

# ISHR INPUT ON IMPLEMENTATION OF THE UN DECLARATION ON HUMAN RIGHTS DEFENDERS

April 2018

ISHR is pleased to submit this paper in response to the call by the Office of the UN High Commissioner for Human Rights (OHCHR) for input on the implementation of the Declaration on Human Rights Defenders.<sup>1</sup>

## A. Assessment of the ways UN entities have taken the Declaration into consideration in their work

All UN entities – including the Secretariat, agencies, funds and programmes- have a duty to uphold the UN Charter and its commitments to human rights. Guidelines to steer relevant UN bodies and representatives in country in terms of these responsibilities are often vague. Where human rights defenders (HRDs) are mentioned it is often in regard to reprisals for cooperation with the UN, rather than a broader understanding of UN work – or potential work – to promote the protection of HRDs. For example, in guidelines for Resident Coordinators,<sup>2</sup> the Declaration on HRDs is not referenced as a key UN standard despite the vital role of HRDs in advancing human rights, security and development and the importance of Coordinators in responding to the vulnerability of HRDs, particularly when OHCHR is not present.

The role of OHCHR country offices in defender protection can be key. In the case of Colombia, OHCHR has been acknowledged as having encouraged reform in practices of the Attorney General's Office relating to the investigation of threats and attacks against HRDs, and in prompting the adoption of a more comprehensive definition of who a is defender by the Office of the Presidential Advisor on Human Rights. In Tunisia, OHCHR has created a database to streamline and systematise the process of follow up UN recommendations.<sup>3</sup> A speedy response by OHCHR in regard to individual cases can also be decisive. The OHCHR [press release](#) issued within two days of the arrest of Egyptian HRD Hossam Bahgat in 2015 is credited with contributing to his release after three days (although he still faces charges).

Concern that criticism of a State's human rights record, including in regard to the protection of HRDs, could put the presence of the UN agency at risk should be balanced with the fact that increasing restrictions and attacks against defenders are often an early warning sign of more widespread, gross and systematic violations. Putting 'Human Rights Up Front' necessitates monitoring and speaking out when defenders are under attack.

**SPECIAL PROCEDURES:** Positive steps taken by Special Procedures (SPs) to promote implementation of the Declaration include: i/ elaborating relevant concepts -e.g. the Special Rapporteur on Freedom of Peaceful Assembly and Association [report](#) on rights in the context of natural resource exploitation projects; ii/ increasing understanding of implementation with regard to particular groups of HRDs- e.g. reports of the Special Rapporteur on HRDs on [women HRDs](#) and [environmental rights defenders](#); iii/ working with UN agencies to enhance their approach -e.g. UN Environment has set out its commitment to work more closely with the Special Rapporteurs on human rights and the environment, and on the situation of HRDs 'Promoting greater protection for environmental defenders'; iv/ integrating an HRD focus in all aspects of their work -e.g. Working Group on Business and Human Rights has integrated concern on HRDs into their agenda and work practices - from country missions and communications to their engagement with companies and States; and v/ producing guidance -e.g. Working group on Business and Human Rights has developed guidance for business on engaging, respecting and supporting HRDs. On a practical level, SPs and their teams are often

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<sup>1</sup> See: <https://drive.google.com/file/d/1lrXHkdkDaE-Yrti4oZvgBJ3ogZXx01wW/view>

<sup>2</sup> See: <https://undg.org/human-rights/undg-guidance-note-on-human-rights/>

<sup>3</sup> Findings from ISHR missions to Colombia and Tunisia with partners the Colombian Commission of Jurists (CCJ) and the Tunisian Ligue for Human Rights (LTDH), to analyse the implementation of the Declaration on Human Rights Defenders. The full report 'Has the Declaration made a Difference to the Lives of Defenders?' will be published at the end of this month.

available to meet with HRDs and for many it is standard practice to consult HRDs in framing strategies and drafting reports.

However, such practices are inconsistently adopted, including in the use of the term 'human rights defender'- e.g. the Special Rapporteur on the rights of indigenous peoples rarely refers explicitly to HRDs when talking about those promoting and protecting the rights of indigenous peoples<sup>4</sup>. Special Procedures should coordinate and share information to ensure that in countries where HRDs are particularly at risk, visiting Special Procedures examine this pressing issue, even if it may not be a main focus of the mandate. As the work of HRDs is essential to all the areas covered by the mandates of the Special Procedures, the situation of HRDs is a relevant element of any examination of human rights enjoyment in a particular country. A positive example of this is the [report](#) of the Special Rapporteur on extreme poverty on the country visit to China.

**ON REPRISALS:** UN bodies and mechanisms have a duty to protect individuals from reprisals in connection with any cooperation or attempted cooperation with the UN. The appointment of Assistant Secretary-General Gilmour as **Senior Official on the issue of reprisals** in October 2016 was a positive step forward. The position does not detract from the obligation of other bodies and mechanisms. ISHR continues to await clarity on the functioning of this mandate and how best to engage. The **President and Bureau of the Human Rights Council** maintain their rhetorical commitment to preventing reprisals, but evidence of action to prevent and ensure accountability for cases of reprisals is lacking. Steps taken by **Treaty Bodies** are welcome – with 8 out of 10 adopting the San José Guidelines (or a policy on reprisals), and CEDAW and CESCR appointing focal points on the issue. The Coordination Committee of the Special Procedures has appointed a focal point on reprisals and keeps a record of all cases related to cooperation with SPs.

However, a lack of coherence and coordination between mechanisms undermines efforts to deal with reprisals effectively. Frequently, possible steps to prevent or respond to reprisals at country level are lacking. In addition, Member States must take responsibility for stamping out reprisals happening within UN bodies – such as is the practice of the NGO Committee in regard to some NGOs.<sup>5</sup>

**ON JURISPRUDENCE AND REFERENCES TO THE DECLARATION BY UN BODIES:** Although more remains to be done, some progress has been made to expound and strengthen the Declaration on HRDs through the jurisprudence and commentaries of UN human rights bodies and experts. In 2016, **CESCR** issued a statement on ESCR HRDs recognising that attacks or restrictions against HRDs may actually amount to a violation of the economic and social rights for which they advocate.<sup>6</sup> This is the most comprehensive statement on defenders issued by a UN treaty body. It reiterates States' obligations towards HRDs and sets out a range of positive measures States should take to protect defenders in line with their obligations under the Covenant. In June 2016, the **Working Group on Arbitrary Detention** found that Article 26 of the International Covenant on Civil and Political Rights (ICCPR) protects an individual from discrimination on the ground that the individual is an HRD.<sup>7</sup> This was the first time that any UN mechanism receiving individual complaints referred to HRDs as a protected group entitled to equal legal protection under Article 26 of the ICCPR. Finally, the **Working Group on Enforced Disappearances** recently published findings that that people who are active in promoting or exercising the enjoyment of economic, social and cultural rights are, in many contexts, at a greater risk of becoming victims of enforced disappearance than they would be if their economic, social and cultural rights were protected.<sup>8</sup>

There are only 12 references made by treaty bodies to the Declaration on HRDs in concluding observations and none in views on individual communications. Treaty bodies could do more to contribute to the

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<sup>4</sup> See, for example, the [report](#) on International investment agreements, including bilateral investment treaties and investment chapters of free trade agreements.

<sup>5</sup> See: <http://www.ishr.ch/news/ngo-committee-stand-election-stamp-out-reprisals>

<sup>6</sup> E/C.12/2016/2

<sup>7</sup> Opinion No. 45/2016

<sup>8</sup> A/HRC/30/38/Add.5

promotion of the Declaration.<sup>9</sup> In a positive development, the Committee on the Rights of the Child is preparing a day of general discussion in 2018 on the topic of children as HRDs.<sup>10</sup>

## **B. Recommendations on how best to promote the Declaration and ensure its implementation**

### **1/ TO UN MEMBER STATES**

- Integrate into General Assembly (GA) and the Human Rights Council (HRC) language requesting States to adopt, enact or implement national processes, policies, laws and mechanisms to follow up on and comply with resolutions and recommendations on HRDs at the national level.
- Consider the technical guidance contained in tools such as the 'Model Law for the Recognition and Protection of HRDs' to define new, or revise existing protection laws and policies.<sup>11</sup>
- Ensure recommendations related to HRDs are precise and concrete, are accompanied by clear dates and indicators for their implementation, and acknowledge the protection needs of particular groups of HRDs. Establish permanent National Mechanisms for Reporting and Follow up (NMRFs) in law with a mandate to focus on recommendations from all relevant UN human rights mechanisms and engage with all relevant stakeholders including HRDs.
- Establish comprehensive, transparent and publicly accessible databases compiling recommendations from UN human rights bodies, along the lines of the [Universal Human Rights Index](#).<sup>12</sup> Make sure that such databases include information on planned follow up measures and the status of implementation, along with clear timelines and assigned entities.
- Consider the designation of thematic focal points within the structures dedicated to following up on UN human rights recommendations and resolutions, including a focal point dedicated to HRDs.
- Review the implementation of existing guidelines on HRDs or develop them, as part of their external human rights policy objectives, in consultation with HRDs.
- In case of attacks by a State representative against Special Procedures, States should speak out in UN spaces and demand a retraction from the offending State.
- Ensure the Declaration on HRDs and its implementation are incorporated into the implementation of the Sustainable Development Goals (SDGs) and the Global Compact on Migration.

### **2/ TO UN ENTITIES IN COUNTRY**

- OHCHR should define an operating procedure to ensure that the all offices establish and apply minimum standards in regard to their work on HRDs (bearing in mind local context).
- Ensure effective coordination of UN efforts in country to support the implementation of UN recommendations on the protection of HRDs, acknowledging the responsibility of all UN agencies to protect HRDs.
- Representatives of UN agencies should regularly reference and engage with States on measures to implement the Declaration on HRDs and relevant resolutions and recommendations.
- Establish a permanent liaison with HRDs within UN entities in country and/or the resident coordinator to avoid ad-hoc processes when crises occur. Promote a working relationship between defenders working on specific issues (children, environment, etc.) and the corresponding UN office working in the country.
- Ensure an understanding of responsibilities regarding HRD protection are not solely focused on measures related to alleged cases of intimidation or reprisals but extend to promoting a safe and enabling environment for their work.

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<sup>9</sup> CAT tops the list with 4 references, followed by the HRC and CESCR both with 3, and CERD with 2 references (ISHR research).

<sup>10</sup> See: <http://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2018.aspx>

<sup>11</sup> See: [https://www.ishr.ch/sites/default/files/documents/model\\_law\\_full\\_digital\\_updated\\_15june2016.pdf](https://www.ishr.ch/sites/default/files/documents/model_law_full_digital_updated_15june2016.pdf)

<sup>12</sup> See: <http://uhri.ohchr.org/>

### **3/ TO THE UN SECRETARY GENERAL**

- Ensure that the safety and security of HRDs is at the heart of UN concerns, by, inter alia, making public statements in support of implementation of the Declaration, pushing for the development and implementation of policies on the promotion and protection of HRDs to be mainstreamed across the UN system which respond effectively to UN recommendations and resolutions related to HRDs, and by speaking out when States fail to respect and protect HRDs or implement the Declaration.

### **4/ TO THE UN SENIOR OFFICIAL ON REPRISALS**

- Ensure that the position of Senior Official on Reprisals is visible and known to rights holders.
- Develop a public facing policy or working method that recognises the need for HRD protection and ensures victims know where and how to submit information and what can be expected as a response.
- Collaborate with UN entities to ensure a unified UN-wide response to acts of intimidation and reprisals.
- Act on cases of reprisals in both a private and public manner.
- Seek input and information on allegations of reprisals from the array of UN bodies and agencies.
- Compile and maintain a publicly accessible database of cases and correspondence (with the consent of rights holders and victims).

### **5/ TO ALL UN HUMAN RIGHTS BODIES AND MECHANISMS**

- Make recommendations on the legislative, administrative, budgetary and other steps necessary to ensure a safe and enabling environment for HRDs, and the need to establish effective follow up mechanisms.
- In line with the [good practice developed by most Treaty Bodies](#),<sup>13</sup> adopt robust policies and working procedures, in coordination with other relevant UN rights bodies, to encourage national implementation of recommendations, and publicly assess State compliance with them.
- Provide guidance clearly outlining steps taken upon receipt of information about credible risks of reprisals.<sup>14</sup> Address and follow up on cases of alleged reprisals attention and ensure victims are kept regularly apprised of the status of their case, as well as any action taken.

### **6/ TO SPECIAL PROCEDURES**

- Continue to elaborate concepts related to the Declaration, and to examine the particular situation of groups of HRDs who are marginalised or in vulnerable situations
- Continue to work with relevant UN agencies and bodies to share expertise and insights into furthering implementation of the Declaration
- In the context of a country mission report, always refer to the situation of HRDs working in the areas covered by your mandate
- Adopt a policy to ensure participation of HRDs in your work. It should include a standard practice on outreach to HRDs in the drafting of reports and, in relation to country visits, ensure that inputs are sought from civil society.

### **7/ TO TREATY BODIES**

- Ensure that engagement with States on the situation of HRDs goes beyond simply enquiring as to whether HRDs were involved in the preparation of the State report.
- Follow CESCR's lead by adopting General Comments, statements or recommendations, and WGAD's lead in adopting views that recognise States' treaty obligations to respect and protect HRDs and which provide them with concrete policy guidance in that regard.
- Provide greater consideration to the promotion and protection of HRDs, and the implementation of the Declaration, in concluding observations to States parties.

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<sup>13</sup> See <http://www.ishr.ch/news/human-rights-implementation-un-mechanisms-should-draw-inspiration-treaty-bodies-improve-state>

<sup>14</sup> For more detailed recommendations to UN bodies and mechanisms, see ISHRs [most recent submission to the UN Secretary General's report on reprisals](#).