

ISHR Submission to SR HRDs annual thematic report for March 2021

Introduction

ISHR welcomes the chance to provide inputs to the annual thematic report of the UN Special Rapporteur on the situation of human rights defenders, to be presented to the Human Rights Council in March 2021, focused on the issue of killings of human rights defenders (HRDs). The process launched by the mandate is essential to ensure that the voices of defenders can inform the Special Rapporteur's work, and we appreciate the comparatively-generous timeline for response; clear and concise series of questions; and efforts to engage a range of stakeholders - which is to say, not simply governments and civil society, but also national human rights institutions (NHRIs), development finance institutions and private sector actors.

We have sought to respond specifically to a handful of questions, namely by discussing:

- the role of online and offline threats against defenders
- pathways of escalation toward violence and killings, and the context in which this happens
- effective measures to prevent and protect against violence of killing of defenders, and lessons learnt

It is important to begin by understanding killings of human rights defenders as the extreme manifestation of intolerance by, and impunity for, individuals or entities with vested social, political and economic interests - with little or any consideration for the need to protect or respect human rights. This, in turn, is a symptom of and contributor to the deterioration in safe and enabling environments for human rights defenders - a principle that all UN member states have committed to upholding and ensuring. Killings of HRDs will only end when the ecosystem in which they thrive has changed so radically as to prevent them from taking root.

Trends and 'red flags' on the pathway to killings

This report topic is timely, as many of ISHR's partners have experienced an escalation of attacks that may reach up to and include death threats, but whose overall intention is to prevent that defender from carrying out their human rights work - and to send a chilling message to others. This often occurs far earlier on the pathway, and - having sadly had its intended censorious effect - precludes the need for perpetrators to escalate threats and attacks further.

These points on the trend arcing toward killing include, among others, ad hominem attacks, judicial harassment, and physical violence. Each should be seen as early warning signs requiring action and accountability in order to prevent killings.

- Ad hominem attacks, whether in person, over media, or online, have the effect of singling out an individual and stigmatising their person, as well as their professional activities. Such statements, by increasing the visibility of the defender, can further constitute a violation of their right to a private and family life.
- Judicial harassment comes in many forms.
 - In some cases, charges brought by public prosecutors may be focused on a wilful distortion of the actions of an individual - for example, migrant rights

- defenders in Europe who are charged with smuggling- or human trafficking-related crimes for humanitarian assistance and search-and-rescue activities.
- In many cases, the charges may have nothing at all to do with the substantive work, but instead are based on procedural issues - such as when organisations and activists in mainland China are charged with 'illegal business activity'.
 - SLAPP suits (strategic litigation against public participation) have been used in the U.S. and Thailand, among other jurisdictions, by private sector actors seeking to eliminate criticism of their business activities. They often claim to be victims of slander or defamation for the exposure or reporting of human rights-related information by defenders.

A key element of judicial harassment is that while the charges may carry criminal, civil or administrative penalties, the aim and intent of the process is to place constraints - administrative, financial or personal - on those targeted. Defenders who are victims of judicial harassment may face years of legal procedures that hinder them from engaging fully in their work; that proscribe their livelihoods; and that impose high legal fees. Even without being found guilty, there are negative impacts on the defender's professional and personal life.

- Finally, physical violence plays an indisputable role in transitioning rhetorical attacks and legal attacks to personal attacks.

At the same time that we must recognize the specificity of attacks on defenders, and seek to identify ways to document and respond to them, we must also recognize the deep linkage between violations against HRDs and the context in which they operate – namely, the lack of an independent judiciary and the deterioration of democratic institutions. Increasing the effectiveness of protection of HRDs and prevention of killings and attacks requires a deeper engagement with root causes, and a commitment to a context in which State institutions who have responsibility to ensure the respect of human rights are willing and able to carry out their work.

This has been documented in particular in Latin America, by different UN expert mechanisms. The [Fact-finding Mission to Venezuela](#) found that 'compromised judicial independence', including fear of retaliation from the executive, 'contributed to arbitrary detentions of protestors'. In [Guatemala](#), the Office of the High Commissioner for Human Rights drew links between politically- or interest-motivated attacks on judges and judicial officials and, in the first instance, 'weakened institutions, corruption and lack of accountability', and in the second, generalized lack of security. Finally, in [his country visit report on Honduras](#) in 2019, the Special Rapporteur on the independence of judges and lawyers, noted that widespread impunity and a 'selective justice system' led to a situation where 'more than 97 per cent of crimes against human rights defenders go unpunished'.

In short, with a focus on preventing threats and escalation of attacks against human rights defenders, the context in which they and their aggressors operate is just as important as the specific characteristics of the case itself. Where judges and magistrates are unable to carry out their duties with independence and impartiality, effective state responses for defender protection are a practical impossibility. Yet, without the work of human rights defenders, the corruption, bribery and political interest that creates pressures on the judicial system will continue unchecked. We see this as a vicious cycle, and one that requires careful thought about the interaction of discrete and structural challenges to defenders.

What can help prevent escalation of threats?

Despite this complex background, there are a number of steps ISHR has seen that can provide barriers to escalation, slowing or even reversing the trends of threats that lead toward killings as a strategy to suppress and constrain HRDs' work.

First, public recognition of the work and value of human rights defenders can provide a direct counter-narrative to those that cast defenders in general - or individual defenders by name - as 'criminal', 'terrorist', or engaged in 'subversion of the state' or 'endangering national security'. Positive stories about the contributions human rights defenders make - about what they stand *for* - help to underline what those individuals share with their fellow members of society. Conversely, there is some evidence that focusing overwhelmingly on the violations and abuses that defenders face can have the effect of [normalising such violations and desensitizing people to them](#).

A growing amount of theoretical and applied work has shown the effectiveness of such narratives at changing 'hearts and minds'. [For example, in the U.S.](#), campaigns reframing issues around [what they are 'for'](#) – such as the #Fightfor15, for decent wages for fast-food workers – have grown exponentially. Campaigns that appropriated the language of equality and freedom, as opposed to 'protection' or special status, were critical in the advancement of marriage equality.

While it is important that such narratives be promoted by people in positions of power - such as elected officials and government representatives - it is equally important that these narratives be shaped, used and amplified by defenders themselves. ISHR has been developing tools to support HRDs to craft these narratives based on their own, local and national experiences and to reframe their work as providing solutions to the problems they expose, and generating value for the benefit of the common good.

It is undeniable that some private actors are at the root of the threats and killings, especially of defenders working on the areas of land, labour and the environment, and of leaders of indigenous communities. But it would be a lost opportunity to paint all private sector actors with the same brush. Therefore, as a **second** element, the role of constructive engagement by the private sector should be further recognised and analysed. This could include:

- Public and private support to the aims of civil society and HRDs which are shared by business: In Cambodia, for example, private sector actors, multi-stakeholder initiatives and civil society have collaborated to use the leverage of EU trade policy to improve the environment for the exercise of fundamental freedoms. It is notable that land rights violations and attacks on land rights activists - in the context of massive land grabs for sugar cane production - have been specifically cited.
- Active consideration of HRDs' views in the development (and content) of human rights policies and due diligence guidelines: Recently-adopted policies by the World Bank that seek to prevent and respond to reprisals and retaliatory acts could - potentially, and if effectively implemented - put a brake on some of the most dangerous practices that have been documented in the context of these projects.
- The protection of defenders in the online space is also crucial. Social media platforms should put mechanisms in place that ensure that risks associated with serious cases of hate speech that incite hostility and violence against human rights defenders are properly mitigated. The strategy and its implementation, both by States and private actors, need to be in line with the right to freedom of opinion and expression.

Third, impunity for the killing of human rights defenders has the effect of licensing further attacks and contributing to a deteriorating environment for the recognition and protection. Threats, attacks and killings of human rights defenders should be promptly, independently and effectively investigated and perpetrators prosecuted and held accountable, both as an aspect of the right to life and the right to an effective remedy, as well as a vital aspect of prevention. Investigations and prosecutions should focus on not only individual but systemic factors contributing to threats, attacks and killing.

Fourth, the legal recognition and protection of defenders is crucial to ensuring they can work in a safe environment free from attacks and restrictions. A legal and policy framework which recognises human rights defenders and which reflects international and regional standards can have important normative, educative, preventative and punitive effects – legislatively recognising the value of defenders’ work, establishing mechanisms for their protection, and providing legal remedies for victims and accountability for perpetrators. More broadly, it also contributes to overall goals of upholding human rights and promoting democracy, sustainable development and respect for the rule of law.

This is particularly true as measures taken in the context of COVID-19 exacerbate the proliferation of laws restricting and criminalising defenders' work.

Historically, defender protection mechanisms are not new - the first were established in Colombia and Brazil in the 1990s. More recently, Côte d’Ivoire, Burkina Faso and Mali in West Africa, as well as Honduras, Mexico and Peru in Latin America, have adopted such laws. In recent years - in more than a dozen countries - civil society has been working towards the development and enactment of specific national laws on human rights defenders, including Niger, Sierra Leone, Togo and Zambia in Africa; Mongolia, Nepal and the Philippines in Asia, and El Salvador in the Americas. In at least five of these countries, draft laws are based on the Model National Law on the recognition and protection of human rights defenders.

Any national law for the protection of defenders must be substantively in line with the UN Declaration on human rights defenders and create a legal environment supportive of their work. Procedurally, as well, a number of elements should be in place in order for this to be an effective preventive measure. These include ensuring that the law:

- Is developed in close consultation with all sectors of civil society;
- Has implementation that is adequately resourced and enjoys high-level political support;
- Does not seek to impose ‘responsibilities’ on defenders that impair their rights;
- Provides for the inclusion and participation of defenders in the governance and decision-making structures of any protection mechanism;
- Contains provisions which recognise and respond to the particular risks and / or vulnerabilities and protection needs of specific groups of defenders;
- Articulates the obligations of both State and non-State actors, and contains provisions for the enforcement of obligations, as well as penalties and remedies.

Innovative monitoring and responses

ISHR encourages the Special Rapporteur to investigate renewed efforts and innovative responses that seek to demonstrate the value of these ‘barriers to escalation’, and to address the accountability gaps.

Assessing the effectiveness of HRD protection laws and mechanisms can be challenging, as the existing examples have been plagued with challenges in resources, implementation and political will. Nonetheless, we have seen an increasing global demand by national-level civil society actors to enhance legislative protection of defenders, as one tool in their toolbox - complementary to other efforts to increase visibility, develop urgent protection measures, and seek international assistance. This is supported by new findings: in Côte d'Ivoire, the Swiss Government has identified an empirical association between the enactment of the law and a decline in threats and attacks against defenders, an association also identified by national-level partners of ISHR.

In Central American, the Esperanza Protocol, an initiative of the Center for Justice and International Law (CEJIL), focuses on the investigation of threats against human rights defenders. Due to be published in early 2021, the guidelines aim to raise awareness about the severity of threats, their impact, as well as provide an outline of essential elements of an effective criminal investigation. ISHR has been part of a group working on the preparation of the Protocol.

The persistent nature of the killings of HRDs, often with ample warning and with rampant impunity, is grave enough to warrant a full report exposing the breadth and human impact of the problem. Indeed, they have been taken so seriously as to be considered an indicator in progress toward the Sustainable Development Goals, and namely Goal 16, for Peace, Justice and Strong Institutions. We recall that the [2019 UN General Assembly resolution on HRDs](#)¹ articulated the link between HRDs' safety and the achievement of the Goals, and further called on states to strengthen data analysis, collection and transparency on cases of killings, as well as 'other harmful acts'.

While it is evident that killings must be identified, quantified and understood in the context of the indicator, the discussion in this document makes clear that this would be insufficient on its own; it would fail to capture the range of preliminary, interim or 'warning' signs that constitute violence against human rights defenders. As Resolution 74/176 makes clear, there is a need to capture and document these 'other harmful acts' – among which, kidnapping, enforced disappearance, arbitrary detention, and torture.

Conclusion

We appreciate the opportunity to share ISHR's experience and views in the context of preparation for this report. We wish to conclude by encouraging the Special Rapporteur on the situation of human rights defenders to consider including the following activities or themes in the development of her recommendations:

- the desirability of a study or project to gather empirical evidence to determine correlation between decreases in the number of reported killings, among other threats and acts of violence, and specific changes in policy, e.g., the adoption of a national law or policy on

¹ Full text of A/RES/74/146 (para 19) reads: *Recognizes the important contribution of the promotion and protection of the safety of human rights defenders in the realization of the Sustainable Development Goals, including target 16.10, and calls upon States to strengthen national disaggregated data collection, analysis and reporting on the number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention, torture and other harmful acts against human rights advocates, as reflected in Sustainable Development Goal indicator 16.10.1, and to do their utmost to make these data available to the relevant entities;*

the recognition and protection of human rights defenders, or increased resources to an existing protection mechanism

- collaboration with the Working Group on Business and Human Rights and the Special Rapporteur on freedom of opinion and expression, in order to more clearly identify the ways in which the UN Guiding Principles apply internet companies – and especially social media platforms – in the context of online attacks on defenders
- support to existing efforts to increase accountability for killings and other attacks on defenders, including through national-level criminal procedures and regional and international accountability mechanisms, *inter alia*, Commissions of Inquiry and 'horizontal sanctions regimes' against human rights violators, such as the Magnitsky Act
- the creation of a checklist or set of criteria by which governments and civil society, as well as relevant UN actors, could ensure that progress towards SDG Goal 16 globally, and on a country-by-country basis, reflects the full picture of the environment for human rights defenders, up to and including the arbitrary deprivation of life