



**International Service for Human Rights**  
**Submission to the Special Rapporteur on the situation of Human Rights Defenders’**  
**annual thematic report for March 2022**

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**Summary of submission**

This submission seeks to provide inputs to the Special Rapporteur in respect of some of the questions (2,6 and 10) in the questionnaire. This submission has collated responses from human rights defenders<sup>1</sup>, specifically in the African region. It also provides some general elements on what more governments can do to provide protection for human rights defenders.

**2. How does your Government support and protect human rights defenders working against corruption?**

In Africa, most countries do not provide a legal framework to protect against intimidation or other forms of reprisal against individuals who dare to expose corruption. For example, **Mauritius** is yet to enact any laws, such as a whistleblower Protection or Freedom of Information Act, which would be important tools and provide protection for human rights defenders working to promote transparency and expose and combat corruption. In **Madagascar**, disclosing certain public interest information can lead to prosecution of defenders and whistleblowers.

**6. Have there been any cases of human rights defenders working on anti-corruption issues physically attacked, including killed, in your country between 1 January 2020 and 30 June 2021? What action has been taken to bring the perpetrators to justice?**

In **Ghana**, a group of activists from civil society organisations have come under attack from some parts of the national media for questioning the benefit for the country of a proposed transaction between Ghana National Petroleum Corporation (GNPC) and Aker Energy. On 5 August 2021, the Alliance of civil society organisations working on extractives, anti-corruption and good governance, which includes Publish What You Pay Ghana, issued [a public statement](#)

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<sup>1</sup> Transparency International Madagascar; Transparency International Mauritius; Amnesty International Guinée; l’Association Guinéenne pour la Transparence (AGT); Rencontre pour la Paix et les Droits de l’Homme Congo; Action Mines Guinée (AMINES)

detailing six points in regards to the proposed transaction in which they raised legitimate concerns, and requested further information and scrutiny.

On 12 August, a number of newspapers published similar [articles](#) in print and online, naming four persons<sup>2</sup> from the Alliance, along with their photographs, and accusing them of pursuing an “anti-Ghana” agenda on account of raising their concerns. The article quoted in detail conversations between the Alliance members, which had been leaked.

In **Guinea** (Conakry), [Action Mines Guinée](#) (AMINES) is a non-governmental organisation specialising in natural resource governance. On 30 June 2021, a four person team from AMINE traveled to the prefecture of Gaoual to consult the local communities in order to find out their opinions and expectations regarding the discovery of a new mine in their area and in order to identify the needs of the communities and organise training to raise awareness and share information on the exploitation of gold. In the morning of 1 July 2021, the team went to the prefectural and regional authorities to sign the mission order, being a required document allowing defenders to inform the authorities they are doing work in a specific area. A delegation of the Ministries of Mines and Geology, Territorial Administration and Decentralization, the general services of the presidency, the national gendarmerie and representatives of the Governor of Boké were present when the team arrived. The AMINES team then presented to them their mission order and on instruction of the governor of Boké, Mr. Siba LOHALAMOU, all the members of the team were arrested and sent to a military camp before being held at the Gaoual central police station from 10am to 5pm. They were all questioned, interviewed and the documents they were carrying were confiscated. They were also photographed without their consent and without justification the images were sent to the services of the President of the Republic of Guinea in Conakry.

After several hours of discussions with the highest authorities in Conakry, the team members were released at 6pm and were forced to leave the prefecture immediately. The Prefect and the governor expressed their regret to the NGO for the "inconvenience suffered", while making it clear that the team would not be able to carry out its activities.

**In Madagascar** *Mr. Jean-Louis Bérard*, a business person and fruit grower, filed a complaint with the Competition Council of Madagascar on 15 October 2020 to denounce a system that he considered anti-competitive in the lychee sector. He claims that a monopoly established in 2011 by the Groupement des exportateurs de litchis (GEL), a private structure that was entrusted in 2011 by the government with the management of the lychee industry in Madagascar, and two importers from Rungis, prevents him from exporting the fruits of the production of his orchards<sup>3</sup>. Not long after he made those claims, the renowned French

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<sup>2</sup> Co-ordinator of the Third World Network (TWN) Africa, Dr Yao Graham; West Africa Regional Manager of Natural Resource Governance Institute, Nafi Chinery; energy analyst, Samuel Bekoe; Bright Simons Vice-president, in charge of research at IMANI Centre for Policy and Education

<sup>3</sup> Position Paper on governance around the trade of litchi in Madagascar (Transparency International Madagascar) <https://drive.google.com/file/d/1NPFciCzN1VEZpR3rHtr-M2kE3vJ4RjJ2/view>

newspaper Le Monde published [an investigation](#) supporting Mr. Bérard's claims. Since then, Mr. Bérard has been the subject of judicial harassment, even though his approach to the Competition Council is perfectly legal. The Groupement des exportateurs de litchis (GEL), accuses Mr. Bérard, among other things, of slanderous and abusive denunciation and denigration. Mr Bernard has been awaiting trial for nearly a year and he has been denied the right to a speedy trial. At 78 years old, he is under judicial control since December 2020 with a ban on leaving the territory of Madagascar; this hindrance to his freedom threatens his health.

**Mr Ravo Nambinina Ramasomanana**, a former agent of the Procurement Management Unit (UGPM) within the Ministry of Health, detected corruption in the awarding of a public contract for the construction of a kidney transplant centre worth 800 million MGA to a cleaning company unqualified for construction, which goes against the law in Madagascar. These facts were corroborated by [several newspapers](#). Mr Ramasomanana, took the initiative to share allegations of such fraud with citizens and decision-makers by posting his testimony through a video on social media networks. This initiative led to a complaint and a trial, with several charges, including cybercrime and undermining state security. His trial has been postponed until November 2021. Moreover, no information has been released about the investigation into the persons cited in Mr Ramasomanana's revelations<sup>4</sup>.

#### **10. What more could your Government do to help protect human rights defenders working on issues of anti-corruption?**

The UN 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) recognises the right to promote and protect universally recognised human rights and fundamental freedoms peacefully. As acknowledged by the Special Rapporteur in her most recent report, its adoption by consensus by the General Assembly, represents a strong commitment of States to its implementation.<sup>5</sup> Starting with adoption of the Declaration on Human Rights Defenders, the international human rights system has developed a strong set of standards, norms and recommendations on the recognition and protection of human rights defenders. Yet a significant protection gap remains due to the lack of implementation at the national level, including through legal frameworks.

The legal recognition and protection of human rights defenders, both through a national legal and policy framework which recognises the rights of human rights defenders as well as international and regional standards in relation to their rights, is crucial to ensuring they can work in a safe environment free from attacks and restrictions. Such a framework can have a preventive function and contribute to overall goals of upholding human rights and promoting democracy, sustainable development and respect for the rule of law. As acknowledged in the

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<sup>4</sup> Madagascar: PPLAAF applauds the courage of former civil servant  
<https://www.pplAAF.org/fr/2021/06/14/madagascar-whistleblower-ministry-health.html>

<sup>5</sup> <https://undocs.org/en/A/HRC/46/35>

last report of the Special Rapporteur on the situation of human rights defenders,<sup>6</sup> 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.

In looking at the legislative protection of human rights defenders, we consider the entire legal framework and the extent to which it both promotes and protects the rights of defenders, as well as the restrictions it places on the exercise of their rights. Legal frameworks which recognise and protect defenders and do not restrict their rights are critical for their legitimate work to protect human rights. This includes laws that promote and protect the fundamental rights of human rights defenders, such as law protecting the rights to freedom of assembly, association, expression, access to information and public participation, as well as laws that restrict their rights, such as counter-terrorism or national security laws. These are particularly relevant as measures taken in the context of COVID-19 have exacerbated the proliferation of laws restricting and criminalising the rights of defenders' and their work.

There has been a positive trend of legislatively recognising the value of defenders' work by establishing specific laws and mechanisms for their protection. Such defender protection instruments are not new - the first were enacted 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 instruments. 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 in 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](#). Among other provisions, the Model Law contains provisions relating to the right of defenders to seek, access, obtain and disseminate information from both State and non-State actors, including business enterprises, with a view to protecting rights or exposing and seeking accountability for violations.

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 and protective measure. These include ensuring that the instrument:

- 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;

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<sup>6</sup> <https://undocs.org/en/A/HRC/46/35>

- 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;
- Contains provisions for the enforcement of obligations, as well as penalties and remedies.

In addition to supporting and calling for the enactment of specific laws for defenders that would protect those working on corruption issues, defenders in the Republic of Congo, Guinea and Madagascar identified other specific areas which could be improved by their governments.

As a first step, defenders identified that it is important that States fulfil their international and regional obligations by domesticating treaties they ratified, especially the UN Convention Against Corruption which a vast majority of African countries have signed and ratified, and by promoting an environment that allows defenders to monitor the management of public funds.

Indeed, in **Mauritius**, guaranteeing freedom of information and transparency will give anti-corruption defenders the necessary means to uncover corruptive practices without having to resort to dangerous ways to carry out their work which can be potentially harmful to their safety.

In the **Republic of Congo**, defenders identified the need to develop campaigns to popularise existing national laws against corruption such as the 2009 “loi contre la Corruption, la Concussion et la Fraude”, the loi n° 10-2017 of 9 March 2017 “portant code relatif à la transparence et à la responsabilité dans la gestion des finances publiques<sup>7</sup>” or the law of 2019 “portant création de la Haute autorité de lutte contre la corruption”. Indeed, these laws include prospects for participation, independence and guarantee freedom of those engaged in fighting corruption. It is also instrumental to strengthen the mechanisms for accountability and punishment of perpetrators and accomplices of corruption, such as the judicial systems which must be independent and depoliticised in order to play a more active role in conducting independent and impartial investigations whenever necessary and to hold perpetrators accountable.

In **Guinea**, defenders noted that the government must guarantee defenders effective access to public information in accordance with Article 93 of Law L/2017/041/AN of 04 July 2017 on the Prevention, Detection and Punishment of Corruption and Related Offences and the strict application of the provisions of Law L/2017/041/AN of 04 July 2017 on the Prevention, Detection and Punishment of Corruption and Related Offences in its articles 99 to 105 relating to the protection of whistleblowers, witnesses, experts and victims of corruption or related offences. The government must also provide defenders the protection of those subject to the Law L/010/AN on the Fight against Money Laundering and involve them in awareness-raising activities organised by institutions responsible for tackling corruption in the country.

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<sup>7</sup> Loi n° 10-2017 du 9 mars 2017 portant code relatif à la transparence et à la responsabilité dans la gestion des finances publiques: <https://eiti.org/document/republic-of-congo-transparency-law-loi-transparence>