


AFRICAN UNION		UNION AFRICAINE
الإتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
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77th Ordinary Session of the African Commission on Human and Peoples' Rights

INTERSESSION REPORT

Presented by

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Commissioner and Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa;

Member of the Working Group on Economic, Social and Cultural Rights in Africa and Country Rapporteur.

Arusha, 20 October to 9 November 2023

INTRODUCTION

1. This Report is submitted in accordance with Rules 25(3) and 64 of the Rules of Procedure (2020) of the African Commission on Human and Peoples' Rights (the Commission) and gives an account of the activities for the promotion and protection of human rights undertaken during the intersession period since the 75th Ordinary Session of the Commission held from 3 to 23 May 2023.
2. This report is divided into four main parts: the first gives an account of the activities carried out in my capacity as Commissioner and Member of the Working Group on Economic, Social and Cultural Rights in Africa, and as Country Rapporteur responsible for monitoring the human rights situation in Algeria, Cameroon, Côte d'Ivoire, Mali and Togo.
3. The second outlines the activities carried out under the mandate entrusted to me in my capacity as Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa. As a reminder, this Special Mechanism was created by Resolution ACHPR/69(XXXV)04 of the African Commission. Its mandate was extended to cover the issue of reprisals under Resolution ACHPR/Res.273 (LV)2014. The Mechanism's mandate was renewed by Resolutions ACHPR/Res.83(XXXVIII)05, ACHPR/Res.125(XXXII)07, ACHPR/Res.149(XLVI) 09, ACHPR /Res.202(L)2011, ACHPR /Res.248(LIV)2013, ACHPR /Res.315(LVII)2015, ACHPR /Res.381(LXI)2017, ACHPR /Res.425 (LXV) 2019, ACHPR /Res.451 (LXVI) 2020 and ACHPR /Res.526 (LXXIII) 2022.
4. The third part presents a brief analysis of the situation of human rights defenders, freedom of association and assembly, and reprisals in Africa. The fourth part sets out recommendations for the various stakeholders involved in the Special Rapporteur's mandate.

PART I ACTIVITIES AS A COMMISSIONER (MEMBER OF THE AFRICAN COMMISSION)

5. This section covers my activities as a Commissioner within the Commission and

as a Member of the various subsidiary mechanisms set up by the Commission, in particular the Working Group on Economic, Social and Cultural Rights in Africa. It also covers my activities as Rapporteur in charge of monitoring the human rights situation in certain States Parties to the African Charter, in particular Algeria, Cameroon, Côte d'Ivoire, Mali and Togo.

A. Activity carried out as a Member of the Working Group on Economic and Social and Cultural Rights in Africa

6. During the period under review, I took part in the evaluation and planning meeting of the Working Group on Economic and Social and Cultural Rights in Africa held on the sidelines of the 77th Ordinary Session of the Commission, on 17 October 2023 in Arusha (Tanzania). The main objective of the meeting was to evaluate the Group's work plan for 2023 and plan its activities for 2024.
7. The meeting also provided an opportunity to discuss the terms of reference and roadmap for the study on "economic, social and cultural rights and national sustainable development processes in Africa".
8. **Activities as Country Rapporteur Commissioner for monitoring the human rights situation in the States Parties of Algeria, Cameroon, Côte d'Ivoire, Mali and Togo**
9. In my capacity as Commissioner-Rapporteur responsible for monitoring the human rights situation, I have taken a number of actions and carried out a number of activities in the various States Parties.
10. With regard to **the Republic of Mali**, on 9 September 2023, I issued a press release following the terrorist attacks on 7 September 2023 on the Malian shipping company's boat Timbuktu on the River Niger in the Gourma-Rharous sector between Timbuktu and Gao and the attack on an army position in Bamba in the Gao region in the north of the Republic of Mali.

11. On this occasion, I deplored the loss of human lives, the many injuries and the material damage. While offering the Commission's condolences to the families of the victims and to the Government and people of Mali, I strongly condemned these acts claimed by the Islam and Muslim Support Group (GSIM) affiliated to Al-Qaeda. I also called on the Malian authorities to redouble their efforts to protect its citizens and secure its territory.
12. With regard to the **People's Democratic Republic of Algeria**, on 25 July 2023, I published a press release on the fatal fires that occurred during the night of 23 to 24 July 2023 in sixteen prefectures in the north-east of the country, causing the death of around thirty people and destroying entire villages, farmlands and buildings.
13. I offered the Commission's deepest condolences to the families of the victims and to the Government and people of Algeria. I also expressed the Commission's concerns about the increasing frequency of forest fires, especially during the summer period, and all the consequences for the rights of the people affected. In this respect, while appreciating the resources put in place by the Algerian authorities to stop the fires and the measures taken to protect and assist the people affected, I urged them to take appropriate measures to identify the root causes of these fires and to implement the national strategy to combat forest fires throughout the country.
14. Regarding the **Republic of Cameroon**, on 25 July 2023, I sent a Press Release following the collapse of a four-storey building on top of another residential building in the Ange Raphaël district in the urban city of Douala, which caused the death of at least forty people and injured several others during the night of 22 to 23 July 2023. Condolences were offered to the bereaved families and to the government and people of Cameroon.
15. I also issued another press release on 10 October 2023 following the death of at least thirty people and the injury of around twenty others as a result of the collapse of a plot of land caused by torrential rain during the night of 8 to 9 October 2023 in the Mbankolo district on the North-West outskirts of Yaoundé.

16. In both press releases, I underscored the Commission's concern about the uncontrolled occupation of land and the failings of the competent administrative authorities in monitoring and implementing town planning rules and the relevant laws and regulations in force. On all these occasions, I urged the Cameroonian authorities to carry out a rigorous general inspection, with a view to ensuring strict compliance with the building standards in force, and to take the necessary measures to prevent and combat such tragedies, which continue to plunge the country into mourning, and to ensure that unstable sites with high risks are regularly monitored.

Result: These press releases send a strong signal to stakeholders to pay attention to the human rights situations they highlight. They also alert international opinion to areas of concern that require keen attention.

PART II
ACTIVITIES AS SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS
AND FOCAL POINT ON REPRISALS IN AFRICA

A. PROMOTION ACTIVITIES

I. Joint Statement on the Protection of the Right to Freedom of Peaceful Assembly in Emergency Situations, 15 September 2023

17. Together with the UN Special Rapporteur on the Rights to Freedom of Assembly and Association, the Special Rapporteur on Freedom of Expression at the Inter-American Commission on Human Rights, the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) and the Representative of Indonesia to the ASEAN Intergovernmental Commission on Human Rights, we issued a joint statement on 15 September 2023 on freedom of peaceful assembly and association and the misuse of digital technologies. The statement set out the general principles applicable to the exercise of the right to freedom of peaceful assembly, association and expression. It also highlighted the various obligations of States, including in relation to censorship and Internet shutdown; digital surveillance technologies; misinformation and false information; online hate speech and incitement to violence; online platforms, including social networking companies; artificial intelligence systems; digital literacy and ensuring effective remedies and

accountability. The statement also recalled the obligations of companies in this area.

Outcome: Raising awareness of the general principles applicable to the exercise of the right to freedom of peaceful assembly, association and expression and the obligations of States in relation to these rights in the sphere of digital technologies.

II. Participation in the Webinar - Raising awareness of the 2018 Marrakesh Declaration and the Advisory Opinion of the African Court on Human Rights Defenders, held virtually on 8 September 2023

18. I took part in an awareness-raising webinar organised on 8 September 2023 by the Network of African Human Rights Institutions on the 2018 Marrakesh Declaration.
19. The main aim of the webinar was to raise awareness of the 2018 Marrakesh Declaration, the final document drawn up by NHRIs for the protection and promotion of the rights of human rights defenders, and to discuss the emerging case law of the African Court on issues affecting civic space and the rights of human rights defenders.
20. The meeting also examined the role of NHRIs and civil society organisations in the implementation of the Court's decisions on human rights defenders and civic space, and assessed the continent-wide impact of the Court's decisions and opinions and the challenges to their effective implementation.

Outcome: Awareness-raising on the indispensable role of NHRIs in the promotion and protection of human rights defenders and formulation of recommendations aimed at improving the implementation of decisions relating to the protection of civic space and the rights of human rights defenders in Africa.

III. Participation in the Webinar on guarantees of the right to freedom of peaceful assembly and related efforts, initiatives and experiences, 4 September 2023

21. I took part in a webinar on the guarantees of the right to freedom of peaceful assembly and related efforts, initiatives and experiences organised on 4 September 2023 by the Regional Office for North Africa and the Middle East of the Office of

the UN High Commissioner for Human Rights. The meeting was held in the context of the implementation of Human Rights Council Resolution 50/21 on the promotion and protection of all human rights in the context of the peaceful demonstrations of 8 July 2022.

22. One of the aims of the webinar was to conduct global and regional consultations and develop specific technical and operational tools based on international standards and best practice to help law enforcement officers strengthen and protect human rights in the context of peaceful demonstrations.
23. The discussions covered the guarantees of the right to freedom of peaceful assembly under international law and the efforts and jurisprudence of the relevant international mechanisms, the guidelines on freedom of association and assembly in Africa; monitoring the exercise of the right to freedom of peaceful assembly; international experiences of national laws and practices relating to the right to freedom of peaceful assembly and the challenges associated with the exercise of the right to freedom of peaceful assembly.

Outcome: Presentation and dissemination of the African Commission's Guidelines on Freedom of Association and Assembly in Africa

IV. Meeting of the Support Group on the Implementation of the Guidelines on Freedom of Association and Assembly in Africa, Arusha, Tanzania, 19 October 2023.

24. I took part in the meeting of the Support Group on the implementation of the Commission's Guidelines on freedom of association and assembly in Africa (the Guidelines), held on 19 October 2023, on the sidelines of the 77th Ordinary Session held from 20 October to 9 November 2023, in Arusha, Tanzania. On this occasion we discussed the situation of freedom of association and assembly in Africa and recommendations for strategic action by the Support Group were formulated.
25. Together with the members of the Group, we examined the progress of the Group's work plan for 2023, concerning in particular the activities relating to the draft study on national legislation and its conformity with the guidelines; the draft manual on the preparation of periodic and parallel reports in accordance with the African Charter and the guidelines; the monitoring of the implementation of the guidelines; initiatives, including the possibility of a joint academic visit to Africa,

between my mechanism and that of the UN Special Rapporteur on Freedom of Assembly and Association to promote the implementation of the guidelines; towards the implementation of the Addis Ababa Roadmap - focusing on freedom of association and assembly and research and learning to support the protection of freedom of association and assembly on the continent.

26. With a view to improving the coordination of activities, the participants deliberated on the next steps and defined the priorities. They also shared responsibilities and set deadlines for implementation.

Outcome: Update on the situation of freedom of association and assembly in Africa and coordination of the Support Group's activities.

V. Participation in the side events on the situation of human rights defenders organised prior to and on the margins of the 77th Ordinary Session of the Commission, October 2023

27. During the period from 16 to 24 October 2023, I took part in various meetings and side events relating to the protection of civic space and human rights defenders organised prior to and on the margins of the 77th Ordinary Session of the Commission held from 20 October to 9 November 2023. These activities and events include brainstorming sessions on the 25th anniversary of the United Nations Declaration on Human Rights and validation of the model policy on human rights defenders in Tanzania; laws constraining the work of human rights defenders; democratic governance, conflict and accountability in Africa; on the protection of environmental defenders and the fight against violations of rights by companies in Africa; the round table on obstacles to the freedoms of association and peaceful assembly and the criminalisation of the status of activists; the situation of human rights defenders working in the area of land and the environment in Africa as well as the official launch session of the study conducted by REDHAC entitled : "we stand up for those who defend human rights and fundamental freedoms".

Outcome: Update on the situation of human rights defenders and the work of the Special Mechanism, as well as the formulation of recommendations on the protection and restoration of civic space in Africa.

I. PROTECTION ACTIVITIES

I. Urgent Appeals

28. During the period under review, the mechanism received complaints concerning alleged violations of the rights of human rights defenders, which it followed up according to the specific needs of each case. Some of these complaints concerned allegations about the human rights situation in respect of violations committed against human rights defenders. For example, during the period under review, seven urgent appeal letters were sent to the States Parties of Angola, Egypt, Kenya, Sudan, Senegal and Uganda. The allegations mainly touched on the murders of human rights defenders, cases of judicial harassment, arbitrary arrest and detention, cases of reprisals and intimidation of human rights defenders, and draft legislation that could restrict civic space and obstruct the activities of human rights defenders, once enacted in its current form.

II. State Responses

29. The mechanism has not yet received any response from States concerning the urgent appeals on allegations of human rights violations against human rights defenders sent during the intersession period, some of which are still within the deadline for submitting their replies.

PART III ANALYSIS OF THE SITUATION OF HUMAN RIGHTS DEFENDERS IN AFRICA

30. A favourable national legal framework is a necessary element in guaranteeing a safe and conducive environment for the work of human rights defenders, as stipulated in numerous international and regional instruments, including the absence of laws and practices that restrict and criminalise their work, and the adoption and effective implementation of laws and measures that guarantee their support and protection.

31. The situation of human rights defenders has evolved positively in some countries, while in others it continues to deteriorate. The following is an overview of the situation of human rights defenders, freedom of association and assembly, freedom of demonstration and the issue of reprisals in a number of countries.

A. FREEDOM OF ASSEMBLY AND DEMONSTRATION IN AFRICA

32. Freedom of assembly and peaceful demonstration are essential to collective expression and the defence of all human rights.

33. In terms of positive developments, the mechanism welcomes the following advances:

- The promulgation **by the Democratic Republic of Congo (DRC)** of Law No. 23/027 on the protection and responsibility of human rights defenders on 15 June 2023. The DRC thus becomes the fifth African country to adopt a legal instrument for the protection of human rights defenders, after Côte d'Ivoire, Mali, Burkina Faso and Niger.
- Still on the protection of human rights defenders by States, the majority of States in the West African sub-region that do not have legislation to protect human rights defenders have embarked on the process of domesticating the 1998 United Nations Declaration on Human Rights Defenders.

34. Areas of concern:

- Despite the general commitment of States Parties to respect and guarantee human rights without discrimination, the persistence of legislative frameworks and legal restrictions severely hamper the work of civil society associations and organisations in some States, despite their important contributions;
- In May 2023, the Angolan Parliament voted to approve the draft law on the status of non-governmental organisations ("the draft law"). The Bill, in its current form, reduces civic space and may have untold negative effects on the right to freedom of association, expression and related rights such as the right to privacy and non-discrimination;
- In Zimbabwe, as part of the crackdown on civic space, parliament recently passed the Private Voluntary Organisations Amendment Bill, which gives unlimited discretionary powers to the executive arm of government to over-

regulate and interfere in the governance and operations of non-governmental organisations;

- In Mali, the decision adopted on 21 September 2021 "setting out the characteristics, procedures for granting and withdrawing the professional card of human rights defenders" requires defenders to obtain a card issued to justify their status. The spirit of the United Nations Declaration is to protect all those who protect human rights, without distinction. The consequence of such a decision will be to limit the implementation of the Malian law on defenders, a law that is held up as an example on the continent.
- Some states continue to use emergency health or security measures to unduly restrict the freedoms (rights) of association and assembly, particularly for opposition political actors, civil society and human rights defenders.

35. The Commission recalls its Guidelines on Freedom of Association and Assembly in Africa which it adopted to assist States Parties, including policy makers, law drafters and legislators, to ensure that legislation, policies and administrative practices are in line with best practice and international standards and that measures do not unjustifiably infringe on the freedoms of association and assembly.

36. We encourage States to use these Guidelines and note in particular the important role played by national courts in guaranteeing the freedoms of association and assembly. We also call on national human rights institutions and NGOs to disseminate these Guidelines widely, to monitor their implementation and to share information relevant to our mechanism

B. THE QUESTION OF REPRISALS ON THE CONTINENT

37. Acts of reprisal are still rife and take various forms, including murders, assassinations, systematic harassment, undue restrictions on access to meetings of human rights bodies, various threats, physical violence and other abuses, unjustified restrictions on the activities of civil society organisations, espionage, burglary of the headquarters of organisations and associations, defamation, suspension of accreditation, arbitrary arrests and detentions and repetitive legal proceedings, among others.

38. These cases of reprisals are virtually common to all countries, with varying degrees of seriousness depending on the country. These include

- The assassination of five (5) human rights defenders, notably in the Darfur region of **Sudan**, especially those working in the El Geneina camp for displaced persons;
- Vandalism, physical attacks and other acts of intimidation against Dr Eduardo Peres Alberto, Secretary General of the Higher Education Teachers' Union (SINPES) and his family, following his refusal to abandon the strike declared by the union he leads in **Angola**;
- Increased threats and attacks against environmental human rights defenders because their work threatens powerful economic interests, including physical attacks, harassment, personal threats against their lives or against members of their families or organisations, as well as arrests and intimidation by government agents and multinational companies;

39. We call on States to investigate threats and acts of intimidation against human rights defenders and to ensure that the alleged perpetrators are brought to justice and that rights-holders and victims obtain justice and adequate reparation.

40. In accordance with the mandate assigned to the mechanism on the issue of reprisals, our efforts to prevent and combat reprisals against human rights defenders who collaborate or attempt to collaborate with the African Commission are continuing. A first report on reprisals is being drafted with the technical support of the partners who support us in this area. To this end, the mechanism intends to launch a call for contributions for its first report, which will be published and launched at the April/May session. The mechanism will contact all States from which it receives allegations of reprisals to give them the opportunity to comment.

PART IV. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

41. We continue to deplore the catastrophic situation of human rights defenders on the continent. Once again, we note with satisfaction the new law on human rights

defenders promulgated by President Felix Tshisekedi of the Democratic Republic of Congo, following the revolution that began in West Africa (Cote d'Ivoire, Mali, Burkina Faso and Niger). It is nevertheless important for the DRC to put in place a protection mechanism to ensure that the law is fully implemented. We encourage other countries to do the same, and we will continue our advocacy on this issue.

42. The number of complaints received by the mechanism remains stable, but some countries more than others are the subject of regular complaints, the veracity of which we endeavour to establish before contacting the State concerned. In this regard, we would like to stress that the follow-up to our urgent appeals, both in terms of the actual receipt by States and the implementation of our recommendations, remains a major challenge.
43. In terms of its activities, the mechanism continues to work with States on a range of issues, including:
 - The proper application of human rights norms and standards in respect of human rights defenders, in particular through recommendations on State reports, country visits, fact-finding missions, urgent appeals and other means.
 - The adoption of laws on the protection of human rights defenders, and in this respect, the mechanism reiterates its willingness to support them in the various stages of the adoption of these laws.
44. The Mechanism will also continue to examine legislation and policies that impose restrictions on public freedoms and reduce the role and operational space of civil society actors, as well as strengthen collaboration with all human rights defenders and pursue dialogue with States and other stakeholders.
45. Similarly, as part of the Addis Ababa Roadmap, a joint study with the UN Special Rapporteur on freedom of assembly and association is being finalised with the support of the mechanism's partners to improve the working environment for human rights defenders.
46. To this end, we call on stakeholders, in particular States Parties, national human rights institutions, international and intergovernmental organisations and civil society organisations, to kindly make their contributions to the Draft African

Declaration on the Promotion of the Role of Human Rights Defenders and their Protection, the first consultation on which took place during this session.

B. RECOMMENDATIONS

47. The recommendations made in our previous reports remain valid. The Mechanism would like the States Parties and the various stakeholders, including those from civil society, to take ownership of them and work towards their effective implementation.

⌘ To the States Parties:

- i. Develop, adopt and implement stronger and more adequate national laws, policies and programmes for the protection of human rights defenders;
- ii. Raise awareness of the law on human rights defenders among administrative, judicial and security authorities in order to remove all forms of restrictions on the work of human rights defenders;
- iii. Ensure that the mechanisms put in place for the protection of human rights defenders are inclusive and bring on board representatives of civil society;
- iv. Ensure that draft legislation on the protection of human rights defenders complies with international legal standards in order to create a favourable legal environment for their work;
- v. Refrain from adopting repressive laws aimed at restricting civic space and the legitimate activities of defenders to promote and defend human rights;
- vi. Adopt special laws to deal with the protection of human rights defenders in the environment or in situations of health and security crises or other continental or global crises;
- vii. Raise awareness and build the capacity of the various stakeholders, including human rights defenders, in relation to the laws and regulations governing the promotion and protection of human rights;
- viii. Take all appropriate measures to ensure that defenders carry out their activities in conditions of security free from any threat to their physical and moral integrity;
- ix. Pay particular attention to the situation of women human rights defenders, which remains a constant concern for the Special Rapporteur's Mechanism;
- x. Refrain from deregistering NGOs and civil society organisations working to promote and protect human rights, and strengthen civic and democratic

- space by promoting freedom of expression, association and peaceful assembly for all human rights defenders;
- xi. Ensure that measures taken by States to combat terrorism are in line with the African Commission's Declaration of Principles on Freedom of Expression in Africa and the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa;
 - xii. Put in place adequate mechanisms to compensate human rights defenders for harm suffered in the course of their work;
 - xiii. Engage in dialogue and consultation with human rights defenders, publicly recognise and support their work through communication and information campaigns;
 - x. Encourage and promote the organisation of defenders' work into associative networks at national, sub-regional and continental levels;
 - xi. Be more proactive in responding to allegations of violations of defenders' rights by my mechanism and the Commission's other mechanisms.

⌘ To the African Union and other regional and sub-regional bodies:

- i. Recognise the essential role of human rights defenders in the effective implementation of democratic principles, the rule of law, good governance and sustainable development in Africa;
- ii. Encourage Member States and the organs of the African Union to conduct awareness-raising campaigns on the fundamental role played by human rights defenders;
- iii. Create a space for dialogue between States, human rights defenders and other key actors on challenges, good practices and progress in the protection of human rights defenders;
- iv. Encourage and support full collaboration between national, regional and international human rights mechanisms.

⌘ To National Human Rights Institutions:

- i. Fully exercise their promotion and protection mandates to hold States accountable for violations committed against human rights defenders and intervene in support of defenders who are victims of human rights violations;
- ii. Establish internal mechanisms for the protection of human rights defenders within the institution and ensure that they are adequately resourced and work actively with all human rights defenders;

- iii. Continue the initiatives relating to the regular holding of the Forum of NHRIs as a prelude to the Sessions of the Commission.

⌘ To civil society organisations :

- i. Continue to collaborate with national, regional and UN mechanisms for the promotion and protection of human rights, in order to prevent and respond to human rights violations committed against populations and human rights defenders;
- ii. Not to focus solely on the satisfaction of certain human rights (the right to freedom of assembly, for example) to the detriment of others (the right to life; economic, social and cultural rights and collective rights) and to seek to maintain the necessary balance so that the satisfaction of certain rights does not lead to the destruction of others;
- iii. Establish and strengthen networks of national and regional advocates to promote collaboration and cross-sectoral approaches that build alliances with diverse groups;
- iv. Develop innovative approaches to involve the general public, political actors and other opinion leaders, including the media, in the work of human rights defenders;
- iv. Comply with the laws and regulations in place and conduct their activities in accordance with the international, regional and national texts established for this purpose;
- iv. Avoid the political instrumentalisation of their activities and contribute mutually to the strengthening of each other's capacities;
- v. Pursue their activities to promote and defend human rights and engage in constructive dialogue with the various stakeholders.

⌘ To the media

- i. Engage in dialogue with all human rights defenders and support their efforts to advance human rights, the rule of law, social change and development;
- ii. Work in solidarity with human rights defenders to enable them to inform themselves and the public appropriately.

⌘ To religious and traditional leaders

- i. Work to remove obstacles to the work of human rights defenders and civil society organisations, in particular access to communities;

- ii. Work to prevent negative practices that discriminate against women defenders and human rights defenders working with people who are criminalised and/or discriminated against, such as sex workers, people living with HIV and people of diverse sexual orientations and identities.

⌘ Technical and financial partners

- i. While thanking them for their ongoing support, I encourage them to continue to support the Mechanism, States Parties, national institutions and civil society in their efforts to better promote and protect the rights of human rights defenders.