

“ *Lawyers for Lawyers* ”

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TRAINING MANUAL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 29: HUMAN RIGHTS DEFENDERS AND THEIR PROTECTION

Further to the *Declaration on Human Rights Defenders* that was adopted by the United Nations GA on 9 December 1998 (Res. N°53/144), human rights defenders are individuals, groups or associations who act to promote, protect and establish human rights and fundamental freedoms at national and international levels.

➤ *Who are human rights defenders?*

Any individual or legal entity, body, association, institution, international organisation or non-governmental organisation may be a human rights defender, at any time, in the course of their professional activities or otherwise.

A human rights defender is defined as a result of the action that he takes.

➤ *What type of action does this involve?*

As human rights must be effective in all States and may be violated in any State, human rights defenders act worldwide, in non-democratic States and in established democracies.

They defend one or more fundamental rights of a person or group of persons, acting either individually or as part of an association (often an NGO).

The action may involve:

- Investigations into alleged violations, whose conclusions are forwarded to the competent authorities at local, national, regional or international level, so that action can be taken and human rights violations do not go unpunished.

For example, the reports published on the human rights situation in a given country or regarding a specific situation or area (children's rights, prisoners' rights, torture, human trafficking, etc), may provoke a reaction at the level of the States concerned or internationally.

- Victim support: legal assistance, representation in legal proceedings, advice, psychological support, etc.



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- Working to defend human rights on a daily basis, as part of their professional activities.
- Mobilising citizens, institutions, associations, etc in order to defend or promote a right, or encourage States to ratify and/or implement international legal instruments relating to human rights, or to set up national mechanisms to protect human rights.
- Promoting human rights through activities intended to increase awareness, education or training in these rights.

➤ **What problems are encountered by human rights defenders?**

Human rights defenders are themselves often victims of human rights violations or of reprisals taken in response to their commitment. They may suffer restrictions on their freedom of expression, association or assembly, or restrictions on freedom of movement (for example, they may be prohibited from leaving or returning to a specific country), or they may suffer intimidation, stigmatisation, harassment, death threats, repression, arrest, arbitrary detention, often in inhuman or degrading conditions, torture or sometimes even assassination.

Situation of lawyers

Lawyers who defend human rights are often threatened in their physical or moral integrity, through the pressures which are made on them, their family, their circle of friends, or their clients due to the exercise of their profession. Forms of threats are various: hindrance to their professional functions through excessive administrative practices, identification of the lawyer with the cause he defends, indirect pressures, putting the lawyer in danger through pressures or direct physical or moral threats (in extreme cases assassinations), abuse of process, breach of decent prison conditions.

For detailed information please refer to the Annual Report of the International Observatory for Lawyers : <http://www.observatoire-avocats.org/en/annual-report-2/>

➤ **What mechanisms exist to protect them?**

As reprisals against defenders had become more common and were sometimes serious, in 1998 the United Nations GA adopted the *Declaration on Human Rights Defenders*, which identifies a certain number of rights that are specific to human rights defenders and defines several obligations for States. The post of special rapporteur was also created, tasked with monitoring the implementation of the declaration.

Otherwise, several initiatives have been taken at regional level with the creation of special rapporteurs or special units charged with studying the situation of human rights defenders.

Finally, some non-governmental organisations specialise in the defence of human rights defenders.

• **The Declaration on Human Rights Defenders of 1998**

- *The rights and duties of human rights defenders*
- ✓ Acknowledged rights intended to guarantee the defence of human rights (and fundamental freedoms) (Articles 5, 6, 8, 9.3 and 9.4, 11, 12.1, 13)
 - The right to meet or assemble peacefully.
 - The right to form, join and participate in non-governmental organisations, associations or groups.
 - The right to communicate with non-governmental organisations.
 - The right to know, seek, obtain, receive and hold information about human rights.

- The right to discuss, evaluate, publish and distribute ideas or information relating to human rights and the respect for human rights, and to advocate the acceptance of human rights.
 - The right to the lawful exercise of his or her occupation or profession.
 - The right to participate in peaceful activities against violations of human rights.
 - The right to solicit, receive and utilise resources for the express purpose of promoting and protecting human rights through peaceful means.
 - The right to complain about the policies and actions of individual officials or governmental bodies with regard to violations of human rights to competent domestic authorities, or to approach international bodies to receive communications.
 - The right to attend public hearings so as to form an opinion on their compliance with national law or international obligations.
- ✓ Acknowledged rights relating particularly to human rights defenders under threat (Article 9)
- The right to have an effective remedy: any person whose rights or freedoms are allegedly violated has the right to complain, with all guarantees of a fair trial (judgment within a reasonable period of time by an independent, impartial and competent authority, public hearing, adversarial proceedings, reasoned decision compensation for the damage, enforcement of the decision, etc.).
 - The right to be protected when one's rights have been violated.
- ✓ Limits on the actions of human rights defenders
- Those determined by the law in accordance with the United Nations Charter, and other obligations intended to ensure that human rights and fundamental freedoms are protected and respected.
 - The activities pursued and means used must be peaceful.
- *States' obligations*
- ✓ States' obligations to promote and respect human rights (Articles 2.1, 9.5, 14 and 15)
- States have a responsibility and duty :
- To adopt such steps as may be necessary to ensure the social, economic, political and legal conditions required so that all persons are able to all enjoy humans rights and fundamental freedoms.
 - To conduct a prompt and impartial investigation or ensure that an investigation is carried out whenever there are suspicions of a violation of human rights in its territory.
 - To publish and ensure that human rights instruments are made available, along with reports relating to their implementation.
 - To promote and facilitate the teaching of human rights.
- ✓ States' obligations to guarantee the rights of human rights defenders, and to protect them (Articles 2.2, 10, 12.2 and 12.3)
- States have a responsibility and duty :

- To adopt legislative, administrative and other steps so as to ensure that the rights and freedoms referred to in this Declaration are effectively guaranteed.
- To take all necessary measures to ensure the protection by the competent authorities of any person against any violence, threats, retaliation, *de facto* or *de jure* discrimination, pressure or any other arbitrary action arising as a consequence of his or her exercising the rights referred to in this Declaration.
- To adopt laws intended to protect citizens who react by peaceful means against activities or acts that led to a violation of human rights.

- **Special Rapporteurs (or special units) on the situation of human rights defenders**

- *The United Nations Special Rapporteur on the situation of Human Rights Defenders*

This mandate was created in 2000 by the Human Rights Commission, and renewed in 2008 for 3 years. The current Special Rapporteur is Mrs Margaret Sekaggya.

The Special Rapporteur is authorised to:

- Seek, receive and examine information within his or her area of competence.
- Recommend strategies to better protect human rights.
- Establish cooperation and conduct dialogue with interested actors on the promotion and implementation of the Declaration.

As part of this mandate, the rapporteur visits countries, drafts annual reports for the Human Rights Council and the United Nations General Assembly on the most important topics and examines individual cases of particular concern.

Procedure for dealing with complaints: Once the probable validity of an allegation has been determined, the rapporteur will make contact with the State concerned:

- Either by making an "urgent appeal" letter within the next few hours, if the violation is currently being perpetrated or is about to be perpetrated, in order to ask the State to take the necessary measures to investigate the alleged facts and remedy the situation;
- Or by writing an "allegation" letter, if the complaint refers to a violation that has already been committed, so that the State can initiate an investigation and prosecute the perpetrators of the acts complained of.

The rapporteur follows up cases with the governments concerned.

Contact details: to report a violation: urgent-action@ohchr.org; to make contact for another reason: defenders@ohchr.org

Guidelines for submitting allegations of violations:

<http://www2.ohchr.org/english/issues/defenders/complaints.htm>

- *Other United Nations Special Rapporteurs who may play a role in the protection of human rights defenders*
- Special Rapporteur for the promotion and protection of the right to freedom of opinion and expression.
- Special Rapporteur on the independence of judges and lawyers.
- Working Group on arbitrary detention.
- Special Rapporteur on extra judicial, summary or arbitrary executions.
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

- *Special Rapporteur on the situation of Human Rights Defenders in Africa*

This mandate was set up in 2004 by the African Commission on Human and Peoples' Rights. The current rapporteur is Mr Mohamed Khalfallah.

The objectives of the Special Rapporteur for Africa are the same as those of the UN rapporteur, although his or her jurisdiction is more limited. He or she is authorised to:

- Seek, receive and examine information within his or her area of competence.
- Recommend strategies to better protect human rights.
- Establish cooperation and conduct dialogue with interested actors on the promotion and implementation of the United Nations Declaration on Human Rights Defenders.

Contact details: achpr@achpr.org

- *The Human Rights Defenders Unit of the Inter-American Commission on Human Rights*

In 2001, the Office of the Executive Secretary of the Commission created a unit charged with coordinating its activities in liaison with human rights defenders. Its main functions are as follows:

- To gather information in its area of competence.
- To liaise with government and non-governmental organisations in this field.
- To coordinate the work of the Executive Secretariat relating to human rights defenders in the hemisphere.

Contact details: CIDHDefensor@oas.org

- *European framework*

There are no specific mechanisms relating to human rights defenders within the Council of Europe or the European Court of Human Rights. However, on 6 February 2008, the Committee of Ministers of the Council of Europe adopted a Declaration on the Council's action to improve the protection of human rights defenders and promote their activities. It calls upon the States and the Council of Europe Commissioner for Human Rights to set up a certain number of measures in order to ensure strong, effective protection for human rights defenders in Europe.

Otherwise, the Council of the European Union has adopted guidelines relating to human rights defenders, which aim to improve the Union's external action in this field.

- **Organisations working for the defence of human rights defenders**

These organisations have developed mechanisms to alert civil society and the authorities about human rights defenders who are under threat, and to provide direct assistance for such persons (material, financial, legal, etc): e.g. The Observatory for the Protection of Human Rights Defenders (<http://www.fidh.org/-Human-Rights-Defenders>); The International Observatory for Lawyers (<http://www.observatoire-avocats.org/en/>); Protection International (<http://www.protectioninternational.org>); Frontline (<http://www.frontlinedefenders.org/>)...

Sources:

- Declaration on Human Rights Defenders 1998: <http://www2.ohchr.org/french/issues/defenders/declaration.htm>
- Website of the United Nations Special Rapporteur on the situation of Human Rights Defenders: <http://www2.ohchr.org/english/issues/defenders/index.htm>
- Website of the Special Rapporteur on the situation of Human Rights Defenders in Africa: http://www.achpr.org/english/info/index_hrd_fr.html
- Website of the Human Rights Defenders Unit of the Inter-American Commission on Human Rights: <http://www.cidh.oas.org/defenders.defensores.htm>

- Declaration of the Committee of Ministers on the action of the Council of Europe to improve the protection of human rights defenders and promote their activities: http://www.coe.int/t/commissioner/Activities/HRD/default_en.asp
- European Union guidelines on human rights defenders: http://eeas.europa.eu/human_rights/defenders/index_en.htm

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