;

Recalling the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the African Charter on the Rights and Welfare of the Child and the African Charter on Democracy, Elections and Governance;

Recalling further the jurisprudence of the Commission pertaining to the rights to freedom of association and assembly;

Recalling further the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa;

Noting that the rights to freedom of association and assembly are fundamental and protected at the national, regional and international levels;

Acknowledging the major differences between states in terms of legal systems, socio-economic conditions, and political and historic influences on the legal regimes governing association and assembly;

Having regard to various political, technological and security developments impacting on the enjoyment of the rights;

Concerned by excessive restrictions imposed on the rights to freedom of association and assembly;

Concerned also by the practice in some states of hampering the participation of civil society in the work of regional and international bodies and by the ‘chilling effect’ of reprisals on civil society actors, and stressing the obligation on states to provide full protection to those who seek to participate in the work of international bodies;

Concerned further that restrictions on the rights to freedom of association and assembly limit the potential for a free public sphere and a free and open democratic society, and that restrictions on an independent civil society hinder the operations of human rights defenders and the advancement of human rights;

Conscious of the need to provide guidance to states on the measures necessary in order to ensure respect for and the protection and fulfilment of human rights;

The African Commission on Human and Peoples’ Rights solemnly adopts these Guidelines on Freedom of Association and Assembly in Africa.

This section presents ten fundamental principles, which inform the more concrete provisions detailed below. These fundamental principles should be borne in mind throughout when contemplating and interpreting the rights in question and their specification as laid out in these guidelines.

- i. **Presumption in favour of the right:** The presumption shall be in favour of the exercise of the rights to freedom of association and assembly.
- ii. **Enabling framework:** Any legal framework put in place or other steps taken relative to the rights to freedom of association and assembly shall have the primary purpose of enabling the exercise of the rights.
- iii. **Political and social participation of an independent civil society:** The independence of civil society and the public sphere shall be ensured, and the participation of individuals in the political, social and cultural life of their communities shall be enabled.
- iv. **Human rights compliance:** All constitutional, legislative, administrative and other measures shall comply with the full extent of regional and international human rights obligations, deriving from the rights to freedom of association and assembly and all other guaranteed rights.

- v. Impartiality of governance agencies: Authorities with governance oversight shall conduct their work impartially and fairly.
- vi. Simple, transparent procedures: Procedures relating to the governance of associations and assemblies shall be clear, simple and transparent.
- vii. Reasoned decisions, judicial review: State decisions shall be clearly and transparently laid out, with any adverse decisions defended by written argumentation on the basis of law and challengeable in independent courts of law.
- viii. Limited sanctions: Sanctions imposed by states in the context of associations and assemblies shall be strictly proportionate to the gravity of the harm in question and applied only as a matter of last resort and to the least extent necessary.
- ix. The right to a remedy: The right to a remedy shall be protected in cases of violation of the rights to association and assembly.
- x. More protective standard: If conflict between provisions of these guidelines and other international and regional human rights standards arise, the more protective provision takes precedence.

## **Definition**

1. An association is an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose. Such an association may be formal (*de jure*) or informal (*de facto*). A formal (*de jure*) association is an association that has legal personality.
  - (a) A formal (*de jure*) association is an association that has legal personality.
  - (b) An informal (*de facto*) association is an association that does not have legal personality, but that nonetheless has some institutional form or structure.
2. Civil society consists of formal and informal associations independent of the state through which citizens may pursue common purposes, participate in the political, social and cultural life of their societies, and be involved in all matters pertaining to public policy and public affairs.
3. Assembly refers to an act of intentionally gathering, in private or in public, for an expressive purpose and for an extended duration. The right to assembly may be exercised in a number of ways, including through demonstrations, protests, meetings, processions, rallies, sit-ins, and funerals, through the use of online platforms, or in any other way people choose

## **Part 1: Freedom of Association**

### **I. Legal Framework**

4. The right to freedom of association is guaranteed under Article 10 of the African Charter, Article 8 of the African Charter on the Rights and Welfare of the Child, and Articles 12(3), 27(2) and 28 of the African Charter on Democracy, Elections and Governance.

5. The right to freedom of association is also guaranteed under Article 20 of the Universal Declaration of Human Rights, Article 22 of the International Covenant on Civil and Political Rights, Article 15 of the International Convention on the Rights of the Child, Article 7(c) of the Convention on the Elimination of All Forms of Discrimination Against Women, Article 26 and 40 of the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families, Article 15 of the 1951 Convention Relating to the Status of Refugees, Article 24(7) of the International Convention for the Protection of All Persons from Enforced Disappearance, and Article 29 of the Convention on the Rights of Persons with Disabilities.

6. National constitutions shall guarantee the right to freedom of association, which shall be understood in a broad manner consistent with regional and international human rights law.

7. National legislation on freedom of association, where necessary, shall be drafted with the aim of facilitating and encouraging the establishment of associations and promoting their ability to pursue their objectives. Such legislation shall be drafted and amended on the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society.

8. The right to freedom of association is a right enjoyed both by individuals and by groups. The choice to exercise the right to freedom of association shall always be voluntary; individuals shall not be compelled to join associations, and shall always be free to leave them. Those founding and belonging to an association may choose whom to admit as members, subject to the prohibition on discrimination.

### **II. Legal Personality Formation**

9. Every person has the right to establish an association together with another, free from limitations violating the right to equality and the guarantee

of non-discrimination. No more than two people shall be required in order to found an association.

10. The fact of past criminal conviction alone shall not prevent an individual from founding an association.

### **Legal Personality of Associations**

11. States shall not compel associations to register in order to be allowed to exist and to operate freely. Informal (de facto) associations shall not be punished or criminalized under the law or in practice on the basis of their lack of formal (de jure) status.

12. Associations shall have the right to acquire legal personality and consequent benefits.

### **Notification Regime**

13. Registration shall be governed by a notification rather than an authorization regime, such that legal status is presumed upon receipt of notification. Registration procedures shall be simple, clear, non-discriminatory and non-burdensome, without discretionary components. Should the law authorize the registration authorities to reject applications, it must do so on the basis of a limited number of clear legal grounds, in compliance with regional and international human rights law.

14. States may require that associations include certain basic information in their initial notifications. Information required may include the name of the association, names of founding members, physical address (if any), contact information, and planned aims and activities of the association.

15. The law shall not limit the names of associations, unless they are misleading, for instance due to resembling the names of other associations, or where they violate the prohibition of hate speech as defined by regional and international human rights law.

16. Associations shall be provided with official documents confirming their submission of notification upon such submission. Should the authorities fail to provide such documents, mailing records and copies of the notification form submitted shall suffice as evidence of submission of notification.

17. Associations shall not be required to register more than once or to renew their registration.

18. A registration fee may be imposed to cover administration fees, provided that this fee is modest and does not have the effect of deterring associations from registering in practice.
19. The same registration procedure shall be employed throughout the country.
20. Foreign and international associations may establish branches in accordance with procedures duly laid down in national law. Any limitations imposed by states shall be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society, as these principles are understood in the light of regional and international human rights law.

### **Administrative Authority Responsible for Registering Associations**

21. The body that registers associations must perform its functions impartially and fairly. Only one body should be tasked with registering associations. The process through which individuals are appointed to the body shall be transparent.
22. The administrative authority in charge of registration shall make sure that the procedure and its decisions are accessible and transparent.

### **III. Purposes and Activities**

23. Associations shall determine their purposes and activities freely.
24. Any limitations imposed by states shall be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society, as these principles are understood in the light of regional and international human rights law.
25. Associations shall be able to engage in the political, social and cultural life of their societies, and to be involved in all matters pertaining to public policy and public affairs, including, inter alia, human rights, democratic governance, and economic affairs, at the national, regional and international levels.
26. States shall establish mechanisms that enable associations to participate in the formulation of law and policy. Such mechanisms shall aim to foster broad and inclusive processes, dialogue and meaningful consultation.



27. Associations shall be able to comment publicly and privately on reports submitted by states to national human rights institutions and regional and international human rights bodies, including prior to the submission of the reports in question.

28. The right to freedom of association protects, inter alia, expression; criticism of state action; advancement of the rights of discriminated-against, marginalized and socially vulnerable communities, including the rights of women and children; and all other conduct permissible in the light of regional and international human rights law.

29. States shall respect, in law and practice, the right of associations to carry out their activities, including those denoted above, without threats, harassment, interference, intimidation or reprisals of any kind.

30. States shall protect associations, including their principal and most visible members, from threats, harassment, interference, intimidation or reprisals by third parties and non-state actors.

#### **IV. Oversight**

##### **Oversight Bodies**

31. Matters relating to the oversight of associations shall be overseen, where necessary, by a single body that conducts its functions impartially and fairly. Such a body shall have oversight only in relation to essential, minimum internal governance structures and standards. The powers of such a body shall be clearly delimited by law in accordance with regional and international human rights standards.

32. Civil society actors should work together to establish independent self-governance standards, which should aim for openness, transparency and democratic structures.

##### **Oversight Powers**

33. The oversight powers of the authorities shall be carefully delimited, so as not to infringe on the right to freedom of association.

(a) In particular, associations shall not be required to transmit detailed information such as the minutes of their meetings, lists of their members, or personal information of their members to the authorities.

(b) Neither law nor practice shall require the attendance of state agents at meetings of associations.

34. State inspections shall not aim at verifying the compliance of associations with their own internal procedures.

(a) Inspections of associations by oversight bodies shall only be permitted following a judicial order in which clear legal and factual grounds justifying the need for inspection are presented.

(b) Inspections shall only take place where there is a well-founded evidence-based allegation of a serious legal violation.

(c) Regulations on inspections shall clearly define the powers of inspecting officers, ensure respect for privacy, and provide redress for any violations committed through the inspection process.

(d) Where associations are required to provide documents prior to or during an inspection, the number of documents required should be defined and reasonable, and associations should be given sufficient time to prepare them.

(e) In no cases shall inspections be utilized in order to harass or intimidate associations of which political authorities disapprove.

(f) Where an unjustified inspection occurs, the association in question shall have the right to a remedy, and sanctions shall be levied against the responsible parties in a court of law.

35. Authorities shall respect the right to privacy of associations and shall not subject them to undue surveillance. Surveillance may only be pursued in cases where reasonable suspicion of an infraction of the law has led to a court-issued warrant authorizing such. Associations and individuals who have their rights to freedom of association and privacy violated through illegitimate surveillance shall be afforded appropriate redress.

### **Internal Governance Structures**

36. Associations shall be self-governing and free to determine their internal management structures, rules for selecting governing officers, internal accountability mechanisms and other internal governance matters.

(a) Law or regulation shall not dictate the internal organization of associations, beyond basic provisions providing that non-discriminatory and rights-respecting principles be followed.

(b) Associations shall not be required to obtain permission from the authorities to change their internal management structure or other elements of their internal rules.

- (c) Public authorities shall not interfere with associations' choices of managing officers, unless such persons are barred by national law from holding the positions in question on the basis of legitimate grounds as interpreted by regional and international human rights law.
- (d) The law shall not require that physical meetings be held.

## **V. Financing**

### **Acquisition of Funding**

37. The law shall clearly state that associations have the right to seek, receive and use funds freely in compliance with not-for-profit aims.
- (a) Associations shall be free to conduct fundraising through various means, including engaging in economic activities designed to support the aims of the organization.
  - (b) Associations shall be free to acquire resources in the form of cash as well as property, goods, services, investments, and other assets.
38. Associations shall be able to seek and receive funds from local private sources, the national state, foreign states, international organizations, transnational donors and other external entities. States shall not require associations to obtain authorization prior to receipt of funding.
39. Associations shall be subject to the same general laws governing money laundering, fraud, corruption, trafficking and similar offenses as individuals and for-profit enterprises.
40. Income generated shall not be distributed as profits to the members of not-for-profit associations. Associations shall however be able to use their income to fund staff and reimburse expenses pertaining to the activities of the association and for purposes of sustainability.

### **Public Support**

41. States should provide tax benefits, and public support where possible, to not-for-profit associations.
42. States that provide public support to associations, including in the form of tax benefits, shall ensure that funds and benefits are distributed in an impartial, non-partisan and transparent manner, on the basis of clear and objective criteria, and that the granting of funds or benefits is not used as a means to undermine the independence of civil society sphere.

43. Public support shall promote the equal ability to participate of all groups and individuals in society through support for associations working with and for marginalized, socially-vulnerable and discriminated-against communities.
44. Any body vested with the power to determine public support shall conduct its functions impartially and fairly. The procedures governing the operations of that body shall be clearly laid out by law.
45. All forms of public support shall be entirely transparent
- 46.(a)Such transparency includes clear publication of the relevant criteria and decision-making process, the amounts of funds awarded, their recipients and the grounds upon which funding decisions were made.
- (b) Additional reporting requirements may be imposed in order to enable effective use and reporting of state funding. Such reporting requirements shall not be overly burdensome in relationship to the quantum of funding available, and shall be the same across organizations receiving similar quantities of funding. Support provided shall cover additional costs imposed by such requirements.
- (c) The levels of public funding available, both in total and to particular organizations, shall be clearly stipulated in advance.
47. Associations shall be able to approach the courts for review of a denial of funding if they believe the decision was taken unfairly.

### **Reporting**

48. Reporting requirements shall be constructed on the basis of the presumed lawfulness of associations and their activities, and shall not interfere with the internal management or activities of associations.
49. Where reporting is required, reporting requirements shall be simple and shall not be overly burdensome
- 50.(a)Reporting requirements shall be entirely laid out in a single piece of legislation, and reports shall only be required to a single state body.
- (b) Any reporting requirements shall not require extensive details, but shall rather be aimed at ensuring financial propriety.
- (c) The rights to confidentiality and privacy of associations, their members and those on whose behalf they work shall be respected throughout the reporting process.
- (d) Reporting requirements shall be proportionate to the size and scope of the organization and shall be facilitated to the extent possible, inter alia,

through the provision of templates, information technology tools, and other measures.

(e) Reporting requirements shall not be used as a way to limit or target associations, including, inter alia, by utilizing the information therein to publicly condemn associations or by attempting to sanction or punish associations merely for altering their activities in relationship to the objectives they originally set out.

51. In no circumstances shall an audit of a not-for-profit association be more burdensome than an audit of a for-profit association of comparable means, nor shall an audit be conducted to harass an association. Neither reporting nor auditing requirements shall be so burdensome as to significantly diminish the substantive activities of a not-for-profit association.

## **VI. Federations and Cooperation**

52. Associations shall be free to create national federations with legal status through procedures substantively equivalent to those through which associations are created. Associations shall also be free to create informal (de facto) national federations.

53. Associations and national federations shall be able to join international federations, and international federations shall be able to obtain legal status in particular countries through procedures substantively equivalent to those through which international associations may obtain such status.

54. The decision to form or not to form federations shall be made freely by civil society actors. The state shall not stipulate by law the existence of particular or exclusive regional or national federations of associations.

55. The law shall not stipulate mandatory state membership of particular federations.

56. States and officials shall refrain from interfering in domestic and international civil society space through the creation, operation or provision of covert support for non-independent civil society organizations.

## **VII. Sanctions and Remedies**

57. States shall not impose criminal sanctions in the context of laws governing not-for-profit associations. All criminal sanctions shall be specified within the penal code and not elsewhere. Civil society shall not be governed

by provisions of criminal law different from the generally applicable provisions of the penal code.

58. Sanctions shall be applied only in narrow and lawfully prescribed circumstances, shall be strictly proportionate to the gravity of the misconduct in question, and shall only be applied by an impartial, independent and regularly constituted court, following a full trial and appeal process.

59. Liability shall not be imputed from associations to individuals or vice versa. Offenses committed by particular members of associations shall not be taken as grounds to penalize the association itself, where the official decision-making structure of the association was not employed to pursue those offenses. Similarly, offenses committed by an association, for instance through decisions of its officers, shall not be imputed to members of the association who did not take part in the offenses in question.

60. Suspension or dissolution of an association by the state may only be applied where there has been a serious violation of national law, in compliance with regional and international human rights law and as a matter of last resort.

61. Suspension may only be taken following court order, and dissolution only following a full judicial procedure and the exhaustion of all available appeal mechanisms. Such judgments shall be made publicly available and shall be determined on the basis of clear legal criteria in accordance with regional and international human rights law.

62. Sanctions shall not be disproportionate or aimed at tightly controlling or penalizing associations without strong grounds.

(a) In no cases shall associations be subject to sanctions on the basis that their activities breach their internal regulations, where the activities in question are otherwise lawful.

(b) Monetary penalties shall be avoided to the extent possible. Where associations have failed to comply with a particular state requirement, the remedy shall be compliance with that requirement. Prior to the imposition of sanctions, a warning shall be issued and a reasonable period of time in which to comply with the regulations in question provided, where circumstances so allow.

63. Commencement of legal appeals shall suspend the enforcement of sanctions until the appeals process has run.

64. The burden of proof relative to sanctions against associations shall always be on the state.

65. Where the right to association has been infringed, the association as well as its members shall have due access to a remedy

(a) In addition to restitution remedying the specific harms inflicted, associations shall have the right to compensation for any and all damages that may have occurred.

(b) Where the authorities pursue warrantless sanctions, or have pursued sanctions with the aim of harassing particular associations, those responsible for prosecuting the cases in question shall be held liable for violating the right to freedom of association.

(c) The right to a remedy also requires other measures, such as satisfaction and guarantees of non-repetition, as and where appropriate.

## **Part 2: Freedom of Assembly**

### **Legal framework**

66. The right to freedom of assembly is guaranteed under Article 11 of the African Charter and Article 8 of the African Charter on the Rights and Welfare of the Child.

67. The right to freedom of assembly is also guaranteed under Article 20(1) of the Universal Declaration of Human Rights, Article 21 of the International Covenant on Civil and Political Rights, and Article 15 of the International Convention on the Rights of the Child.

68. National constitutions shall guarantee the right to freedom of assembly, which shall be understood in a broad manner consistent with regional and international human rights law.

69. Where States enact laws on freedom of assembly, those laws shall aim primarily at the facilitation of the enjoyment of the right.

70. Legislation and regulations on assemblies shall be drafted and amended on the basis of broad and inclusive processes including dialogue and meaningful consultation with civil society.

71. The right to freedom of assembly applies to all individuals, groups, peoples, unregistered and registered associations, and others.

72. Everyone has the right to assemble freely with others. No one shall be compelled to participate in an assembly.

73. The right to freedom of assembly applies to meetings on private as well as public property.

74. The right to freedom of assembly extends to peaceful assembly. An assembly should be deemed peaceful if its organizers have expressed peaceful intentions, and if the conduct of the assembly participants is generally peaceful.

(a) 'Peaceful' shall be interpreted to include conduct that annoys or gives offence as well as conduct that temporarily hinders, impedes or obstructs the activities of third parties.

(b) Isolated acts of violence do not render an assembly as a whole non-peaceful.

## **II. Notification Regime**

75. Participating in and organizing assemblies is a right and not a privilege, and thus its exercise does not require the authorization of the state. A system of prior notification may be put in place to allow states to facilitate the exercise of this right and to take the necessary measures to protect public safety and rights of other citizens.

(a) A notification regime requires that the presumption is always in favour of holding assemblies, and that assemblies not be automatically penalized, through dispersal or sanction, due to failure to notify, subject to the provisions further detailed below.

(b) Lack of notification shall not be understood to make an assembly illegal.

76. Notification procedures shall be non-burdensome.

(a) A notification regime shall not stipulate that notifications be required too far in advance; rather, any notice period shall be as short as possible. Notification may be sought far enough in advance for an exchange of views as to any possible conditions, and for the relevant authorities to prepare.

(b) An appropriately simple procedure would involve the filling in of a clear and concise form, available and submittable online and elsewhere, requesting information as to the date, time, location and/or itinerary of the assembly, and the name, address and contact details of principle organizer(s).

(c) Procedures shall be flexible in instances of late notification or submission of incomplete information, with a view to facilitating the conduct of assemblies.

Notification shall be free of charge.



77. A failure to respond by the authorities shall be taken as acknowledgement that the assembly may go ahead along the lines proposed.

78. Should the authorities receive notification from multiple groups aimed at holding assemblies in the same space at the same time, efforts shall be made to facilitate multiple concurrent assemblies. Where this is impossible, an impartial and reasonable means shall be found to allocate the space.

79. No notification need be submitted for small assemblies, assemblies unlikely to generate disturbance or spontaneous assemblies. Spontaneous assemblies include assemblies that occur as immediate reactions to events, and planned assemblies that necessarily occur within a tighter deadline than that required relative to notification.

80. A single authority shall be designated as the entity responsible for receiving notifications.

81. The designated authority shall be impartial. Upon receipt of notifications, the authority in question shall be responsible for communicating with other concerning agencies.

82. The authority in question shall have a membership broadly representative of the diversity in society. It shall make the relevant procedures, including decision-making procedures, as clear, transparent and readily available as possible. It shall have a procedure for receiving information from individuals who believe their rights will be negatively affected by particular assemblies.

83. All authorities involved in administering assemblies shall be adequately trained in human rights law and aware that their primary task is to facilitate peaceful assemblies.

84. The operations of the authority in question should be subject to oversight and monitoring by an independent authority with a rights-advancement mandate, such as an ombudsman or a national human rights institution.

### **III. Scope of Limitations**

#### **Freedom of Expression**

85. States shall fully respect in law and practice the right to freedom of expression through assembly. States shall not discriminate among assemblies based on the expression involved.

86. The expression aimed at in and through assemblies is protected by the right to freedom of expression, and includes expression that may give offense or be provocative.

87. Hate speech and the incitement of violence are not protected and shall be prohibited.

88. Speech addressing matters of public concern, public interest or political or policy affairs, including criticism of the state or state officials, including as exercised in the context of an assembly, is given maximum protection under the right to freedom of expression.

89. The state shall not discriminate against assemblies on the basis of other illegitimate grounds, including sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, migration status, property, socio-economic status, birth, disability, age, sexual orientation or gender identity.

90. The right to freedom of expression in the context of assemblies protects the manner in which assemblies are conducted as well as the paraphernalia used, including flags, masks, symbols, banners, posters and other objects as well as their content.

91. Such symbols may be restricted where they are intrinsically and exclusively associated with acts of hate speech however.

92. The actions of assemblies shall be reported freely, impartially and without discrimination in the media of a country. The authorities should recognize and respect the right of assembly monitors to observe the manner in which the assembly is policed.

### **Blanket Bans**

93. The blanket application of restrictions, including the banning of assemblies at certain times of day or in particular locations, shall be permitted only as a measure of last resort, where the ban in question complies with the principle of proportionality. The holding of assemblies in public areas in the proximity of residential areas, as well as the holding of nighttime assemblies, shall be handled on a case-by-case basis, rather than prohibited as such.

94. States shall impose no external limitations that unreasonably restrict the right to freedom of peaceful assembly, such as unreasonable limitations on freedom of movement, including transnational movement.

### **Proportionality**

95. Any limitations imposed shall be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society, as these principles are understood in the light of regional and international human rights law. The law shall not allow assemblies to be limited based on overly broad or vague grounds.

96. Assembly shall be recognized as a right, and its exercise recognized as of no less value than other uses of public space, including commercial activity and the free flow of traffic.

97. Assemblies may be held in any public space.

98. Urban planning shall take account of the need to ensure the right to freedom of assembly, and barriers designed to prevent the effective exercise of the right, including in symbolically important locations, shall not be constructed. Conduct of an assembly will often temporarily hinder, impede or obstruct the activities of third parties, and may have economic consequences; the assembly shall not be dispersed or prevented on such grounds.

99. The temporal component of assemblies shall always be assessed with regard to the need to ensure the right to freedom of assembly and the hardship actually imposed on others. The fact that assemblies are defined as ‘temporary’ does not mean that they may be limited to any particular timelines.

### **Conditions**

100. Any conditions contemplated shall be communicated promptly in writing to the organizers of the event, along with an explanation of the rationale for the conditions.

(a) The law shall set out a clear procedure through which, prior to the imposition of such conditions, the authorities shall reach out to assembly organizers with their concerns in such a manner as to facilitate the sharing of information and the production of a mutually positive and agreed approach. Organizers shall not be compelled or coerced during this process. Where time allows, a procedure of administrative review shall be available in cases of conflict.

(b) Prompt recourse to an independent court shall be available to assembly organizers to challenge the decision of the authorities should they wish to do so.

101. Authorities shall always seek to facilitate assemblies at the organizers' preferred location at their preferred date and time.

(a) When imposing limitations on location, time or date, the authorities shall propose a suitable alternative time, in which context the message the assembly seeks to convey is still capable of being effectively communicated to those to whom it is directed.

(b) When imposing restrictions, the authorities shall facilitate the ability of an assembly to take place within sight and sound of its target audience.

(c) Physical security installations around politically and symbolically important locations may violate the right to freedom of assembly in this context where the security gain is outweighed by the extent to which the barriers prevent assemblies from taking place in appropriate locations.

102. Any conditions imposed shall relate closely to the particular concerns raised and be narrowly tailored.

(a) Conditions may only be imposed where they promote a substantial interest that would not be achieved in the absence of the restriction.

(b) The routine application of conditions, without individuated proportionality assessment, shall be prohibited. Application of conditions requires an objective and detailed evaluation of the circumstances in question.

(c) Reasons adduced to impose conditions shall be relevant, sufficient, convincing and compelling, and based on a reasonable assessment of the relevant facts including a risk assessment.

(d) The fact that conditions may be imposed as a matter of last resort during an event shall limit the extent to which conditions are imposed prior to assemblies in purported response to future contingencies.

(e) Conditions may be imposed to protect the rights and freedoms of others.

103. Prohibition shall only be used as a measure of last resort where no other less intrusive response would achieve the legitimate aim pursued.

(a) The authorities shall promptly communicate a decision to prohibit an assembly to assembly organizers, together with a clear statement of the legal rationale for their decision.

(b) Prompt resort to an independent court to determine de novo any dispute on such a matter between organizers and the state shall be available.

104. The burden rests on the authorities throughout the process to justify and substantiate any restrictions imposed.

#### **IV. Protection**

105. States shall ensure the protection of all assemblies, public and private, from interference, harassment, intimidation and attacks by third parties and non-state actors.

(a) Authorities shall take particular care to ensure that marginalized and discriminated-against communities can assemble and voice their concerns free from interference, harassment, intimidation or attacks.

(b) Where third parties aim to interfere, harass, intimidate or attack a peaceful assembly, the response of the authorities shall not be to ban or disperse the peaceful assembly, but rather to take measures to protect the assembly and to allow it to proceed.

106. The authorities shall ensure the protection and rights of bystanders and other citizens.

107. The costs of security and safety measures shall be fully born by the state. Financial charges shall not be levied on protest organizers and participants.

108. Persons have the right to assemble as counter-demonstrators, and thus simultaneous protests and counter-demonstrations shall not be banned. Rather, public safety authorities shall ensure that all demonstrations may proceed peacefully.

109.(a) Authorities shall protect simultaneous counter-demonstrations as well as original demonstrations, where both are peaceful. The authorities shall facilitate the ability of such assemblies to occur within sight and sound of one another.

(b) Counter-demonstrations shall not be allowed to violate the right to freedom of assembly of the first party, nor vice versa.

110. The policing of assemblies shall be conducted in accordance with the African Commission on Human and Peoples' Rights Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa.

#### **V. Sanctions and Remedies**

111. States shall not impose criminal sanctions in the context of laws governing assemblies. All criminal sanctions shall be specified within the penal code and not elsewhere. Assemblies shall not be governed by provisions

of criminal law different from the generally applicable provisions of the penal code.

112. Sanctions shall be applied only in narrow and lawfully prescribed circumstances, on the basis of generally applicable civil and criminal law, shall be strictly proportionate to the gravity of the misconduct in question, and shall only be applied by an impartial, independent and regularly constituted court, following a full trial and appeal process.

113. Liability shall be personal. Neither the organizers nor fellow participants of a public assembly shall be subjected to sanctions of any kind on the basis of acts committed by others.

114. Excessive responsibilities or liabilities shall not be imposed on assembly organizers.

(a) Organizers shall not be subject to sanctions or dispersal merely for failure to notify.

(b) Organizers shall not be held liable for the public costs of assemblies.

(c) Organizers may only be subject to monetary sanction where all four of the following conditions are met: they fail to notify;

(d) there is harm caused by the assembly; that harm was reasonably foreseeable; and they fail to take reasonable steps within their power to prevent the act or omission in question.

(e) Assembly organizers shall not be penalized on the basis of acts committed by individuals aimed at disrupting assemblies or clashes provoked by law-enforcement.

115. Where the right to peaceful assembly has been infringed, organizers and participants shall have a right to a remedy.

(a) The remedy shall include facilitation of future assemblies as necessary.

(b) The remedy shall include measures designed to address the concerns of the assembly that were harmed by unlawful prevention of the assembly.

(c) The remedy shall include compensation for any harms that have occurred.

(d) Where the authorities have pursued groundless or disproportionate sanctions or dispersal, or have pursued sanctions or dispersal with the aim of harassing particular assemblies, those responsible shall be held liable for violating the right to freedom of assembly.

- (e) Where discriminatory conduct or physical attack or harassment or threats are carried out by private individuals in the course of an assembly, the authorities shall investigate, prosecute, and punish where necessary.
- (f) The right to a remedy also requires other measures, such as satisfaction and guarantees of non-repetition, as and where appropriate.

# **Council of Europe: Declaration of the Committee of Ministers on Council of Europe Action to Improve the Protection of Human Rights Defenders and Promote their Activities**

**Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies**

The Committee of Ministers of the Council of Europe,

Noting the commitment made by Heads of State and Government meeting at their Third Summit in Warsaw 2005 that the Council of Europe 'shall – through its various mechanisms and institutions – play a dynamic role in protecting the right of individuals and promoting the invaluable engagement of non-governmental organisations, to actively defend human rights';

Recalling the United Nations Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms of 9 December 1998, and reiterating the importance of the declaration for individuals, groups and associations to promote and strive for the protection and realisation of human rights and fundamental freedoms at the national and international level;

Taking account of the European Union Guidelines on Human Rights Defenders of 2004 and the first review of their implementation in 2006, which contain suggestions for practical measures by EU member states and other states willing to implement them, to support and protect human rights defenders;

Deploring that human rights defenders, including journalists, are all too often victims of violations of their rights, threats and attacks, despite efforts at both national and international levels, and considering that human rights defenders merit special attention, as such violations may indicate the general situation of human rights in the state concerned or a deterioration thereof;

Paying tribute to their invaluable contribution in promoting and protecting human rights and fundamental freedoms;



Mindful that restrictions placed on the exercise of the freedom of expression, assembly and association, which affect the work of human rights defenders in Europe, must not extend beyond those authorised by paragraphs 2 of Articles 10 and 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms ('European Convention on Human Rights' or 'ECHR');

Taking account of the report of the Steering Committee for Human Rights (CDDH) on Council of Europe action to improve the protection of human rights defenders and promote their activities;

Recalling Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe which stipulates that NGOs should enjoy the right to freedom of expression and all other universally and regionally guaranteed rights and freedoms applicable to them;

Acknowledging that whereas the prime responsibility and duty to promote and protect human rights defenders lie with the state, the Council of Europe shall also contribute to creating an enabling environment for human rights defenders and protect them and their work in defending human rights;

Welcoming the activities that the Council of Europe Commissioner for Human Rights has already undertaken in support of human rights defenders, in particular during his country visits, and mindful that protection of human rights defenders as well as the development of an enabling environment for their activities fall within the scope of his mandate, as defined in Committee of Ministers' Resolution (99) 50 of 7 May 1999,

1. Condemns all attacks on and violations of the rights of human rights defenders in Council of Europe member states or elsewhere, whether carried out by state agents or non-state actors;
2. Calls on member states to:
  - (i) create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights;

- (ii) take effective measures to protect, promote and respect human rights defenders and ensure respect for their activities;
- (iii) strengthen their judicial systems and ensure the existence of effective remedies for those whose rights and freedoms are violated;
- (iv) take effective measures to prevent attacks on or harassment of human rights defenders, ensure independent and effective investigation of such acts and to hold those responsible accountable through administrative measures and/or criminal proceedings;
- (v) consider giving or, where appropriate, strengthening competence and capacity to independent commissions, ombudspersons, or national human rights institutions to receive, consider and make recommendations for the resolution of complaints by human rights defenders about violations of their rights;
- (vi) ensure that their legislation, in particular on freedom of association, peaceful assembly and expression, is in conformity with internationally recognised human rights standards and, where appropriate, seek advice from the Council of Europe in this respect;
- (vii) ensure the effective access of human rights defenders to the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures;
- (viii) co-operate with the Council of Europe human rights mechanisms and in particular with the European Court of Human Rights in accordance with the ECHR, as well as with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested;
- (ix) consider signing and ratifying the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124);
- (x) consider signing and ratifying the 1995 Additional Protocol to the European Social Charter and to consider recognising the right of national NGOs fulfilling the criteria mentioned therein to lodge collective complaints before the European Committee of Social Rights;
- (xi) provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas;

3. Calls on all Council of Europe bodies and institutions, to pay special attention to issues concerning human rights defenders in their respective work. This shall include providing information and documentation, including on relevant case law and other European standards, as well as encouraging co-operation and awareness-raising activities with civil society organisations and encouraging human rights defenders' participation in Council of Europe activities;

4. Invites the Commissioner for Human Rights to strengthen the role and capacity of his Office in order to provide strong and effective protection for human rights defenders by:

(i) continuing to act upon information received from human rights defenders and other relevant sources, including ombudsmen or national human rights institutions;

(ii) continuing to meet with a broad range of defenders during his country visits and to report publicly on the situation of human rights defenders;

(iii) intervening, in the manner the Commissioner deems appropriate, with the competent authorities, in order to assist them in looking for solutions, in accordance with their obligations, to the problems which human rights defenders may face, especially in serious situations where there is a need for urgent action;

(iv) working in close co-operation with other intergovernmental organisations and institutions, in particular the OSCE/ODHIR focal point for human rights defenders, the European Union, the United Nations Secretary General's Special Representative on Human Rights Defenders and other existing mechanisms;

(5) Agrees to keep under review the question of further Council of Europe action in this field.

# **European Union: Ensuring Protection – European Union Guidelines on Human Rights Defenders**

**Council of the EU (Foreign Affairs), 2008**

## **I. PURPOSE**

1. Support for human rights defenders is already a long established element of the European Union's human rights external relations policy. The purpose of these Guidelines is to provide practical suggestions for enhancing EU action in relation to this issue. The Guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the Union to promote and encourage respect for the right to defend human rights. The Guidelines also provide for interventions by the Union for human rights defenders at risk and suggest practical means to support and assist human rights defenders. An important element of the Guidelines is support for the Special Procedures of the UN Commission on Human Rights, including the UN Special Representative on Human Rights Defenders and appropriate regional mechanisms to protect human rights defenders. The Guidelines will assist EU Missions (Embassies and Consulates of EU Member States and European Commission Delegations) in their approach to human rights defenders. While addressing specific concerns regarding human rights defenders is their primary purpose, the Guidelines also contribute to reinforcing the EU's human rights policy in general.

## **II. DEFINITION**

2. For the purpose of defining human rights defenders for these Guidelines operative paragraph 1 of the 'UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms' (see Annexe I), which states that 'Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels' is drawn upon.

3. Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and

fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.

### III. INTRODUCTION

4. The EU supports the principles contained in the Declaration on the Right and responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. Although the primary responsibility for the promotion and protection of human rights lies with states, the EU recognises that individuals, groups and organs of society all play important parts in furthering the cause of human rights. The activities of human rights defenders include:

- documenting violations;
- seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support; and
- combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms.

5. The work of human rights defenders often involves criticism of government's policies and actions. However, governments should not see this as a negative. The principle of allowing room for independence of mind and free debate on a government's policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights defenders can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognised and supported.

6. The EU acknowledges that the activities of Human Rights Defenders have over the years become more recognised. They have increasingly come to ensure greater protection for the victims of violations. However, this progress has been achieved at a high price: the defenders themselves have increasingly become targets of attacks and their rights are violated in many countries. The EU believes it is important to ensure the safety and protect the rights of human

rights defenders. In this regard it is important to apply a gender perspective when approaching the issue of human rights defenders.

#### **IV. OPERATIONAL GUIDELINES**

7. The operational part of the Guideline is meant to identify ways and means to effectively work towards the promotion and protection of human rights defenders in third countries, within the context of the Common Foreign and Security Policy.

##### **Monitoring, reporting and assessment**

8. EU Heads of Mission are already requested to provide periodic reports on the human rights situation in their countries of accreditation. The Council Working Party on Human Rights (COHOM) has recently approved the outline of fact sheets to facilitate this task. In line with these fact sheets Missions should address the situation of human rights defenders in their reporting, noting in particular the occurrence of any threats or attacks against human rights defenders. In this contexts HoMs should be aware that the institutional framework can have a major impact on the ability of human rights defenders to undertake their work in safety. Issues such as legislative, judicial, administrative or other appropriate measures, undertaken by States to protect persons 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 any of the rights referred to the UN Declaration on Human Rights Defenders are all relevant in this regard. Where it is called for, HoMs should make recommendations to COHOM for possible EU actions, including condemnation of threats and attacks against human rights defenders, as well as for demarches and public statements where human rights defenders are at immediate or serious risk. HoMs should also report on the effectiveness of EU actions in their reports.

9. The HoMs reports and other relevant information, such as reports and recommendations from the Special Representative of the Secretary General for Human Rights Defenders, UN Special Rapporteurs and Treaty Bodies as well as non-governmental organisations, will enable COHOM and other relevant working parties, to identify situations where EU actions are called upon and decide actions to be taken or, where appropriate, make recommendations for such action to PSC / Council.

### **Role of EU Missions in supporting and protecting human rights defenders**

10. In many third countries EU Missions (Embassies of EU Member States and European Commission Delegations) are the primary interface between the Union and its Member States and human rights defenders on the ground. They therefore have an important role to play in putting into practice the EU's policy towards human rights defenders. EU Missions should therefore seek to adopt a proactive policy towards human rights defenders. They should at the same time be aware that in certain cases EU action could lead to threats or attacks against human rights defenders. They should therefore where appropriate consult with human rights defenders in relation to actions which might be contemplated. Measures that EU Missions could take include:

- co-ordinating closely and sharing information on human rights defenders, including those at risk;
- maintaining, suitable contacts with human rights defenders, including by receiving them in Missions and visiting their areas of work, consideration could be given to appointing specific liaison officers, where necessary on a burden sharing basis, for this purpose;
- providing, as and where appropriate, visible recognition to human rights defenders, through the use of appropriate publicity, visits or invitations;
- attending and observing, where appropriate, trials of human rights defenders.

### **Promotion of respect for human rights defenders in relations with third countries and in multilateral fora**

11. The EU's objective is to influence third countries to carry out their obligations to respect the rights of human rights defenders and to protect them from attacks and threats from non-state actors. In its contacts with third countries, the EU will, when deemed necessary, express the need for all countries to adhere to and comply with the relevant international norms and standards, in particular the UN Declaration. The overall objective should be to bring about an environment where human rights defenders can operate freely. The EU will make its objectives known as an integral part of its human rights policy and will stress the importance it attaches to the protection of human rights defenders. Actions in support of these objectives will include:

- where the Presidency, or the High Representative for the CFSP or EU Special Representatives and Envoys, or European Commission are making country visits they will, where appropriate, include meetings with, and raising individual cases of, human rights defenders as an integral and part of their visits to third countries;

- the human rights component of political dialogues between the EU and third countries and regional organisations, will, where relevant, include the situation of human rights defenders. The EU will underline its support for human rights defenders and their work, and raise individual cases of concern whenever necessary;
- working closely with other like minded countries with similar views notably in the UN Commission on Human Rights and the UN General Assembly;
- promoting the strengthening of existing regional mechanisms for the protection of human rights defenders, such as the focal point on human rights defenders of the African Commission on Human and Peoples' Rights and the special Human Rights Defenders Unit within the Inter-American Commission on Human Rights, and the creation of appropriate mechanisms in regions where they do not exist.

### **Support for Special Procedures of the UN Commission on Human Rights, including the Special Representative on Human Rights Defenders**

12. The EU recognises that the Special Procedures of the UN Commission on Human Rights (Special Rapporteurs, Special Representatives, Independent Experts and Working Groups) are vital to international efforts to protect human rights defenders because of their independence and impartiality; their ability to act and speak out on violations against human rights defenders worldwide and undertake country visits. While the Special Representative for Human Rights Defenders has a particular role in this regard the mandates of other Special Procedures are also of relevance to human rights defenders. The EU's actions in support of the Special Procedures will include:

- encouraging states to accept as a matter of principle requests for country visits by UN Special Procedures;
- promoting via EU Missions, the use of UN thematic mechanisms by local human rights communities and human rights defenders including, but not limited to facilitating the establishment of contacts with, and exchange information between, thematic mechanisms and human rights defenders;
- since the Special Procedures are unable to carry out their mandate in the absence of adequate resources, EU Member States will support the allocation of sufficient funds from the general budget to the Office of the High Commissioner for Human Rights

### **Practical supports for Human Rights Defenders including through Development Policy**

13. Programmes of the European Community and Member States aimed at assisting in the development of democratic processes and institutions, and the



promotion and protection of human rights in developing countries are among a wide range of practical supports for assisting human rights defenders. These can include but are not necessarily limited to the development co-operation programmes of Member States. Practical supports can include the following:

- bi-lateral human rights and democratisation programmes of the European Community and Member States should take further account of the need to assist the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries by, inter alia, supporting human rights defenders through such activities as capacity building and public awareness campaigns;
- encouraging and supporting the establishment, and work, of national bodies for the promotion and protection of human rights, established in accordance with the Paris Principles, including, National Human Rights Institutions, Ombudsman's Offices and Human Rights Commissions.
- assisting in the establishment of networks of human rights defenders at an international level, including by facilitating meetings of human rights defenders;
- seeking to ensure that human rights defenders in third countries can access resources, including financial, from abroad;
- ensuring that human rights education programmes promote, inter alia, the UN Declaration on Human Rights Defenders.

### **Role of Council Working Parties**

14. In accordance with its mandate COHOM will keep under review the implementation and follow-up to the Guidelines on Human Rights Defenders in close co-ordination and co-operation with other relevant Council Working Parties. This will include:

- promoting the integration of the issue of human rights defenders into relevant EU policies and actions;
- undertaking reviews of the implementation of the Guidelines at appropriate intervals;
- continuing to examine, as appropriate, further ways of co-operating with UN and other international and regional mechanisms in support of human rights defenders.
- Reporting to Council, via PSC and COREPER, as appropriate on an annual basis on progress made towards implementing the Guidelines.

## OSCE: Guidelines on the Protection of Human Rights Defenders

**1. The right to defend human rights is a universally recognized right:** It derives from universal human rights, which are indivisible, interdependent and interrelated, and which OSCE participating States have committed to respect, protect and fulfil for everyone on their territory and subject to their jurisdiction.

**2. Who is a human rights defender?** Human rights defenders act ‘individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms’ at the local, national, regional and international levels. They recognize the universality of human rights for all without distinction of any kind, and they defend human rights by peaceful means.

**3. Human rights defenders play a vital role in democratic societies:** The active involvement of people, groups, organizations and institutions is essential to ensure continuing progress towards the fulfilment of international human rights. Civil society – among others – assists states to ensure full respect for human rights, fundamental freedoms, democracy and the rule of law. Accordingly, human rights defenders perform important and legitimate functions in democratic societies. State authorities should respect that dissenting views may be expressed peacefully in democratic societies and should publicly acknowledge the important and legitimate role of human rights defenders.

**4. Need for protection of human rights defenders:** Human rights defenders face specific risks and are often targets of serious abuses as a result of their human rights work. Therefore, they need specific and enhanced protection at local, national and international levels. Certain groups of human rights defenders are exposed to heightened risks due to the specific nature of their work, the issues they are working on, the context in which they operate, their geographical location or because they belong to or are associated with a particular group.

**5. The nature of state obligations:** The primary responsibility for the protection of human rights defenders rests with states. States have both positive and negative obligations with regard to the rights of human rights

defenders. In line with their duties under international law – according to which they must respect, protect and fulfil human rights – they have an obligation to:

- (a) refrain from any acts that violate the rights of human rights defenders because of their human rights work;
- (b) protect human rights defenders from abuses by third parties on account of their human rights work and to exercise due diligence in doing so; and
- (c) take proactive steps to promote the full realization of the rights of human rights defenders, including their right to defend human rights.

**6. A safe and enabling environment to empower human rights work:** Effective protection of the dignity, physical and psychological integrity, liberty and security of human rights defenders is a prerequisite for the realization of the right to defend human rights. Furthermore, a safe and enabling environment requires the realization of a variety of other fundamental human rights that are necessary to carry out human rights work, including the rights to freedom of opinion and expression, peaceful assembly and association, the right to participate in public affairs, freedom of movement, the right to private life and the right to unhindered access to and communication with international bodies, including international and regional human rights mechanisms.

## **I. GENERAL PRINCIPLES UNDERPINNING THE PROTECTION OF HUMAN RIGHTS DEFENDERS**

**7. Recognition of the international dimension of the protection of human rights defenders:** Commitments undertaken in the field of the human dimension are matters of direct and legitimate concern to all OSCE participating States. While the responsibility for the protection of human rights defenders rests primarily with states, violations of the rights of human rights defenders are not solely a matter of their internal affairs. States should, therefore, recognize the need for protecting human rights defenders both on their territories and in other states. Thus, they should set up appropriate instruments and mechanisms that deal with the protection of human rights defenders domestically and abroad.

**8. Accountability of non-state actors:** While states have a duty to protect human rights defenders from abuses by non-state actors, the latter can play an important role towards the realization of the rights of human rights defenders.

Non-state actors should respect and recognize the rights of human rights defenders and be guided by international human rights norms in carrying out their activities. Participating States should hold them accountable if they fail to do so in accordance with domestic legal procedures and standards.

**9. Equality and non-discrimination:** Human rights defenders shall not be discriminated against in the exercise of the full range of their human rights as a result of their work. The right to defend human rights must be guaranteed without discrimination, and measures to protect human rights defenders should be reflective of the specific needs of defenders facing multiple forms of discrimination. A gender- and diversity-sensitive approach should be mainstreamed into all activities to strengthen the protection of human rights defenders.

**10. Conducive legal, administrative and institutional framework:** Domestic legal, administrative and institutional frameworks should contribute to creating and consolidating a safe and enabling environment, in which human rights defenders are protected, supported and empowered to carry out their legitimate activities. Domestic laws, regulations, policies and practices must be compatible with OSCE commitments and international human rights standards. They must be sufficiently precise to ensure legal certainty and prevent them from being arbitrarily applied. The institutional framework must guarantee the fundamental principle of fairness and due legal process.

**11. Legality, necessity and proportionality of limitations on fundamental rights in connection with human rights work:** International human rights instruments only allow for limitations on certain rights and only if limitations have a formal basis in law and are necessary in a democratic society in the interest of one of the prescribed grounds. Furthermore, they must be proportionate and compatible with other fundamental human rights principles, including the prohibition of discrimination. International human rights mechanisms have emphasized that the scope for permissible limitations must generally be interpreted narrowly. The fact that the right to defend human rights is instrumental for the achievement of all other rights further narrows the scope for permissible limitations. The threshold to meet the principles of necessity and proportionality of any such limitations can be considered particularly high.

## **II. PHYSICAL INTEGRITY, LIBERTY AND SECURITY AND DIGNITY OF HUMAN RIGHTS DEFENDERS**

### **A. Protection from threats, attacks and other abuses**

12. State institutions and officials must refrain from any acts of intimidation or reprisals by threats, damage and destruction of property, physical attacks, torture and other ill-treatment, killing, enforced disappearance or other physical or psychological harm targeting human rights defenders and their families. Participating States also have a duty to protect human rights defenders from such acts by non-state actors and to take steps to prevent abuses. Public authorities should publicly condemn such acts and apply a policy of zero tolerance.

### **Impunity and effective remedies**

13. All allegations of such acts must be promptly, thoroughly and independently investigated in a transparent manner. The existence of independent and effective oversight mechanisms to investigate complaints about abuses by police and other state officials and their accessibility to human rights defenders are an essential element in this regard. Individuals who bring complaints against police or other law enforcement officers must not face reprisals.

14. Authorities must not shield any unlawful actions of public officials or non-state actors directed against human rights defenders from prompt, thorough, independent and transparent investigation. Investigations must be capable of and effective in identifying the perpetrators and lead to their prosecution where necessary. Any sanctions should be commensurate with the gravity of the offence. Disciplinary proceedings are no substitute for criminal charges, nor are prosecutions for offences such as 'abuse of office' sufficient in cases of violations of the right to life, of the prohibition of torture and other ill-treatment or other serious human rights violations.

15. States should consider adopting national legislation recognizing the motivation for crimes against human rights defenders on account of their human rights work as an aggravating factor in relation to sentencing.

16. States should ensure that their hate crime laws apply to crimes committed against human rights defenders 'by association'. A crime against a human rights defender should be similarly punished under relevant legislation if it is

motivated by intolerance towards a specific social group the human rights defender does not directly belong to but is associated with.

17. States should guarantee full respect for the rule of law and the independence of the judiciary. Wherever necessary, they should carry out reforms to ensure that there is no impunity for abuses committed against human rights defenders, that legal remedies are available, accessible and fully effective and that victims or their families obtain adequate reparation.

18. Legal aid and other support should be provided to ensure that human rights defenders have effective access to justice.

### **Protection policies, programmes and mechanisms**

19. States should develop, in consultation with civil society and with technical advice from relevant international agencies, appropriate protection policies, programmes and mechanisms to ensure the safety and security of human rights defenders at risk. These should include the provision of physical protection, temporary relocation and other protection measures and support services as may be required.

20. States should ensure that any protection programmes, policies and mechanisms have the capacity and means to provide gender-sensitive protection and support that meet the needs of women human rights defenders. Protection programmes, policies and mechanisms should also be reflective of and able to respond to the specific protection requirements of other particularly vulnerable categories of human rights defenders in accordance with the needs identified by affected individuals and groups. Human rights defenders should also be involved in developing protection systems that take into account the risks for their family members and in determining concrete protection measures to mitigate such risks when required.

21. States should designate sufficient funds in their regular budget for the physical and psychological protection of human rights defenders at risk, emergency relief and other support services. They should also actively support non-governmental organizations (NGOs) that provide such services. If required, participating States should seek funds through international co-operation for this purpose.

22. Such measures should be accompanied by training and awareness-raising programmes targeted at relevant professional groups, as well as broader human rights education, in order to shape attitudes and behaviours and raise

the profile of human rights defenders in society, and thereby increase their protection.

### **B. Protection from judicial harassment, criminalization, arbitrary arrest and detention**

23. Human rights defenders must not be subjected to judicial harassment by unwarranted legal and administrative proceedings or any other forms of misuse of administrative and judicial authority, or to criminalization, arbitrary arrest and detention, as well as other sanctions for acts related to their human rights work. They must have access to effective remedies to challenge the lawfulness of detention or any other sanctions imposed on them.

#### **Criminalization and arbitrary and abusive application of legislation**

24. States should review the domestic legal framework relevant to human rights defenders and their activities for its compliance with international human rights standards. They should broadly and effectively consult with human rights defenders and seek international assistance in doing so. Any legal provisions that directly or indirectly lead to the criminalization of activities that are protected by international standards should be immediately amended or repealed.

25. Legal provisions with vague and ambiguous definitions, which lend themselves to broad interpretation and are or could be abused to prosecute human rights defenders for their work, should be amended or repealed. Full due process protections, in line with international fair trial standards, must be ensured.

26. Laws, administrative procedures and regulations must not be used to intimidate, harass, persecute or retaliate against human rights defenders. Sanctions for administrative or minor offences must always be proportionate and must be subject to the possibility of appeal to a competent and independent court or tribunal.

27. States should take steps, where required, to strengthen the independence of the judiciary and prosecution authorities, as well as the proper functioning of law enforcement bodies, to ensure that human rights defenders are not subjected to politically-motivated investigations and prosecutions or to the otherwise abusive application of laws and regulations for their human rights work.

28. Effective oversight mechanisms should be put in place to investigate possible misconduct by law enforcement and judicial officials concerning the judicial harassment of human rights defenders. In addition, any structural shortcomings that may give rise to the abuse of power or corruption within the judiciary and law enforcement should be rigorously addressed.

29. Law enforcement officers, military personnel, public servants and other state employees who speak out against human rights violations or are engaged in other activities in defence of human rights should be protected from intimidation and harassment, disciplinary or other proceedings. In particular, the justice and discipline systems should not impose disproportionate limitations on members of the armed forces that would effectively deprive them of the right to defend human rights. Limitations on the rights of members of intelligence services and other security-sector officials have to meet the strict requirements of necessity and proportionality.

30. States should also protect, in law and practice, human rights defenders who are engaged in litigation from retaliatory charges, arbitrary prosecutions and other legal actions in response to cases that they file. Furthermore, their physical and personal integrity must be fully protected within and outside of the courtroom. Lawyers engaged in human rights work should not face intimidation or reprisals, such as the threat of disbarment, for their defence of human rights or of other human rights defenders.

### **Arbitrary detention and treatment in detention**

31. States should not subject human rights defenders to arbitrary deprivation of liberty because of their engagement in human rights activity. Any form of deprivation of liberty must be based on and in accordance with procedures established by law, subject to the possibility for the detained to challenge the legality of detention before a competent court and otherwise comply with international human rights standards.

32. Human rights defenders arbitrarily detained should be immediately released. In this context, states should fully comply with decisions and opinions issued by international human rights mechanisms.

33. Human rights defenders should not be held in temporary or administrative detention for the purpose of intimidation or coercion or to prevent them from carrying out their human rights work.



34. Human rights defenders deprived of their liberty must always be treated with respect for and in accordance with international standards, without discrimination of any kind. Human rights defenders should not be singled out for selective treatment to punish them for or discourage them from their human rights work. They should not be held in prolonged incommunicado detention. They should have access to a lawyer of their choice and be allowed to receive visits from their families. They should be provided with adequate food and health care while in detention. They should not be subjected to harsh prison conditions and should be absolutely protected from any form of torture and other cruel, inhuman or degrading treatment. Authorities have an obligation to exercise due diligence in protecting them from abuses by other detainees or inmates and to hold perpetrators of abuses, including potential instigators, to account. All allegations of torture and other ill-treatment must be promptly, independently and effectively investigated and referred to prosecution authorities.

35. Authorities should also take into account specific problems that women and other human rights defenders who are at particular risk may face in detention, protect them from gender-specific violations while in detention, including through the provision of gender-sensitivity training for police and law enforcement personnel, and provide appropriate services in accordance with relevant international standards.

### **Fair trial**

36. Where criminal charges are brought against them, human rights defenders are entitled to a fair trial before a competent, independent and impartial tribunal. This includes that human rights defenders accused of a crime have access to legal representation provided by a lawyer of their choice, are not put under duress to extract a confession and that evidence, including witness statements, obtained through torture and other ill-treatment is excluded from legal proceedings. Assertions made against human rights defenders that are based on the misconduct of investigating or other officials should also not be used against them in the trial. Their lawyers must be effectively protected from pressure from any public official or non-state actor. Any form of pressure on the clients of human rights defenders or others to testify against them in court must also be prevented. Confidentiality of communication between the lawyer and the human rights defender facing trial

must be fully guaranteed, while legal aid schemes should be available and accessible to human rights defenders to ensure that those who do not have the means to pay for it are appropriately represented when facing trial and to ensure equality of arms.

### **C. Confronting stigmatization and marginalization**

37. State institutions and officials must refrain from engaging in smear campaigns, negative portrayals or the stigmatization of human rights defenders and their work. This includes the negative labelling of human rights defenders, discrediting human rights work and human rights defenders or defaming them in any way.

38. States should take proactive steps to counter smear campaigns against and the stigmatization of human rights defenders, including by third parties. They should publicly acknowledge the need to protect human rights defenders and the importance of their work, give recognition to individual human rights defenders and thereby strengthen the legitimacy and status accorded to human rights work in society.

39. While fully respecting the right to freedom of opinion and expression, states should combat advocacy of hatred and other forms of intolerance against human rights defenders that constitutes incitement to discrimination, hostility or violence, including where this is conducted online. Governments and state institutions at all levels – national, regional and local – should publicly condemn any such manifestations or actual attacks against human rights defenders whenever they occur. Conduct that meets the threshold of constituting incitement to national, racial or religious hatred, as prescribed in international standards, must be prohibited by domestic law and sanctioned accordingly. These laws must be in full compliance with international human rights standards.

40. To avoid marginalization of human rights defenders, state institutions should actively and constructively engage with human rights defenders to empower their participation, including in public debates. State institutions should recognize the relevance and importance of their contributions, even if these are critical of the authorities or challenge them. Particular attention should also be given to strengthening the role of national human rights institutions (NHRIs) that are created and operate in conformity with the Paris Principles, and appropriate mechanisms should be in place to ensure effective

follow-up by the government to NHRI recommendations. Regular dialogue between human rights defenders and state institutions should be facilitated by applying appropriate consultative mechanisms. These mechanisms should also serve as a basis to develop joint actions, campaigns and human rights education programmes to raise awareness of human rights issues of concern and to encourage the use of complaints mechanisms and other means of enhancing accountability and addressing human rights abuses in the country.

### **III. A SAFE AND ENABLING ENVIRONMENT CONDUCTIVE TO HUMAN RIGHTS WORK**

41. States should respect, encourage and facilitate human rights activity. They should put in place practical measures aimed at creating safe and conducive environments that enable and empower human rights defenders to pursue their activities freely and without undue limitations, including work conducted individually and collectively with others, domestically and across borders. The full enjoyment of other rights and freedoms is instrumental to realizing the right to defend human rights.

#### **D. Freedom of opinion and expression and of information**

42. States should review legislation concerning freedom of opinion and expression and should repeal or amend any provisions that do not comply with relevant international human rights standards. These include provisions that impose undue restrictions for reasons of national security, public order and public health or morals beyond what is permissible under international standards. Laws or regulations that impose specific limitations on the exercise of the right to freedom of opinion and expression by certain groups or professions, such as members of the armed forces or public servants, should also be reviewed to ensure their full compliance with international standards, i.e., that they fully meet the strict requirements of necessity and proportionality.

43. States should eliminate any vaguely-worded provisions in anti-terrorism or other national security legislation that may be open to arbitrary application in order to threaten, silence or imprison human rights defenders. They should also eliminate legislation that, for example, effectively prohibit advocacy against discrimination and intolerance; criminalize criticism of or disrespect for the government and public officials, as well as disrespect for state

institutions or symbols; and other legal provisions that do not meet the strict requirement of necessity and proportionality under international law. They should respect that dissenting views may be expressed peacefully.

44. Similarly, criminal defamation laws should be repealed. Defamation and similar offences – including those committed online – should be dealt with exclusively under civil law. Criminal liability, including prison sentences, should be excluded for offences regarding the reputation of others such as libel and defamation. Civil laws regulating speech offences should not provide for disproportionate financial penalties or other undue requirements that would lead to self-censorship, endanger the functioning of or lead to the bankruptcy of an individual or media outlet.

### **Access to information of public interest and whistleblowers**

45. States should not impose undue limitations on the dissemination of information that in practice prevent human rights defenders from carrying out their work or providing services to their beneficiaries.

46. Furthermore, states should adopt and implement freedom of information legislation that provides for effective and equal access to official documents, including by human rights defenders. They should also take proactive measures to ensure that the general public is aware of the existence of such legislation, its entitlement to access official documents and the specific procedures to request access.

47. Laws, regulations and practices concerning state secrecy should be reviewed and, where necessary, amended, so as to ensure that they do not unduly restrict access to information of public interest, including information relevant to past and present human rights abuses and crimes.

48. States should recognize the importance of whistleblowers who act in the public interest to uncover human rights abuses and corruption in both the public and the private sector. They should adopt legislation and practices that afford whistleblowers protection and provide a safe alternative to silence. In legal proceedings against whistleblowers, the public interest in the information that has been disclosed should be given appropriate weight. In particular, whistleblowers should be effectively protected from prosecution and punishment for disclosing state secrets when uncovering information about the responsibility of state agents or non-state actors for serious human rights abuses, which must not be protected as state secrets.

49. Freedom of opinion and expression applies online. Generally, states should promote and facilitate equal access to the Internet and digital information technologies. All state regulation of Internet communication must fully comply with the strict requirements that international standards set for limitations to the right to freedom of opinion and expression. It is inconsistent with these standards to censor online content and block or filter websites, foreign news and information or other services solely because they contain information that is critical of the government or discuss issues that are controversial in society.

50. States should ensure that Internet service providers and other private companies that are subject to their jurisdiction but operate internationally do not facilitate such undue restrictions to online content on their territory or in other states. Bloggers and users of social media should be protected from repercussions for posting content and comments that are critical of their government.

### **Freedom of the media**

51. The media environment – including the printed media, radio, television and the Internet – should be conducive to the participation of human rights defenders in public debates in order to help develop new ideas towards improving the protection of human rights and meeting new human rights challenges. States should therefore take measures to create a strong and pluralistic media and to improve the access of human rights defenders to the media.

52. States should review their media laws, policies and practices and should guarantee that these laws are conducive to an independent, pluralistic and human rights friendly media environment, in which knowledge of and respect for human rights is promoted more generally. Measures to strengthen the independence of the media should be accompanied by the independent training of journalists and media workers, including human rights education, as part of their professional training.

53. States have an obligation to refrain from direct or indirect censorship, and should not exert formal or informal control over the media system in order to prevent or punish criticism of the government, reporting on human rights violations, mismanagement and corruption or discussion of issues that are controversial in society and that may challenge traditional values or the

views of the authorities. They should ensure that neither public institutions and officials nor private media corporations and vested business interests inhibit the exercise of the right to freedom of opinion and expression, including the right to seek, receive and impart information.

54. Journalists who promote human rights are human rights defenders, regardless of their accreditation status and the media through which they work (print, radio, television or the Internet). Journalists who report on human rights violations, corruption or mismanagement or on the work of whistleblowers should not face prosecution, arbitrary legal actions or other repercussions for doing so. Authorities should acknowledge the importance of independent and investigative journalism in uncovering abuses and misuse of power, and they should support it in order to enhance accountability. They should ensure that journalists are not subjected to arbitrary criminal prosecutions and have access to legal aid and other means of support to enable them to carry out their work without interference and fear of reprisals. In particular, they should take steps to ensure the safety of journalists and ensure that journalist human rights defenders are effectively protected from attacks and other abuses both by state and non-state actors. Any crime committed against human rights defenders, including against journalists defending human rights, must be promptly, effectively and independently investigated in a transparent manner, and those responsible must be brought to justice.

#### **E. Freedom of peaceful assembly**

55. Legislation on freedom of peaceful assembly and related practices must be in full conformity with international human rights standards. Limitations on the right to freedom of assembly can only be imposed if they are based in law and necessary in a democratic society in the interest of one of the specific grounds set out in international human rights standards. In addition, limitations on the right to freedom of peaceful assembly must be proportionate. Authorities involved in drafting or reviewing relevant legislation, as well as those involved in implementing it (including national, regional and local authorities, law enforcement and the judiciary), are encouraged to apply the OSCE/ODIHR-Venice Commission *Guidelines on Freedom of Peaceful Assembly*.

56. Human rights defenders should not face any limitations on their right to freedom of assembly beyond those that are permissible under relevant

international standards. Content-based restrictions imposed only because they convey messages that are critical of the authorities or perceived to be controversial in society are incompatible with these standards. An outright ban of an assembly can be permissible only in very exceptional circumstances as prescribed by international human rights standards.

57. Human rights defenders organizing assemblies should only be required to give prior notification of the assembly where this is necessary to enable the authorities to make arrangements in order to facilitate the assembly and to protect public order, public safety and the rights and freedoms of others. Wherever legitimate restrictions are imposed concerning the time, place and manner of a peaceful assembly, human rights defenders holding an assembly must be provided with reasonable alternatives that ensure that the assembly can be held within 'sight and sound' of the target audience. States should ensure that appropriate and effective procedures are in place to review complaints about the imposition of undue restrictions. Authorities should also refrain from obstructing participation in assemblies and imposing unreasonable requirements on the organizers of assemblies that would discourage them from holding assemblies.

58. Spontaneous assemblies should be facilitated, in line with the presumption in favour of holding assemblies, even where no advance notification was given. Human rights defenders participating in non-notified assemblies should not be arrested, detained or fined solely for their participation in such an assembly. Fines or other sanctions for failing to comply with formal legal requirements for assemblies should be proportionate to the gravity of the offence; legislation that allows for disproportionate penalties should be repealed. Under no circumstances should organizers of peaceful assemblies be held liable for unlawful acts by individual participants if they make reasonable efforts to avert them. States should ensure that all those charged with administrative or other offences in connection with the exercise of their right to freedom of assembly enjoy full due process protections.

59. In policing assemblies, law enforcement officers must strictly refrain from using force against human rights defenders who exercise their right to peaceful assembly. Particular attention should be given to specific needs – for example, in terms of risk assessment, the composition of police units or their prior training and instruction – when policing assemblies of certain groups of

human rights defenders who are at particular risk. If assemblies turn violent, the police have a duty to use force only where strictly necessary and only to the extent required by the exigencies of the situation. They must refrain from using disproportionate force and indiscriminate force that fail to distinguish between violent and peaceful demonstrators, journalists reporting from the event, monitors or bystanders. Any misconduct and excessive use of force by law enforcement officers must be promptly, effectively and independently investigated and appropriate action must be taken to bring those responsible to justice. Law enforcement officers must be regularly and sufficiently trained to ensure their compliance with human rights principles in policing assemblies. States should involve human rights defenders in devising and implementing such trainings.

60. Furthermore, states have a positive obligation to protect human rights defenders from any acts by third parties that aim to obstruct them in exercising their right to peaceful assembly, without discrimination. This includes physical protection before, during and after the assembly if those organizing or participating in it face threats of violent attacks. This is particularly relevant for assemblies on issues that are perceived to challenge traditional values or aim to counter extremist political views, such as demonstrations to counter racism, xenophobia, intolerance or discrimination.

61. Authorities should engage effectively with organizers of assemblies in identifying protection needs and appropriate measures to address them. They should consult closely with organizers prior, during and after the event about security and public safety measures for the event, as well as the policing operation itself, with a view to ensuring that human rights defenders can exercise their right to freedom of assembly freely, without undue interference and in a safe environment.

62. Authorities should also support and facilitate initiatives by human rights defenders for the independent monitoring of and reporting on assemblies, as these measures can contribute to greater accountability and improve the protection of the right to freedom of peaceful assembly. Human rights defenders and their organizations play a crucial watchdog role in any democracy and must, therefore, be permitted to freely observe public assemblies. Similarly, independent coverage by the media can increase public accountability for both organizers of assemblies and law-enforcement officials. The ability of independent media to access and report on assemblies



should, therefore, not be inhibited but, rather, protected and facilitated by the authorities.

#### **F. Freedom of association and the right to form, join and participate effectively in NGOs**

63. Everyone should be able to freely exercise the right to form, join and participate in groups or associations for the defence of human rights without discrimination of any kind, including on the basis of the nature of the rights defended. Any limitations on the exercise of the right to freedom of association must have a clear legal basis and must fully comply with the strict requirements prescribed by international human rights standards. Any limitations imposed must be necessary in a democratic society in the interests of one of the specific grounds set out in international human rights standards. Any such limitations must be proportionate.

64. States should review all legislation relevant to the right to freedom of association and to form, join and participate effectively in NGOs in order to ensure its consistency, coherence and compliance with relevant international human rights standards. States should consult with civil society when discussing amendments to such laws, and are encouraged to seek international assistance in carrying out such legislative reviews.

#### **Laws, administrative procedures and requirements governing the operation of NGOs**

65. Human rights defenders should be able to form groups or associations without an obligation to register or obtain legal personality in order to pursue their activities. The exercise of the right to freedom of association is not contingent on registration, and human rights defenders must not be criminalized for not registering a group or association. Any offences related to activity on behalf of an unregistered organization, including in relation to funding, should be promptly removed from legislation.

66. Formal registration and procedures to acquire legal personality should be available as an option to empower human rights defenders in carrying out their work in association with others, for example, for the purpose of accessing benefits or other support that may only be available to legal persons. In general, the legislative and administrative framework should be designed to

assist human rights defenders in creating organizations or groups and not to stigmatize them for their legitimate activities.

67. Laws and administrative procedures for NGOs to register officially or to obtain legal personality – if they so wish – should be clear and simple and not discriminatory. They should not impose undue and burdensome requirements on the organizations that may obstruct their work or unduly distract resources from their human rights activities. Any administrative and financial reporting requirements must be reasonable and provided for in law. Any inspections of NGO offices and financial records must have a clear legal basis and be fair and transparent. Audits should be specifically regulated by legislation. Such legislation should clearly define in an exhaustive list the grounds for possible inspections and the documents that need to be produced during the inspection. Furthermore, it should provide for a clearly defined and reasonable period of prior warning and maximum duration of inspections.

68. In overseeing compliance with reasonable requirements, authorities shall respect the independence and autonomous decision-making capacity of NGOs. They must not interfere with their internal affairs, management, planning and implementation of activities. They should respect the confidentiality of their internal matters and refrain from interfering by surveillance, infiltration or other means. The oversight and audit of NGOs should not be invasive, intrusive or paralyzing.

69. Where reasonable requirements for the registration or operation of NGOs are not met, the oversight or registration bodies should always give adequate warning so that corrections can be made. Members of human rights organizations must not be punished for non-compliance with unreasonable administrative or other requirements. Sanctions for the failure to comply with legitimate administrative requirements should be proportionate.

### **Access to funding and resources**

70 States should assist and facilitate NGO efforts to seek and obtain funds for human rights work while not interfering with their independence. They should, to the extent possible, make funds available to support independent NGOs. They should also take appropriate steps to encourage donations by private individuals or business corporations for human rights work, including by offering tax benefits for donations. In their human rights and development policies, states should ensure that funding for NGOs is accessible without

discrimination and prejudice to the activity of the organization, its geographical focus and the location of the human rights activity.

71. States should also, where required, assist and facilitate NGO efforts to obtain other material resources needed to carry out independent human rights work. They shall refrain from any arbitrary or unlawful acts that deprive NGOs of these resources, including by confiscating, damaging or destroying equipment or other property. They should also ensure that all public authorities and officials refrain from applying pressure on private actors in order to obstruct NGOs in their efforts to procure material resources.

72. Furthermore, all public authorities and officials should fully respect the independence of NGOs and refrain from using government funding or other financial or non-financial means to influence the work of NGOs and the broader human rights movement. State funding schemes should be transparent, fair and accessible on an equal basis to all human rights defenders and their NGOs.

73. States should not place undue restrictions on NGOs to seek, receive and use funds in pursuit of their human rights work. Domestic laws must not criminalize or delegitimize activities in defence of human rights on account of the origin of funding. States should guarantee that NGOs operating on their territory – whether registered or not – can seek and receive funding from abroad without undue restrictions and requirements. States should refrain from invoking efforts to eradicate money laundering and terrorism financing as pretexts for imposing discriminatory restrictions on NGO access to funding or monitoring of their transactions. Governmental authorization prior to seeking, receiving or using funds – whether from within or outside the country – should not be required.

#### **G. The right to participate in public affairs**

74. States should set up appropriate mechanisms and procedures for the participation of human rights defenders and their organizations both domestically and internationally. These should not be limited to one-off or ad-hoc consultations, but should provide for regular, ongoing, institutionalized and open dialogue to facilitate effective participation in public decision-making, including in policy and law-making and prior to drafting legislation.

75. Participation mechanisms and procedures should be inclusive, reflective of the diversity of human rights defenders and should take account of the

situation of those with specific needs or from marginalized groups, to ensure their participation on an equal basis.

#### **H. Freedom of movement and human rights work within and across borders**

76. States should recognize the importance of human rights work within and across borders and should fully comply with their commitments and relevant international standards concerning freedom of movement, including when human rights defenders leave or enter a country and when they move within their own country or seek to do so for the purpose of human rights work.

77. Everyone has the right to leave any country, including their own. Any restrictions on this right must be prescribed by law, necessary to achieve a legitimate aim as set out in relevant international human rights standards and proportionate to that aim. Furthermore, no one shall be arbitrarily deprived of the right to return to their own country.

78. Travel bans on human rights defenders that prevent them from leaving the country and are imposed solely for reasons related to their human rights work are inconsistent with international standards. Other measures which in practice have the same effect are similarly incompatible. Human rights defenders who are denied the right to leave their country because their name appears on a list of individuals not permitted to leave the country should have the right to know about and challenge such lists and have their names promptly removed from them if there is no lawful justification for their appearance on such lists.

79. Everyone lawfully within the territory of a state has the right to freedom of movement within that territory. Human rights defenders must not face any restrictions to that right beyond what is permissible under relevant international human rights standards. The state should effectively ensure freedom of movement of human rights defenders across its territory, including to remote regions, as required to effectively pursue their human rights activities. This should include, wherever possible, access to autonomous regions and disputed territories for the purpose of human rights monitoring and reporting, as well as other human rights activities. States should also facilitate access to relevant sites, such as places where assemblies or protests are held and places where people are deprived of their liberty, for the purpose of human rights monitoring and reporting.

80. In recognition of the importance of freedom of movement and contacts among people in the context of the protection and promotion of human rights and fundamental freedoms, states should also aim at facilitating visits by NGOs from other states for the purpose of participating in meetings, advocacy and other human rights activities.

81. Visa regimes and procedures should not impose undue obstacles for human rights defenders to travel to another state for the purpose of their human rights work and should be simplified as much as possible. States should consider practical measures to ensure that past arbitrary convictions, charges and arrests resulting from human rights work do not lead to denials of or undue delays in the visa applications of human rights defenders. Furthermore, visa applications must be considered duly and without discrimination on any ground such as race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth, age or other status.

82. Human rights defenders who are denied entry into a country because they have been included on a national list that prohibits entry to one or a group of states should be entitled to know about and appeal such prohibitions and entry bans before the relevant authorities and courts.

83. States should support, including through their diplomatic missions, human rights defenders who face imminent risks to their lives and well-being by temporarily moving them to a safe environment when required and, if necessary, by issuing emergency visas. In line with their obligations under international law, states should also grant human rights defenders longer-term international protection in the event that they have to flee their country for fear of persecution on account of their human rights work. They must fully comply with their obligation under international law not to return persons to countries where they face a real risk of being subjected to violations of their right to life, to be free from torture and other ill-treatment or other serious human rights violations.

84. Human rights defenders travelling to another state should not be subjected to border checks that are disproportionate or constitute a violation of their human rights. Similarly, they should not be subjected to searches at the border, including body searches that are disproportionate, fail to respect their dignity or are otherwise arbitrary. Furthermore, when crossing borders, human rights defenders should not face arbitrary confiscation of equipment,

including IT equipment, private data or information materials such as publications, leaflets and hand-outs, necessary for carrying out their human rights activities.

### **I. Right to private life**

85. States have a duty to refrain from any unlawful or arbitrary interference with the privacy, family life, home or correspondence of human rights defenders, including with their electronic communications, and to protect them from such interference by others through legislative and other measures. Any interference with privacy, family, home or correspondence must be provided for by law, necessary to achieve a legitimate aim in accordance with international human rights standards and proportionate to that aim.

86. States should also take steps towards ensuring and set out clearly the expectation that private companies that are subject to their jurisdiction but operate internationally do not facilitate such undue interferences in other states by providing software, surveillance technology and services used to target human rights defenders for their work. They should also support efforts by human rights defenders in building their knowledge and capacity to enhance the safety of their electronic communications.

87. Information or data obtained through unlawful or arbitrary interferences with a human rights defender's private life should be inadmissible in any legal proceedings against her or him. Authorities have an obligation to ensure that any information or data obtained – even if obtained legally – is not shared with anyone who is not authorized by law to receive, process and use it. In particular, effective measures have to be taken to ensure that such information or data is not made available to and used by mass media or others in order to publicly discredit human rights defenders. If obtained legally, such data and information must be stored only as long as strictly necessary, and then must be destroyed.

88. States should acknowledge that human rights defenders have a special need for protection from undue interference in their private life due to the nature of their work. States should also recognize that the confidentiality of human rights defenders' sources and the identity of their clients need to be respected in order for them to carry out their human rights work effectively. It is particularly important for human rights defenders working with individuals who are at high risk of physical and other attacks that the identity of sources

and clients is adequately protected. This is to ensure that these individuals feel sufficiently safe to provide information or seek assistance.

89. States should also recognize the specific protection needs that certain groups of human rights defenders, including in particular women human rights defenders, have in relation to matters concerning their private life.

#### **J. Right to access and communicate with international bodies**

90. States shall ensure that human rights defenders enjoy the right to unhindered access to and communication with international bodies, including international and regional bodies with the competence to receive and consider information concerning allegations of human rights abuses. States must protect human rights defenders, their families and associates from any form of reprisals for co-operating, having co-operated or seeking to co-operate with international institutions. All allegations of such reprisals – whether committed by public officials or other actors – must be promptly, thoroughly and independently investigated, and there must be no impunity for such acts. Victims and their families must have access to effective remedies and should obtain adequate reparation.

91. States should also refrain from any other action, including legislative measures, that may frustrate or undermine the right of human rights defenders to provide information, submit cases or participate in meetings with international bodies, including: OSCE institutions; the United Nations and its representatives and mechanisms in the field of human rights; the institutions of the Council of Europe and the Inter-American Commission on Human Rights (IACHR); international courts and tribunals; and any other human rights mechanisms at the international and regional level. States must refrain from actions that might prevent human rights defenders from travelling abroad to attend formal and informal meetings with international bodies. Moreover, they should not prevent human rights defenders from meeting with international delegations when these visit the country.

92. States should take proactive steps to facilitate communication between human rights defenders and international bodies with a view to improving the protection of human rights in the country. They should, for example, actively disseminate information in the country's local languages about international human rights mechanisms, related human rights instruments, recommendations, decisions and jurisprudence. They should consult with

human rights defenders when drafting periodic reports to human rights monitoring bodies and other mechanisms and should actively consult with them in ensuring adequate follow-up. They should accept visit requests from the UN, its representatives and mechanisms in the field of human rights, including the UN Special Rapporteur on the situation of human rights defenders. Furthermore, they should facilitate in good faith the conduct of such visits, as well as those by regional institutions, including of the Council of Europe and the IACHR, and provide space for human rights defenders to hold private meetings and confidentially share information with these bodies and institutions in the course of their visits. Furthermore, states should welcome ODIHR and other OSCE institutions to conduct visits and other monitoring activities.

#### **IV. FRAMEWORK FOR IMPLEMENTATION OF THE GUIDELINES**

##### **National implementation**

93. To ensure the protection of human rights defenders, participating States are encouraged to carry out – in consultation with civil society – a baseline review of laws and practices affecting human rights defenders. They should repeal or amend any laws and regulations that impede or hinder the work of human rights defenders and adjust their practices accordingly.

94. Participating States should strengthen the role of independent NHRIs and their mandate in accordance with the Paris Principles, and should consider granting them the competence to receive individual complaints if not yet done so. Where this is not yet the case, states should specifically mandate and resource NHRIs to systematically and impartially monitor and regularly report on the situation of human rights defenders, and to support them in obtaining redress for violations they experience as a result of their work. They should not in any way restrict the right of human rights defenders to access, communicate or otherwise engage with NHRIs. States should recognize that members and staff of independent NHRIs must be fully protected, as all other human rights defenders, from undue pressure and abuse.

95. Where required, states should consider setting up or designating inter-institutional coordinating bodies, with the participation of human rights defenders, to develop and implement strategies to enhance the protection of human rights defenders and to create and consolidate a safe and enabling



environment. Whether or not an inter-institutional co-ordinating body is required is best ascertained in consultation with human rights defenders. Such bodies should also be tasked with drawing up and administering appropriate protection programmes, policies and mechanisms in order to increase the physical safety and security of human rights defenders at risk.

96. Participating States are encouraged to translate the present Guidelines in local languages and, together with other relevant international standards, disseminate them widely among law enforcement agencies, the judiciary, the military, faith leaders, teachers and educators, health workers, journalists and other professional groups, civil society and other relevant actors. They should encourage non-state actors – including private businesses, political and social groups – to be guided by the Guidelines in carrying out their activities. Furthermore, they should co-operate with ODIHR in promoting awareness about the Guidelines and in training relevant public officials, professional groups and other actors to ensure appropriate follow-up and implementation.

### **Protection of human rights defenders in other OSCE participating States and third countries**

97. Participating States should consider setting up mechanisms and draw up national guidelines to support human rights defenders and their work in other OSCE participating States, as well as in other countries outside the OSCE region. Such national guidelines should include rapid response mechanisms for human rights defenders at imminent risk in other OSCE participating States and third countries.

98. Through their diplomatic missions, participating States should take action in the state concerned to support human rights defenders, in particular those at immediate risk of or subject to attacks, harassment, persecution and arbitrary detention. They should promote action by members of the diplomatic corps, for example, to meet with human rights defenders, visit those in detention, attend their trials and issue public statements or intervention letters to the authorities of the host state when required.

99. Participating States should also raise instances of threats, attacks, arbitrary arrests and other serious human rights violations against human rights defenders through other appropriate means with the state concerned, for example, in high-level meetings between governments, at international

forums or by calling, when required, the accredited diplomatic representative of the state concerned to a meeting.

100. Whenever required, participating States should – through their diplomatic missions in the state concerned or otherwise – facilitate the issuance of emergency visas and relocation support for individual human rights defenders to allow them to promptly leave the country where they are at risk. Effective protection measures should take into account the risks that family members of the human rights defenders are exposed to and should be extended to them if required. If relocated to another country, effective protection should also be provided to the family members of the human rights defender concerned.

101. Participating States should co-operate within the OSCE and other international forums to develop and strengthen international and regional standards and mechanisms for the protection of human rights defenders, including by providing relevant international institutions and mechanisms with sufficient resources and other political support. In doing so, they should ensure consistency and coherence in their interaction with different international organizations and human rights mechanisms at different levels.

102. Participating States should, in good faith, engage in peer review at the international level with a view to identifying protection gaps, shortcomings in national law and practices, as well as possible improvements that can be made to strengthen the protection of human rights defenders. They should draw on good practices from other states in that respect.

103. Participating States should co-operate with OSCE institutions and international human rights mechanisms, including the United Nations, its representatives and mechanisms in the field of human rights, as well as the institutions of the Council of Europe and the Organization of American States. They should do so, *inter alia*, by providing, in good faith, all information requested by such institutions and mechanisms and by responding to their communications without undue delay. Furthermore, they should ensure appropriate follow-up towards implementing without delay all recommendations by OSCE institutions and international human rights mechanisms and should fully comply with the judgements of international and regional courts.

104. To enable ODIHR to provide, in accordance with its mandate, information on relevant implementation issues, including to the OSCE

Permanent Council, as well as supporting material for the annual review of implementation, participating States are encouraged to supply information to ODIHR about the steps taken to implement the OSCE/ODIHR *Guidelines on the Protection of Human Rights Defenders*. In accordance with their commitment to co-operate with OSCE institutions, including in the continuous review of implementation, participating States should seek assistance from ODIHR, whenever required, with a view to ensuring full compliance with their human dimension commitments relevant to the protection of human rights defenders. They should welcome and facilitate ODIHR activities and other forms of assistance on their territory, and should actively support the Office in discharging its mandate.

### **OSCE**

105. The OSCE executive structures, institutions and field presences should contribute to the full realization of the rights and principles set out in the OSCE/ODIHR Guidelines, within their respective mandates.

## **B. Resolutions**

## **Resolution 68/181: Promotion 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: Protecting Women Human Rights Defenders (A/RES/68/181), 2013**

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other relevant instruments, including the Convention on the Elimination of All Forms of Discrimination against Women,

Recalling its resolution 53/144 of 9 December 1998, by which it adopted by consensus 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 annexed to that resolution, and reiterating the fundamental importance of the Declaration and its promotion and implementation,

Recalling also all previous resolutions on this subject, including its resolution 66/164 of 19 December 2011 and Human Rights Council resolutions 16/5 of 24 March 2011 and 22/6 of 21 March 2013,

Recalling further the Vienna Declaration and Programme of Action, the Declaration on the Elimination of Violence against Women, the Programme of Action of the International Conference on Population and Development and the Beijing Declaration and Platform for Action and their review outcomes, as well as the agreed conclusions and resolutions of the Commission on the Status of Women,

Acknowledging the attention given by the Human Rights Council to the importance of women human rights defenders and of ensuring their protection and enabling their work in recent resolutions, and noting the panel discussion on women human rights defenders convened on 26 June 2012,

Acknowledging also that women of all ages who engage in the promotion and protection of all human rights and fundamental freedoms and all people who engage in the defence of the rights of women and gender equality, individually and in association with others, play an important role, at the local, national, regional and international levels, in the promotion and protection of human rights, in accordance with 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,

Noting with deep concern that in many countries persons and organizations engaged in promoting and defending human rights and fundamental freedoms, including women human rights defenders, frequently face threats and harassment and suffer insecurity as a result of those activities, including through the curtailment of freedom of association or expression or the right to peaceful assembly or the abuse of civil or criminal proceedings,

Gravely concerned that women human rights defenders are at risk of and suffer from violations and abuses, including systematic violations and abuses of their fundamental rights to life, liberty and security of person, to psychological and physical integrity, to privacy and respect for private and family life and to freedom of opinion and expression, association and peaceful assembly, and in addition can experience gender-based violence, rape and other forms of sexual violence, harassment and verbal abuse and attacks on reputation, online and offline, by State actors, including law enforcement personnel and security forces, and non-State actors, such as those related to family and community, in both public and private spheres,

Deeply concerned that historical and structural inequalities in power relations and discrimination against women, as well as various forms of extremism, have direct implications for the status and treatment of women and that the rights of some women human rights defenders are violated or abused and their work stigmatized owing to discriminatory practices and those social norms or patterns that serve to condone violence against women or perpetuate practices involving such violence,

Gravely concerned that impunity for violations and abuses against women human rights defenders persists owing to factors including a lack of reporting, documentation, investigation and access to justice, social barriers and constraints with regard to addressing gender-based violence, including sexual

violence and the stigmatization that may result from such violations and abuses, and a lack of recognition of the legitimate role of women human rights defenders, all of which entrench or institutionalize gender discrimination,

Concerned that all forms of discrimination, including racism, racial discrimination, xenophobia and related intolerance, can lead to the targeting or vulnerability to violence of women human rights defenders, who are prone to multiple, aggravated or intersecting forms of discrimination,

Aware that information-technology-related violations, abuses, discrimination and violence against women, including women human rights defenders, such as online harassment, cyberstalking, violation of privacy, censorship and the hacking of e-mail accounts, mobile phones and other electronic devices, with a view to discrediting them and/or inciting other violations and abuses against them, are a growing concern and can be a manifestation of systemic gender-based discrimination, requiring effective responses compliant with human rights,

Mindful that domestic law and administrative provisions and their application should enable the work of women human rights defenders, including by avoiding any criminalization or stigmatization of the important activities and legitimate role of women human rights defenders and the communities of which they are a part or on whose behalf they work, as well as by avoiding impediments, obstructions, restrictions or selective enforcement thereof contrary to relevant provisions of international human rights law,

Recalling that the primary responsibility for promoting and protecting human rights and fundamental freedoms rests with the State, and reaffirming that national legislation consistent with the Charter and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights defenders, including women human rights defenders, conduct their activities,

Gravely concerned that, in some instances, national security and counter-terrorism legislation and other measures have been misused to target human rights defenders, including women human rights defenders, or have hindered their work and endangered their safety in a manner contrary to international law,

Recognizing the urgent need to address, and to take concrete steps to prevent and stop, the use of legislation to hinder or limit unduly the ability of human rights defenders, including women human rights defenders, to exercise their work, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with States' obligations and commitments under international human rights law,

Underlining the need for all appropriate measures to be taken to modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and other practices based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women, in accordance with States' obligations and commitments under international human rights law, thereby addressing harmful attitudes, customs, practices and gender stereotypes that underlie and perpetuate violence against women, including women human rights defenders,

Reaffirming that the empowerment, autonomy and advancement of women and the improvement of their political, social, legal and economic status are essential to respect for all human rights, the growth and prosperity of society and the achievement of representative, transparent and accountable government, democratic institutions and sustainable development in all areas of life,

Recognizing the valuable work of human rights defenders, including women human rights defenders, in promoting civil, political, economic, social and cultural rights and the right to development,

Welcoming the opportunity afforded by the 2015 development agenda for the global community to advance the human rights and fundamental freedoms of all persons, including gender equality and non-discrimination, as well as real and effective participation, including equal political participation, in decision-making processes,

Welcoming also the steps taken by some States towards the adoption of national policies or legislation for the protection of individuals, groups and organs of society engaged in promoting and defending human rights, including as follow-up to the universal periodic review mechanism of the Human Rights Council,



1. Calls upon all States to promote, translate and give full effect 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, including by taking appropriate, robust and practical steps to protect women human rights defenders;
2. Takes note with appreciation of the work of the Special Rapporteur on the situation of human rights defenders, noting the particular attention given to women human rights defenders;
3. Stresses that respect and support for the activities of human rights defenders, including women human rights defenders, is essential to the overall enjoyment of human rights, and condemns all human rights violations and abuses committed against persons engaged in promoting and defending human rights and fundamental freedoms;
4. Recognizes that all human rights are universal, indivisible and interdependent and that the international community must treat human rights globally in a fair and equal manner, on the same footing and with the same emphasis, and stresses that, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms;
5. Expresses particular concern about systemic and structural discrimination and violence faced by women human rights defenders of all ages, and calls upon States to take all measures necessary to ensure their protection and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights;
6. Reiterates strongly the right of anyone, individually and in association with others, to defend the human rights of women in all their aspects, and stresses the important role of women human rights defenders in promoting and protecting human rights and fundamental freedoms, to which everyone is entitled without distinction of any kind, including in addressing all forms of human rights violations, combating impunity, fighting poverty and discrimination and promoting access to justice, democracy, the full participation of women in society, tolerance, human dignity and the right to development, while recalling that the exercise of these rights carries duties and responsibilities set out in the Declaration;

7. Urges States to acknowledge publicly the important and legitimate role of women human rights defenders in the promotion and protection of human rights, democracy, the rule of law and development as an essential component of ensuring their protection, including by publicly condemning violence and discrimination against women human rights defenders;

8. Calls upon States to ensure that human rights defenders, including women human rights defenders, can perform their important role in the context of peaceful protests, in accordance with national legislation consistent with the Charter of the United Nations and international human rights law, and in this regard to ensure that no one is subject to excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, abuse of criminal and civil proceedings or threats of such acts;

9. Also calls upon States to exercise due diligence in preventing violations and abuses against human rights defenders, including through practical steps to prevent threats, harassment and violence against women human rights defenders, who face particular risks, and in combating impunity by ensuring that those responsible for violations and abuses, including gender-based violence and threats against women human rights defenders, committed by State and non-State actors, including online, are promptly brought to justice through impartial investigations;

10. Further calls upon States to ensure that the promotion and protection of human rights are not criminalized or met with limitations in contravention of their obligations and commitments under international human rights law and that women human rights defenders are not prevented from enjoying universal human rights owing to their work, including by ensuring that all legal provisions, administrative measures and policies affecting women human rights defenders, including those aimed at preserving public morals, are clearly defined, determinable, non-retroactive and compatible with relevant provisions of international human rights law;

11. Underlines the fundamental principle of the independence of the judiciary and that procedural safeguards must be in place in accordance with States' obligations and commitments under international human rights law in order to protect women human rights defenders from unwarranted criminal actions and sanctions as a consequence of their work in line with the Declaration;

12. Also underlines that women human rights defenders have the right to the lawful exercise of their occupation or profession and that everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics;

13. Stresses that, in the exercise of the rights and freedoms referred to in the Declaration, women human rights defenders, 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;

14. Urges States to strengthen and implement legal, policy and other measures to promote gender equality, empower women and promote their autonomy and to promote and protect their equal participation, full involvement and leadership in society, including in the defence of human rights;

15. Invites leaders in all sectors of society and in their respective communities, including political, military, social and religious leaders and leaders in business and the media, to express public support for the important role of women human rights defenders and the legitimacy of their work;

16. Calls upon States to implement, effectively and expeditiously, Security Council resolutions 1325 (2000) of 31 October 2000, 1820 (2008) of 19 June 2008, 1888 (2009) of 30 September 2009, 1889 (2009) of 5 October 2009, 1960 (2010) of 16 December 2010, 2106 (2013) of 24 June 2013 and 2122 (2013) of 18 October 2013 on women and peace and security, including through the provision of gender-sensitivity training for police officers and law enforcement personnel, inter alia, on the barriers that women human rights defenders face in gaining access to justice in armed conflict and post-conflict situations, ensuring the inclusion of sexual violence in the definition of acts prohibited by ceasefires and in provisions for ceasefire monitoring and the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, as a step towards the effective protection of women, including women human rights defenders;

17. Strongly calls upon States to refrain from, and ensure adequate protection from, any act of intimidation or reprisal against women human rights defenders who cooperate, have cooperated or seek to cooperate with international institutions, including their family members and associates;

18. Reaffirms the right of everyone, individually and in association with others, to unhindered access to and communication with international bodies, in particular the United Nations, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms;

19. Urges States to develop and put in place comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women human rights defenders, including by providing adequate resources for immediate and long-term protection and making sure that these can be mobilized in a flexible and timely manner to guarantee effective physical and psychological protection, while also extending protection measures to their relatives, including children, and otherwise to take into account the role of many women human rights defenders as the main or sole caregivers in their families;

20. Emphasizes the need for the participation of women human rights defenders in the development of effective policies and programmes related to their protection, recognizing their independence and expertise with regard to their own needs, and the need to create and strengthen mechanisms for consultation and dialogue with women human rights defenders, such as focal points for human rights defenders within the public administration, for example, through national mechanisms for the advancement of women and girls, where they exist, or other mechanisms, depending on the national and local context;

21. Urges States to adopt and implement policies and programmes that provide women human rights defenders with access to effective remedies, including by ensuring:

(a) The effective participation of women human rights defenders in all initiatives, including transitional justice processes, to secure accountability for violations and abuses, and also ensuring that the guarantee of non-recurrence incorporates overcoming the root causes of gender-based violations and abuses in everyday life and institutions;

- (b) Adequate access to comprehensive support services for those women human rights defenders who experience violence, including shelters, psychosocial services, counselling, medical care and legal and social services;
- (c) That women human rights defenders who are victims of sexual and other forms of violence are attended to by adequately trained and equipped personnel with gender sensitivity and expertise and are consulted during each step of the process;
- (d) That women human rights defenders are able to avoid situations of violence, including by preventing the occurrence or recurrence of such violence in the exercise of their important and legitimate role in accordance with the present resolution;

22. Also urges States to promote and support projects to improve and further develop the documentation and monitoring of cases of violations against women human rights defenders, and encourages the provision of adequate support and resources for those working to protect women human rights defenders, such as government agencies, national human rights institutions and civil society, including national and international non-governmental organizations;

23. Encourages national human rights institutions to support the documentation of violations against women human rights defenders and to integrate a gender dimension into the planning and implementation of all programmes and other interventions related to human rights defenders, including through consultations with the relevant stakeholders;

24. Encourages regional protection mechanisms, where they exist, to promote projects to improve and further develop the documentation of cases of violations against women human rights defenders and to ensure that programmes for the security and protection of human rights defenders integrate a gender perspective and address the specific risks and security needs of women human rights defenders;

25. Encourages United Nations bodies, agencies and other entities, within their respective mandates and in cooperation with the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights, to address the situation of human rights defenders, including women human rights defenders, in their work and to contribute to the effective implementation of the Declaration;

26. Requests all concerned United Nations agencies and organizations, within their mandates, to provide all possible assistance and support to the Special Rapporteur for the effective fulfilment of her mandate, including in the context of country visits and through suggestions on ways and means of ensuring the protection of women human rights defenders;
27. Requests the Special Rapporteur to continue to report annually on her activities to the General Assembly and the Human Rights Council, in accordance with her mandate;
28. Decides to continue its consideration of this matter.

## **Resolution 69: Resolution on the Protection of Human Rights Defenders in Africa, 2004**

**The African Commission on Human and Peoples' Rights meeting at its 35th Ordinary Session held from 21 May to 4 June 2004, in Banjul, The Gambia**

Recognising the crucial contribution of the work of human rights defenders in promoting human rights, democracy and the rule of law in Africa;

Seriously concerned about the persistence of violations targeting individuals and members of their families, groups or organisations working to promote and protect human and peoples' rights and by the growing risks faced by human rights defenders in Africa;

Noting with deep concern that impunity for threats, attacks and acts of intimidation against human rights defenders persists and that this impacts negatively on the work and safety of human rights defenders;

Recalling that it is entrusted by the African Charter on Human and Peoples' Rights with the mandate to promote human and peoples' rights and ensure their protection in Africa;

Reaffirming the importance of the observance of the purposes and principles of the African Charter for the promotion and protection of all human rights and fundamental freedoms for human rights defenders and all persons on the continent;

Bearing in mind 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 (Declaration on Human Rights Defenders);

Mindful that in the Grand Bay (Mauritius) Declaration, the Organisation of African Unity called on Member States 'to take appropriate steps to implement the UN Declaration on Human Rights Defenders in Africa';

Mindful that the Kigali Declaration recognises 'the important role that the human rights defenders play in the promotion and protection of human rights in Africa';

Recalling its decision to include on its agenda the situation of human rights defenders and to nominate a focal point on human rights defenders;

1. Now decides to appoint a Special Rapporteur on human rights defenders in Africa for a period of two years with the following mandate:  
to seek, receive, examine and to act upon information on the situation of human rights defenders in Africa;  
to submit reports at every Ordinary Session of the African Commission;  
to cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders, human rights defenders and other stake holders;  
to develop and recommend effective strategies to better protect human rights defenders and to follow up on his/her recommendations;  
to raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa;
2. Further decides to nominate Commissioner Jainaba Johm as the Special Rapporteur on Human Rights Defenders for the current duration of her mandate within this Commission;
3. Reiterates its support for the work carried out by human rights defenders in Africa;
4. Calls upon Member States to promote and give full effect to the UN Declaration on Human Rights Defenders, to take all necessary measures to ensure the protection of human rights defenders and to include information on measures taken to protect human rights defenders in their periodic reports;
5. Invites its members to mainstream the issue of human rights defenders in their activities;
6. Urges Member States to co-operate with and assist the Focal Point in the performance of his/her tasks and to provide all necessary information for the fulfilment of his/her mandate;
7. Requests the African Union to provide adequate resources, assistance and support in the implementation of this Resolution.



## **Resolution 104: Resolution on the Situation of Human Rights Defenders in Africa, 2007**

**The African Commission on Human and Peoples' Rights,  
meeting at its 41<sup>st</sup> Ordinary Session in Accra, Ghana, from  
16 - 30 May 2007**

Recalling the various human rights protection instruments, particularly the United Nations Declaration on Human Rights Defenders, the Grand Bay Declaration and Plan of Action, the Kigali Declaration, and the Principles and Guidelines on the Right to a Fair Trial and Legal Aid in Africa,

Also recalling the obligations of States Parties to the African Charter on Human and Peoples' Rights (the African Charter) and to other regional and international human rights instruments for the protection of human rights, more especially, the obligation to guarantee the security of persons living in their own country, the freedoms of assembly, association, and expression of human rights defenders, and their right to take part in the management and conduct of the public affairs of their countries,

Deeply concerned by the situation of human rights defenders within the States Parties to the African Charter, who – as a result of their activities – have suffered multiple violations of their basic rights such as arbitrary arrests, illegal detentions, acts of torture, inhuman and degrading treatment, extra-judicial killings, lack of the right to counsel, and the refusal of medical care and food during the period of their detention,

Recognizing the insecurity that often characterizes post-election periods in Africa, more especially, as it affects human rights defenders, especially during election campaigns which take place in African countries:

1. Urges all States Parties to the African Charter to fulfill all their obligations as stipulated in the Charter, in the Principles and Guidelines on the Right to a Fair Trial and Legal Aid in Africa, in the United Nations Declaration on Human Rights Defenders, in the Grand Bay Declaration, in the Kigali Declaration, as well as in the other international and regional instruments to which they are parties;

2. Urges States Parties to take all the necessary measures to ensure the protection of all human rights defenders and ensure that they have an environment which allows them to carry out their activities safely, without suffering any acts of violence, threats, reprisals, discrimination, pressure and any arbitrary acts by State or non-State actors as a result of their human rights activities;
3. Recommends that States Parties to the Charter should take specific measures to ensure the physical and moral integrity of their peoples, especially those of human rights defenders, to enable the latter to fully play their role in the promotion and protection of human rights especially during election periods.

## **Resolution 273: Resolution on Extending the Scope of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa, 2014**

**The African Commission on Human and Peoples' Rights, meeting at its 55<sup>th</sup> Ordinary Session in Luanda, Angola, from 28 April to 12 May 2014**

Recognizing its mandate to promote and protect human and peoples' rights under the African Charter on Human and Peoples' Rights (the African Charter);

Further recalling its Resolution ACHPR/Res.69 (XXXV) 04 on the protection of human rights defenders in Africa and its Resolutions ACHPR/Res. 119 (XXXXII) 07 and ACPHR/Res. 196 (L) 11 on the situation of human rights defenders in Africa;

Recalling the human rights protection instruments, particularly the United Nations Declaration on Human Rights Defenders in 1998, the Grand Bay Declaration and its Plan of action adopted by the OAU Ministerial Conference on the promotion and protection of Human Rights in Africa in 1999, the Kigali Declaration in 2003, and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa;

Cognizant of the obligations of African Union member States under the African Charter and under other regional and international human rights instruments for the protection of human rights, the obligation to guarantee the security of persons living in their own country, as well as freedoms of assembly, of association, of expression of human rights defenders and their right to take part in the management and conduct of public affairs;

Further recognizing the importance of the work carried out by civil society stakeholders, in particular human rights defenders collaborating with the African human rights system, for the promotion and protection of human rights, democracy and the rule of law in Africa;

Deeply concerned about the hostile environment in which civil society stakeholders collaborating with the African human rights system operate, and

the fact they are victims of various kind of human rights violations as reprisals for their activities in defense of human rights;

Concerned by the total impunity that continues to be enjoyed by the perpetrators of these acts of reprisals against those who collaborate with the African system of human rights;

Noting that the mandate of the Special Rapporteur on human rights defenders does not cover the specific issue of monitoring reprisals against human rights defenders collaborating with the African human rights system;

Determined to combat all obstruction of activities being conducted by those collaborating with the African human rights system and all forms of violence and reprisals against them;

Decides to extend the scope of the Special Rapporteur's mandate to include issues relating to reprisals against human rights defenders;

Decides, in this regard, to give this mechanism the additional responsibility of:

1. Gathering information on and effectively addressing cases of reprisals against civil society stakeholders;
2. Documenting and maintaining a database on cases of reprisals brought to its attention;
3. Providing guidance to the Commission for the adoption of urgent measures to deal with specific cases of reprisals;
4. Presenting reports on cases of reprisals at each Ordinary Session of the Commission in the Special Rapporteur's activity report;
5. Ensuring a follow-up of registered cases.

## **Resolution 275: Resolution on Protection Against Violence and Other Human Rights Violations Against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity, 2014**

**The African Commission on Human and Peoples' Rights,  
meeting at its 55<sup>th</sup> Ordinary Session held in Luanda, Angola,  
from 28 April to 12 May 2014**

Recalling that Article 2 of the African Charter on Human and Peoples' Rights (the African Charter) prohibits discrimination of the individual on the basis of distinctions of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status;

Further recalling that Article 3 of the African Charter entitles every individual to equal protection of the law;

Noting that Articles 4 and 5 of the African Charter entitle every individual to respect of their life and the integrity of their person, and prohibit torture and other cruel, inhuman and degrading treatment or punishment;

Alarmed that acts of violence, discrimination and other human rights violations continue to be committed on individuals in many parts of Africa because of their actual or imputed sexual orientation or gender identity;

Noting that such violence includes 'corrective' rape, physical assaults, torture, murder, arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail;

Further alarmed at the incidence of violence and human rights violations and abuses by State and non-State actors targeting human rights defenders and civil society organisations working on issues of sexual orientation or gender identity;

1. Condemns the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other

forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity;

2. Specifically condemns the situation of systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity;

3. Calls on State Parties to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities; and

4. Strongly urges States to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.

## **Resolution 336: Resolution on Measures to Protect and Promote the Work of Women Human Rights Defenders, 2016**

**The African Commission on Human and Peoples' Rights, meeting at its 19<sup>th</sup> Extra-Ordinary Session, held in Banjul, The Islamic Republic of The Gambia, from 16 to 25 February 2016**

Recalling its mandate to promote and protect human and peoples' rights in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

Further recalling its Resolutions ACHPR/Res.69 (XXXV) 04, ACHPR/Res.119 (XXXXII) 07, ACHPR/Res.196 (L) 11 and ACHPR/Res.273 (LV) 2014 relevant to the situation of human rights defenders in Africa and the mandate of the Special Rapporteur on the Human Rights defenders;

Considering the obligations of State Parties under Article 18 (3) of the African Charter and the relevant provisions of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), particularly in light of the celebration of the African Year of Human Rights with particular focus on the Rights of Women, to eliminate all discrimination against women and ensure the protection of their rights;

Recalling the Report on the Situation of Women Human Rights Defenders in Africa, adopted at the Commission's 56<sup>th</sup> Ordinary Session, held in Banjul, The Gambia, from 21 April to 7 May 2015;

Considering that Resolution ACHPR/Res.196 (L)11 acknowledges the difficult environment in which human rights defenders in Africa conduct their work, which is often characterized by arbitrary arrests and detentions, acts of harassment, threats and other forms of intimidation, summary and extra-judicial executions or torture;

Further considering that Resolution ACHPR/Res.245 (LIV) 13 recognizes the challenges confronting women in Africa, particularly with regard to the recognition, exercise and enjoyment of their rights;

Emphasizing the importance of State Parties making progress on the implementation of UN General Assembly resolution on Women Human Rights Defenders (A/RES/68/181) of 18 December 2013;

Bearing in mind the human rights protection instruments, particularly the United Nations Declaration on Human Rights Defenders, and that in the Grand Bay Declaration and Action Plan (Mauritius), the Organisation of African Unity (African Union) called on Member States; ‘to take all the necessary measures to implement the United Nations Declaration on Human Rights Defenders in Africa’;

Emphasizing the obligations of State Parties under other regional and international human rights instruments to protect and promote human rights, particularly the obligation to guarantee the security of persons living in their own country, as well as freedoms of assembly, association, and expression;

Convinced that women human rights defenders face particular barriers to engaging in the defense of human rights and risks in the conduct of their work to defend human rights;

Deeply concerned regarding the impunity that perpetrators of acts of violence on human rights defenders, in particular on women human rights defenders continue to enjoy in a large number of African countries;

Noting efforts by some State Parties to ensure an enabling environment for human rights defenders, including by reaffirming the legitimacy of the work of women human rights defenders;

The Commission:

Calls on State Parties to:

- i. disseminate and implement the recommendations of the Commission’s Report on the Situation of Women Human Rights Defenders in Africa, in consultation with relevant stakeholders, and in particular women human rights defenders;
- ii. end impunity by adopting specific laws and relevant measures to promote and protect the work of human rights defenders, which should include provisions that recognize and address the specific protection needs of women human rights defenders;



- iii. ensure that efforts designed to prevent and address violations and discrimination against women human rights defenders are developed and monitored in consultation with human rights defenders and other relevant stakeholders;
- iv. train the judiciary and public security and other relevant authorities on the specific risks and protections for human rights defenders and in particular women human rights defenders;
- v. report on the progress made in the promotion and protection of the work of women human rights defenders during presentation of periodic reports to the Commission in accordance with Article 62 of the African Charter and Article 26 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

## **Resolution 345: Resolution on the Situation of Human Rights Defenders in Africa, 2016**

**The African Commission on Human and Peoples' Rights, meeting at its 58<sup>th</sup> Ordinary Session held in Banjul, Islamic Republic of Gambia, from 6 to 20 April 2016**

*Recalling* its mandate to promote and protect human and peoples' rights in Africa under the African Charter on Human and Peoples' Rights (the African Charter);

*Recalling* Commission Resolution ACHPR/ Res. 69 (XXXV) 04 on the protection of human rights defenders (HRDs) in Africa and Resolutions ACHPR/ Res.104, ACHPR / Res. 119 (XXXXII) 07 and ACHPR/ Res.196 (L) 11 on the situation of human rights defenders in Africa;

*Recalling* the human rights protection instruments, in particular the United Nations Declaration on Human Rights Defenders of 1998, the Grand Bay Declaration and Plan of Action of 1999 adopted by the OAU Ministerial Conference on the promotion and protection of human rights in Africa, the Kigali Declaration adopted in 2003 by the African Union (AU) Ministerial Conference on human rights in Africa;

*Recalling further* Commission Resolution ACHPR/Res.273 (LV) 2014 on the expansion of the mandate of the Special Rapporteur on Human Rights Defenders in Africa and Resolution ACHPR/Res.336 (EXT.OS/XIX) 2016 on measures to protect and promote the rights of women human rights defenders;

*Deeply concerned* about the situation of human rights defenders including those working on land and environmental issues in States Parties to the African Charter, particularly those who, because of their activities, are subjected to several violations of their fundamental rights, such as arbitrary arrest, illegal detention, extrajudicial killing, denial of the right to defence, denial of medical treatment and food during their detention;

*Further concerned* about the situation of human rights defenders in some African countries where they are regularly victims of judicial harassment,

arbitrary arrest and detention, travel ban, freezing of funds, space restriction, prohibition of demonstration and assembly, arbitrary suspension of their activities;

*Commending* the efforts of some States Parties to promote and protect the rights of human rights defenders;

*The Commission:*

- i. *Reminds* all States Parties to the African Charter on Human and Peoples' Rights of their obligation to promote and protect the rights and freedoms enshrined in the African Charter and other relevant human rights instruments;
- ii. *Strongly condemns* obstacles to the activities of human rights defenders and all forms of violence and reprisals against them;
- iii. *Urges* all States Parties to meet their obligations under the United Nations Declaration on Human Rights Defenders, the Grand Bay Declaration, the Kigali Declaration and the Principles and Guidelines on Human and Peoples' Rights while Combating Terrorism in Africa;
- iv. *Urges* States parties to release arbitrarily detained human rights defenders and put an end to all forms of harassment and other acts of intimidation against human rights defenders including individuals or groups of individuals who cooperate with or bring matters before African human rights mechanisms;
- v. *Calls on* States parties to take the necessary measures to conduct independent investigations into violations of the rights of human rights defenders and prosecute the perpetrators;
- vi. *Encourages* States parties to enact specific laws on the protection of human rights defenders.

## **Resolution 376: Resolution on the Situation of Human Rights Defenders in Africa, 2017**

**The African Commission on Human and Peoples' Rights,  
meeting at its 60<sup>th</sup> Ordinary Session held from 8 to 22 May 2017  
in Niamey, Niger**

*Recalling* its mandate to promote and protect human and peoples' rights in Africa under the African Charter on Human and Peoples' Rights (African Charter);

*Bearing in mind* its Resolution ACHPR/Res.69 (XXXV) 04 establishing the mechanism of the Special Rapporteur on Human Rights Defenders in Africa and its Resolutions ACHPR/Res.119 (XXXXII) 07, ACHPR/Res.196 (L) 11, ACHPR/Res.273 (LV) 14 and ACHPR/Res. 336 (XIX) 16 on the situation of human rights defenders in Africa;

*Considering* Resolution ACHPR/Res.196 (L) 11 which recognises the difficult environment in which human rights defenders in Africa work;

*Considering* Resolution ACHPR/Res.245 (LIV) 13 which recognises the challenges faced by women human rights defenders on the African continent regarding the recognition, exercise and enjoyment of their rights;

*Further considering* the obligations of States Parties under Article 1 of the African Charter and the relevant provisions of regional and international human rights instruments, including the obligation to guarantee the security of persons living in their territories, as well as the freedom of assembly, association, expression, and access to information of human rights defenders and their right to participate in the management and government of their country;

*Bearing in mind* the instruments for the protection of the rights of human rights defenders, in particular 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 (1998 UN Declaration on Human Rights Defenders), the 1999 Grand Bay Declaration and Plan of Action, and the 2003 Kigali Declaration;

*Recognising* the importance of the contribution of human rights defenders to the protection of human and peoples' rights, democracy, rule of law, peace consolidation and sustainable development;

*Deeply concerned* about the situation of human rights defenders in Africa, and their families, who as a result of their activities are victims of several forms of violation, including arbitrary arrest, unlawful detention, acts of torture, inhuman and degrading treatment, extrajudicial and summary execution, killing, enforced disappearance, denial of the right to fair trial, access to medical care and right to food while in detention, and are forced to go into exile;

*Also concerned* about the persistence of reprisals against human rights defenders who cooperate with human rights mechanisms;

*Noting* with satisfaction the initiative taken by some States Parties to enact specific laws for the protection of human rights defenders in accordance with international standards and measures for their implementation;

*Recalling* that States Parties recognised in the 2003 Kigali Declaration 'the important role of human rights defenders in the promotion and protection of human rights in Africa';

*Conscious* of the fact that since the establishment of the mechanism of the Special Rapporteur on Human Rights Defenders in Africa much progress has been made, including the establishment of sub-regional networks of human rights defenders, the study and adoption of the report on women human rights defenders and the Report of the Study of Freedom of Association;

*Concerned* about new challenges, in particular the increased threats against defenders working on issues including the right to health, the fight against HIV/AIDS, reproductive health, sexual orientation and gender, extractive industries, promotion of democracy and peace, and women rights defenders irrespective of their area of activity;

*Concerned* by the shrinking civic space through the enactment or amendment of laws within the framework of the fight against terrorism, in particular regarding freedom of association, demonstration, expression and access to information which are the fundamental pillars of the work of human rights defenders;

*Convinced* that women human rights defenders face obstacles and risks while carrying out their human rights activities;

*Conscious* that the 1999 Grand Bay Declaration calls on State Parties to ‘take appropriate steps to implement in Africa the UN Declaration on the Protection of Human Rights Defenders’;

*Noting* the Cotonou Declaration issued at the end of the 2<sup>nd</sup> International Colloquium on the Situation of Human Rights Defenders in Africa of March 2017;

The Commission calls upon States Parties to:

1. Comply with their obligations under the African Charter on Human and Peoples’ Rights and other relevant human rights instruments ratified;
2. Take the necessary measures to provide human rights defenders with a conducive environment to be able to carry out their activities without fear of acts of violence, threat, intimidation, reprisal, discrimination, oppression and harassment from State and non-State actors;
3. Adopt specific legislative measures to recognise the status of human rights defenders, and protect their rights and the rights of their colleagues and family members, including women human rights defenders and those working on issues such as extractive industries, health and HIV/AIDS, reproductive health, sexual orientation and gender identity, promotion of peace and democracy, fight against terrorism, and respect for human rights;
4. Refrain from using the fight against terrorism as a pretext to restrict fundamental freedoms, including freedom of religion and conscience, expression, association, assembly and movement;
5. Enact specific laws in conformity with the UN Declaration on Human Rights Defenders, the Grand Bay Declaration and Plan of Action, and the Kigali Declaration, and take the necessary measures for their implementation.

## **Resolution 381: Resolution on the Appointment of the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa, 2017**

**The African Commission on Human and Peoples' Rights, meeting at its 61<sup>st</sup> Ordinary Session held from 1 to 15 November 2017, in Banjul, The Gambia**

Recalling its mandate to promote and protect human and peoples' rights in Africa under the African Charter on Human and Peoples' Rights (African Charter);

Recalling its Resolution ACHPR/Res.69 (XXXV) 04 on the protection of human rights defenders in Africa adopted at its 35<sup>th</sup> Ordinary Session held from 21 May to 4 June 2004 in Banjul, The Gambia;

Further recalling its Resolutions ACHPR/Res.56 (XXIX) 01, ACHPR/Res.104 (XXXXI) 07, ACHPR/Res.119 (XXXXII) 07, ACHPR/Res.196 (L) 11, ACHPR/Res.345 (LVIII) 16 and ACHPR/Res.376 (LX) 17 on the situation of human rights defenders in Africa;

Bearing in mind its Resolutions ACHPR/Res.83 (XXXVIII) 05, ACHPR/Res.149 (XLVI) 09, ACHPR/Res.171 (XLVII) 10, and ACHPR/Res.202 (L) 11 on the appointment of the various Special Rapporteurs on Human Rights Defenders in Africa;

Recalling its Resolutions ACHPR/Res.248 (LIV) 2013 and ACHPR/Res.315 (LVII) 15 on the Renewal of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa;

Bearing in mind also that in the Grand Bay Declaration and Plan of Action (Mauritius), the Organisation of African Unity (African Union) called on Member States 'to take appropriate measures to implement the United Nations Declaration on Human Rights Defenders';

Recalling its Resolution ACHPR/Res.273 (LV) 14 on the expansion of the mandate of the Special Rapporteur on Human Rights Defenders in Africa to include reprisals, adopted at the 55<sup>th</sup> Ordinary Session held from 28 April to 12 May 2014 in Luanda, Angola;

Considering the new responsibilities of the Special Rapporteur as the focal person for cases of reprisals against human rights defenders in Africa;

Considering the end-of-term report of the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa;

Noting with appreciation the work undertaken by Commissioner Reine Alapini Gansou as the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa;

Noting the importance of the work of the Special Rapporteur regarding the search for solutions to problems relating to the protection of human rights defenders;

Considering the need for the mechanism of the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa to continue to carry out its mandate;

Decides to appoint Commissioner Prof. Rémy Ngoy Lumbu as the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa for a period of two (2) years, with effect from 15 November 2017.





## **C. Model Law**

# **Model Law for the Recognition and Protection of Human Rights Defenders**

**Developed by human rights experts and jurists, Adopted in 2016,  
first published in 2017**

## **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, reprisal 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;
- Face-to-face consultations with over 500 human rights defenders from more than 110 States from all regions, sub-regions and legal traditions;
- A monitoring mission and comparative literature review; 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.

### **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 their 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 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 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, 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.

## **Law for the Recognition and Protection of Human Rights Defenders**

### **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].

## **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.

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

### **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.

### **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.

### **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.

### **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.

### **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.

### **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.



### **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.

### **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 nondiscriminatory 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.

### **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.

### **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.

### **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.

#### **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.

#### **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.

#### **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.

#### **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.

### **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.

### **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.

### **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.

### **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.

## **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.

### **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.

**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.

**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.

**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.

**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.

**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.

(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.

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.

### **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.

### **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.

### **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.

### **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.

### **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.

## **PART IV. MECHANISM FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS**

### **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.

### **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.

### **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.

## **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.

### **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.

## **Annexure 1: Potential Additional Provisions to Mandate, Resource and Implement a Mechanism for the Protection of Human Rights Defenders**

### **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).

### **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.

#### **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.

#### **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.

#### **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].

### **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.

## **Annexure II: Potential Additional Provisions to Ensure the Compatibility of Other Laws with the Model 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.

### **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.

### **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.

#### **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.

#### **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.

## Appendix: List of Existing Domestic Instruments Relating to Human Rights Defenders

Short title	Full title
Belgian Proposition	Proposition de Résolution Relative à 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 Nº 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)
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)
Mexican Regulation	Reglamento de la Ley Para la Protección de Personas Defensoras de Derechos Humanos y Periodistas (2012)