THE INTERNATIONAL LEGAL FRAMEWORK APPLICABLE TO THREATS AGAINST HUMAN RIGHTS DEFENDERS:
A REVIEW OF THE RELEVANT JURISPRUDENCE IN INTERNATIONAL LAW
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LIST OF ABBREVIATIONS

ACHPR: African Charter on Human and Peoples’ Rights
ACHR: American Convention on Human Rights
CAT: Convention against Torture
CEDAW: Convention on the Elimination of All Forms of Discrimination against Women
CEESC: Committee on Economic, Social, and Cultural Rights
ECHR: European Convention on Human Rights
Eur. Ct. H.R.: European Court of Human Rights
HRD(s) or defender: human rights defender(s)
Hum. Rts. Comm.: U.N. Human Rights Committee
ICCPR: International Covenant on Civil and Political Rights
ICERD: International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR: International Covenant on Economic, Social, and Cultural Rights
Inter-Am. Comm’n H.R.: Inter-American Commission of Human Rights
Inter-Am. Ct. H.R.: Inter-American Court of Human Rights
U.N. Declaration on HRDs: U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universal Recognized Human Rights and Fundamental Freedoms
UDHR: Universal Declaration of Human Rights
I. PROLOGUE

On March 2, 2016, prominent indigenous leader, and environmental activist Berta Cáceres was murdered in La Esperanza, Honduras. Her death sent shockwaves across the world. However, prior to her death, she had received 33 threats. None were ever investigated, even after the Inter-American Commission on Human Rights granted precautionary measures in her favor.

Sadly, threats, attacks, and killings of human rights defenders are all too common across the globe. Impunity for threats and violence against them has contributed to entrenching high rates of violence against a group that is vital to the development of our democracies.

The Esperanza Protocol project was developed to provide a timely and effective solution in addressing threats faced by human rights defenders, journalists, and others tasked with preserving democracies and the full enjoyment of human rights across the world, with a special focus on the investigation of threats. Esperanza means hope in Spanish and expresses the possibility of inspiring change and illuminating the possibilities of social transformation and justice that human rights defenders pursue. In this spirit, we propose a path forward.

This initiative is led by the Center for Justice and International Law (CEJIL) with support from several organizations, human rights defenders, and experts. As part of this process, six committees examined distinct areas of focus of the Esperanza Protocol, including the relevant international law framework, public policy standards and best practices, criminal policy and investigation, and the need for transformative reparations and guarantees of non-repetition. Members included HRDs, experts from local civil society organizations, international human rights groups, academic and thematic experts, and representatives from regional or international human rights bodies.

It is with great pleasure that I present to you the following report, developed by the International Legal Framework Committee. The Committee sets out the applicable international legal standards regarding human rights defenders,
threats, and corresponding State obligations. Their work has been crucial in the development and drafting of the Protocol.

I am grateful to the committee experts, who worked tirelessly on this report. I also want to highlight the invaluable contribution of the International Human Rights Law Clinic of the University of California, School of Law (IHRLC), which provided background research and hosted a meeting of experts. As the project moves forward, we hope that this report will provide a significant contribution to a Protocol that seeks to promote the development of national, regional, and international policies by including standards to fight against impunity, guaranteeing that there is #Hope4Defenders across the globe.

Sincerely

Viviana Krsticevic
II. INTRODUCTION

In drafting this memorandum, the International Legal Framework Committee greatly benefited from a first draft prepared by the International Human Rights Law Clinic of the University of California, School of Law (IHRLC). That document was submitted as a first contribution to the initiative to draft the Esperanza Protocol, a soft law document that will establish guidelines based in international and regional legal norms, on investigation of threats against human rights defenders (HRDs). That first draft was then discussed and reviewed by the International Legal Framework Committee.

The aim of this memorandum is to provide an overview of the international legal framework applicable to threats against human rights defenders and the relevant jurisprudence in international law that undergirds it.

This memorandum draws from various sources of international human rights law, including conventions, treaties, jurisprudence of treaty monitoring bodies, jurisprudence of regional mechanisms like the Inter-American Court and Commission of Human Rights, the European Court of Human Rights, and the African Commission of Human Rights, and a variety of soft law sources. There is widespread acknowledgement in the body of law under analysis that threats violate the human rights of HRDs and give rise to a diversity of obligations on the State. While there is minimal divergence among jurisdictions, some areas of jurisprudence are better developed in certain jurisdictions as compared with others. However, taken collectively, they present a comprehensive framework of international and regional legal norms that set out the State's obligation to prevent and protect HRDs against threats.

The present document seeks to locate the obligation to investigate threats within the larger framework of the State's obligations to protect persons within its jurisdiction and prevent violations of their rights. In the process, complementary State obligations like the obligation to implement measures of protection in anticipation of violations that may follow threats, to punish perpetrators of threats, and to provide reparations to victims of threats, are discussed. The discussion proceeds in nine sections, including the present one. Part II provides the definitions of HRDs and
threats, as considered by the International Legal Framework Committee to draft this memorandum. Part III sets out the State’s obligation to prevent and protect against threats that violate rights across two dimensions—the State’s positive and negative obligations, and general and specific due diligence obligations—and discusses the role of intersectionality in the analysis of the international legal framework addressing threats against HRDs. The section also addresses definitional challenges presented by variations in the terms used to explain the nature of State obligations. Part IV deepens the discussion of the general due diligence obligations of the State to prevent and protect against violations, moving from the overarching requirement to establish a safe and enabling environment and adequate legal framework for enjoyment of rights, to general measures of protection in the context of threats and the State’s duty to combat impunity arising from the failure to address threats. Part V reviews the specific due diligence obligations of the State in the context of threats against HRDs, including the threshold at which the State’s due diligence duties are triggered and the contours of the duty to investigate, punish, and repair. Part VI sets out the reinforced and/or heightened nature of State obligations in cases concerning threats against HRDs and discusses the rationale for and dimensions of this duty. Part VII examines the obligations by non-State actors and, in particular, the duties of businesses and corporations to respect human rights. Part VIII identifies the specific human rights that may be violated when threats are made against HRDs and discusses the key elements of such an analysis. Part IX concludes the document by providing some observations on how the framework and jurisprudence discussed might be understood.

II. RELEVANT DEFINITIONS

For the purpose of this memorandum, the International Legal Framework Committee has considered the definition of HRDs contained in the preamble of the U.N. Declaration on HRDs, according to which HRDs are individuals, groups and associations that “contribute to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.”

It is widely recognized that the criterion to determine whether a person is a human rights defender or not rests upon the activity undertaken by the person, regardless of
whether the individual acts as a private individual or as a public servant.\(^1\) Defenders can be of any gender and background and their activities can vary from monitoring, reporting, disseminating, educating, advocating, or defending rights before the justice system.\(^2\) HRDs can be individuals, groups and organs of society that promote the rights of other individuals or the rights of members of groups such as indigenous communities.\(^3\) In the definition of groups, there should be an understanding that this includes not only those acting and defending fundamental rights on behalf of others (e.g. CSOs, media, academia), but also affected individuals defending the communities to which they belong\(^4\) and collectively, communities fighting for their rights.\(^5\)

Likewise, threats are broadly defined to have physical, psychological, economic, and social dimensions,\(^6\) and include various forms of harassment,\(^7\) intimidation,\(^8\) moral and psychological injury,\(^9\) delivered directly or indirectly,\(^10\) through various means, including different media.\(^11\)


\(^3\) European Union Guidelines on Human Rights Defenders (2008), ¶ 3.

\(^4\) The OHCHR includes “individuals working within their local communities” in its discussion of who can be a human rights defender. https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx (last visited Jul. 26, 2019).

\(^5\) Protection International has an ongoing global campaign, #CommunitiesareHRDs that works on the assumption that human rights defenders seldom act individually and that a collective approach to human rights work, among other things, must be advocated. https://www.protectioninternational.org/en/communities-are-hrds-pi-global-campaign (last visited Jul. 26, 2019).


\(^8\) Id.

\(^9\) Id. ¶ 158.

\(^10\) Id. ¶ 159.

\(^11\) G.A. Res. 70/217, ¶ 46 (“Threats received through digital communications, which often expose defenders to a large number of threats due to the open nature of the internet.”).
III. THE STATE’S OBLIGATION REGARDING HUMAN RIGHTS

A. Negative and Positive Obligations of the State to Protect Human Rights

States have both negative and positive obligations to guarantee the human rights and fundamental freedoms enumerated in various international human rights instruments. Generally, negative obligations require States to refrain from interference in the exercise of rights while positive obligations require States to take affirmative steps in order to ensure the protection and promotion of rights. International Law has developed both positive and negative obligations recognising their interrelated character as applicable to civil and political rights and economic, social, and cultural rights. While the universal and the regional systems use differing language to distinguish between these obligations, all systems require States to undertake both negative and positive obligations to protect against and prevent human rights violations. This section provides a general overview of the language used in each system while subsequent sections detail specific examples of the State’s positive obligations.

Under international human rights law, the State must respect, protect, and fulfill its obligations to protect human rights. Respect entails the negative obligation of States to refrain from the interference with the human rights. Protect entails the positive obligation to protect persons against human rights abuses. Fulfill entails the positive obligation that requires States “to take positive action to facilitate the

13 Id.
14 Id. § 2.
16 Shelton & Gould, supra note 12, § 2.1; International Human Rights Law, supra note 15.
17 Shelton & Gould, supra note 12, § 2.1; International Human Rights Law, supra note 15.
enjoyment of basic human rights.” Further, to discharge its positive obligations, the State must protect against violations of rights by non-State actors by taking appropriate measures and exercising due diligence to prevent, punish, investigate, or redress such harms. State responsibility for the actions of non-state actors are likewise described in the UN Human Rights Committee’s interpretation of Article 2(1) of the ICCPR, through General Comment No. 3. It states that “the positive obligations on State Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights insofar as they are amenable to application between private persons or entities.”

Under the European system, States must secure for everyone the rights and freedoms enumerated in the European Convention on Human Rights (ECHR), which encompasses both negative and positive duties. Jurisprudence in the European system has also created positive procedural obligations by reading substantive rights, including the right to life and the prohibition on torture and ill-treatment, in conjunction with ECHR, art. 1, meaning the State has a “positive procedural obligation to investigate any alleged violation that occurs and sanction those responsible.”

18 Shelton & Gould, supra note 12, § 2.1; International Human Rights Law, supra note 15.
19 Shelton & Gould, supra note 12, § 2.1.
20 ECHR, art. 1; Shelton & Gould, supra note 12, § 2.2. See OSCE, Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR 2014, at ¶ 68, (2014) (“The obligations of participating States to respect, protect and fulfil human rights requires that they refrain from any threats or acts of violence against human rights defenders, protect them from such acts by non-state actors and take proactive measures to ensure their safety.”).
21 Shelton & Gould, supra note 12, § 2.2; Mahmut Kaya v. Turkey, App. No. 22535/93, Eur. Ct. H.R., ¶¶ 85–86 (Mar. 28, 2000) (stating that under ECHR, art. 2, States have negative obligations, to refrain from the intentional and unlawful taking of life and States have positive obligations, “to take appropriate steps to safeguard the lives of those within its jurisdiction” which includes effective criminal-law provisions that secure the right to life by deterring the commission of offenses against the person and “backed up by law-enforcement machinery for the prevention, suppression, and punishment of breaches” as well as provisional measures to protect those whose life is at risk). See Jean-François Akandji-Kombe, POSITIVE OBLIGATIONS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS: A GUIDE TO THE IMPLEMENTATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS, Human Rights Handbook No. 7, at 5 (2007) (“These general obligations
the “difficulties of modern societies, the unpredictability of human conduct and the operational choices” to be made, positive obligations must not impose an impossible or disproportionate burden on authorities.\textsuperscript{22}

In the Inter-American system, States have a fundamental obligation to \textit{respect} and \textit{ensure} the rights and freedoms recognized within the American Convention on Human Rights (ACHR).\textsuperscript{23} \textit{Respect} entails negative obligations that restrict State actions to prevent violations of the ACHR,\textsuperscript{24} whereas \textit{ensure} entails the organization of governmental institutions and structures to exercise “public power . . . so that they are capable of juridically ensuring the free and full enjoyment of human rights.”\textsuperscript{25} The obligation to ensure, or the obligation to \textit{guarantee},\textsuperscript{26} also includes the duties to prevent, investigate, and repair.\textsuperscript{27} The nature and scope of positive obligations

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may vary based on the specific right guaranteed and the needs of persons requiring protection. Further, the obligations to respect and ensure are interrelated and, together, require the State to “abstain[] from violating guaranteed human rights; prevent[] violations by State and non-State actors; and investigate[] and punish[] both State and private human rights infringements.”

Under the African system, States have a four-fold obligation to respect, protect, promote, and fulfill its human rights guarantees encompassed in the African Charter on Human and Peoples’ Rights (ACHPR). Respect entails the negative obligation to refrain from interfering with all fundamental rights and should “respect right-holders, their freedoms, autonomy, resources, and liberty of their action.” Protect entails the obligation of the State to protect persons against third parties and non-State actors by taking measures through a legislative and regulatory framework that allows persons to realize their rights and includes the provision of effective remedies when rights are violated. Promote entails further positive obligations of the State to “promot[e] tolerance, rais[e] awareness, and even build[] infrastructures” to allow persons to realize their rights. Finally, fulfil creates a positive obligation on the State to “fulfil the rights it freely undertook under various human rights regimes” by developing mechanisms and moving its infrastructure towards the actual realization of those rights.

32 Id. ¶ 46.
33 Id.
34 Id. ¶ 47 (including, for example, direct provision of food or resources to be used for food, like food aid or social security, as part of its obligation under the right to life).
Examples of specific steps States must take to fulfill these negative and positive obligations are discussed below.

**B. General, Specific, and Reinforced Standards of Due Diligence**

While a State’s negative obligations require it to refrain from acting in any way that would infringe on the enjoyment of rights protected under human rights law, the State’s execution of its positive obligations carries a due diligence standard: generally understood as “reasonable measures of prevention that a well-administered government could be expected to exercise under similar circumstances.” 35 Here, prevention refers to all positive obligations, including the obligation to investigate, punish, and repair any violations. 36

The due diligence standard was first developed through the Inter-American system, which holds States liable for human rights violations that they could have prevented through the exercise of due diligence when a harmful act is committed by either State or non-State actors and violates the protected rights of persons. 37 Even if a human rights violation is not directly imputable to State authorities, the State can nevertheless be held responsible because of the “lack of due diligence to prevent the violation or to respond to it as required by the [ACHR].” 38 Due diligence considerations are not fixed but require an assessment of the conduct of State authorities to prevent or respond to a violation in a particular context in which that State is operating as well as the “general state of affairs at the

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35 Shelton & Gould, supra note 12, § 3.
36 See, e.g., Rashida Manjoo (Special Rapporteur on Violence against Women, its Causes and Consequences), Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, U.N. Doc. A/HRC/23/49 (2013) (outlining positive obligations in the framework of individual and systemic due diligence standards, which require States to ensure various mechanisms and institutions function to prevent, protect, punish, and repair against human rights violations that violate the rights of women).
37 Shelton & Gould, supra note 12, § 3.2.
time.” 39 The European system has followed the Inter-American system in its development of the due diligence standard.40

While the concept of State acquiescence or complicity as it relates to the State’s due diligence obligation is not entirely consistent across systems, generally, a State has failed in its due diligence obligations to protect and prevent human rights violations when the State supports or acquiesces to the violation of the human right;41 is complicit if it condones the violation as seen through a pattern of abuse through pervasive inaction; 42 allows the violation to take place without taking measures to prevent it; 43 or fails to investigate or punish...


40 Despite not naming it as such in earlier cases, the European Court of Human Rights first developed a due diligence standard in Osman v. United Kingdom, App. No. 23452/94, Eur. Ct. H.R., ¶ 117 (Oct. 28, 1998) (stating that in order for States to fulfil their positive obligation to protect the ECHR, art. 2 right to life, States must protect against death threats when “the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual . . . from the criminal acts of a third party”). See Isayeva and Others v. Russia, App. Nos. 57947/00, 57948/00 & 57949/00, Eur. Ct. H.R., ¶¶ 208–13 (Feb. 24, 2005) (detailing that the obligations to protect the ECHR, art. 2 right to life includes effective, prompt, and reasonable investigation into the deaths of Petitioners in order to implement domestic laws properly, ensure accountability for the deaths, and prosecute those responsible).

41 Velásquez Rodríguez v. Honduras, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 173. For example, in the Inter-American system, collaboration and acquiescence are considered violations of the right to respect.

42 Shelton & Gould, supra note 12, § 3.2.

those responsible if the violation occurs. 44

Part IV of this document discusses the general due diligence standard that States owe to all persons through an overarching set of legal duties and standards to protect their human rights. 45 Part V analyses the specific due diligence standard that States owe to all persons when they know or ought to know of a human rights violation against persons. 46 Part VI explores the reinforced or heightened due diligence obligations States owe human rights defenders due to the nature of their work, their particular vulnerabilities, as well as the social impact any threat or attacks against HRDs have on the communities they work for.47

C. Non-Discrimination and Intersectionality

Acknowledging existing discrimination, International human rights standards call for an intersectional approach to all measures taken by the State to protect the rights of HRDs and prevent a violation of their rights. 48 This standard is informed by the recognition that HRDs come from diverse backgrounds, cultures, and belief systems and have different identities and experiences, often resulting in discrimination and compounding and intersecting vulnerability to human rights violations. 49 For example, this requires awareness on the role that discrimination

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44 Id. ¶ 173.
45 See infra Part III General Due Diligence Obligations, which discusses the States’ obligation to create an enabling environment for the full and free enjoyment of human rights by establishing a legal framework, instituting general measures of protection as part of the state’s duty to protect and prevent, and implementing policies and practices against impunity.
46 See infra Part IV Specific Due Diligence Obligations, which discusses when such obligations are triggered and the nature and scope of the obligations, including the threefold duty to investigate, punish, and repair.
47 See infra Part V Reinforced Obligations for Human Rights Defenders, which discusses the normative reason for reinforced obligations against HRDs and the effect this has on the State’s positive obligations.
49 Id.
plays in the responses to protect and prevent violations against women HRDs. As such, intersectional approaches should be taken to protect at-risk groups of HRDs, including women defenders, indigenous defenders, defenders of the LGBTI, environmental and land defenders, and those who are collectively at risk as a consequence of their affiliation with a disfavored group.

Intersectionality has been most explicitly recognized as it relates to gender where gender-based discrimination intersects with other identities such as ethnicity, religion, class, age, health, or sexual orientation to “produces different vulnerabilities,” which impacts the rights and security of women defenders differently. 50 For HRDs, the Inter-American system has stated that the dual discrimination suffered “by virtue of being a woman and either indigenous or Afro-descendant is compounded in the case of women who promote and defend women’s rights.” 51 Overall, States should apply an intersectional lens to the assessment of risks of women HRDs and to the design of protection initiatives as to “recognize the significance of gender in the protection of defenders.” 52 States should ensure that in such situations HRDs “must be treated fairly and equally and obtain fair and adequate compensation, rehabilitation and other reparative measures which respond to their specific needs.” 53 Additionally, States should examine proposed legislative or policy reforms for whether such reforms would have a “negative impact on women or contain gender-specific elements or would affect specific sectors of the population.” 54

50 Id. ¶ 38.
IV. GENERAL DUE DILIGENCE OBLIGATIONS OF THE STATE: CREATING A SAFE AND ENABLING ENVIRONMENT

As explained above, State responsibility is generally based on acts or omissions that are wrongful as a matter of international law (i.e., they violate an international obligation of the State) and are committed by State actors or by actors whose actions are attributable to the State, unless there are circumstances that preclude wrongfulness (such as self-defense, error, duress, state of necessity, etc.). Circumstances that preclude wrongfulness are seldom if ever present in human rights violations. States may incur responsibility for acts of State and non-State actors where there is a failure to exercise due diligence to prevent or respond to the latter’s acts or omissions.\(^55\) The due diligence standard is a particularly important tool to examine what constitutes effective fulfillment of a State’s obligations, and for analyzing its actions or omissions. States have the obligation to adhere to a standard of due diligence when addressing the issue of violations of rights of HRDs.

As part of the States’ general obligations to protect human rights, as well as derived of the specific obligation to prevent harm and the reinforced obligation to protect the work of HRDs and prevent violations against them, States have a duty to ensure a safe and enabling environment that allows HRDs to perform their work.\(^56\)

HRDs should be able to enjoy the rights and freedoms that are necessary for them to be able to effectively undertake their activities of promoting and protecting human rights, e.g. freedom of expression, association, peaceful

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\(^{56}\) Article 3 of the UN Declaration of HRDs; article 9 of the of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted in Escazú, Costa Rica on 4 March 2018.
assembly, access to information, including access to detention places and police stations, access to remedies, etc.\textsuperscript{57}

There is a need for States to clearly recognize that HRDs face differing levels of threats that require nuanced responses. For example, Michel Forst in his 2016 Report noted that “defenders who challenge social and cultural norms, do not fit stereotypes and prescribed roles, or who challenge power structures in society—such as defenders of sexual orientation and gender identity rights, women defenders, and defenders working on the rights of minorities and indigenous people— are often stigmatized and subjected to threats and attacks from members of society because of who they are or what they do. Defenders in conflict zones and occupied territories are also more vulnerable to continuous insecurity and threats. Protection practices must therefore be gender-sensitive and suited to the specific needs and situations of such defenders at risk.”\textsuperscript{58}

HRDs who operate in an environment where there is “poor governance, absence of the rule of law, an upsurge in religious and political intolerance and fundamentalism, or tension over development issues” often face threats and intimidation. They also face laws and regulations “designed to delegitimize and criminalize the human rights activities of defenders.”\textsuperscript{59}

A. Public support for the work of defenders

In an attempt to delegitimize the work of defenders, HRDs are often branded as ‘enemies of the State’ or ‘terrorists’ or ‘immoral’ or ‘enemies of the majorities’ or ‘tools of illegitimate interests’. This stigmatization makes them more vulnerable to attacks, especially by non-State actors.\textsuperscript{60} State officials have an obligation to


\textsuperscript{59} Id. ¶ 25.

ensure that their own statements cannot be construed, correctly or incorrectly, as encouraging murder or other violations.\textsuperscript{61}

Hence, the task of establishing an environment conducive to the work of HRDs begins with the State recognizing the important and legitimate role HRDs play in promoting and protecting human rights, democracy, the rule of law, development, and peace and security.\textsuperscript{62} States must acknowledge this significant role in public statements\textsuperscript{63} by disseminating widely the U.N. Declaration on HRDs, informing the public about the rights and responsibilities of all individuals to promote and protect human rights,\textsuperscript{64} and adopting effective measures to increase the social understanding of the role of HRDs.\textsuperscript{65} States should demonstrate "high-level political support for the independence and diversity of civic activity through public statements and public information campaigns." \textsuperscript{66} Such support should be


reflected at all levels of government, from the national to the local.\textsuperscript{67}

\section*{B. Legal, institutional, and administrative framework}

A key element of a safe and enabling environment for defenders is the “existence of laws and provisions at all levels, including administrative provisions, that protect, support, and empower defenders.” \textsuperscript{68} States must enact legislation, and modify or abolish those laws and regulations that violate the rights of HRDs, and more generally the right to defend rights. In order to end impunity and ensure justice and accountability, States are required to improve institutional capacity by reviewing and amending “laws, policies, institutions, and mechanisms to create and maintain a safe and enabling environment in which civil society can operate free from hindrance and insecurity.”\textsuperscript{69}

In emphasizing the importance of the States’ duty to recognize the role of HRDs, legal frameworks must clearly provide for an encompassing and inclusive definition of human rights defenders.

Under the Inter-American and universal systems (particularly the Hum. Rts. Comm), States must establish an “appropriate legal framework for protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to the complaints regarding violations.” \textsuperscript{70}

\begin{thebibliography}{9}
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the universal system, a comprehensive legal framework, including legislation, by-laws, and administrative rules and practices, which protects rights and freedoms fundamental for civil society actors, is “a prerequisite to creating and maintaining a safe, enabling environment.” 71 States should repeal or amend legal provisions that “impede the free and independent work of civil society actors” and ensure all legislation complies with international human rights law and standards, including the U.N. Declaration on HRDs. 72 The State should ensure that legislation, policies, and practices protect the right to defend rights and empower HRDs in the pursuit of human rights activities, even if HRDs espouse minority or dissenting views or beliefs.73

Further, in the Inter-American system, States are required to “organize the government apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.” 74

Given the role of HRDs in facilitating an enabling environment for enjoyment of rights, the State’s obligation is not limited to establishing the requisite legal and formal conditions, but also to ensure real conditions in which human rights defenders can freely carry out their work. 75 In particular, States should be mindful

that these obligations bind them at the national, subnational, and local levels.\textsuperscript{76}

The ratification of human rights treaties requires States to adjust their domestic law to reflect international human rights principles,\textsuperscript{77} including, potentially, the requirement to “adopt legislative, judicial, administrative, educative and other appropriate measures” to comply with their international human rights obligations.\textsuperscript{78}

In the context of protecting against the deprivation of life (including death threats), States must enact protective legal frameworks that provide effective criminal prohibitions\textsuperscript{79} and adopt necessary measures at the legislative, administrative and judicial levels, including: issuing relevant penal norms; establishing a system of justice to prevent, eliminate and punish the relevant criminal acts (including acts by non-State actors); and investigating alleged violations effectively.\textsuperscript{80}


\textsuperscript{77} ACHR, art. 2 (“Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.”); Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 rev. ¶ 473 (2011); “The Last Temptation of Christ” (Olmedo Bustos et al.) v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 73, ¶ 87 (Feb. 5, 2001); La Cantuta v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162, ¶ 171 (Nov. 29, 2006).


\textsuperscript{79} Hum. Rts. Comm., General Comment No. 36: on article 6 of the International Covenant on Civil and Political Rights, on the right to life, ¶24 (advanced unedited version).

rights principles establish that criminal investigations must be prompt, effective, thorough, impartial, and independent. A number of States have enacted specific legislation that protects defenders and criminalizes the violation of their rights. Importantly, the requirement to establish a legal system designed to make it possible for States to comply with their obligation to ensure free and full enjoyment of rights must be complemented by effective government conduct.

As a measure to ensure the right to defend rights, and especially those working on the protection of the environment, it has been recently recognized that States should ensure that information held by public authorities, including that relating to the environment, land and natural resources and development issues, is proactively disclosed.

Additionally, States shall implement the Guiding Principles on Business and Human Rights and shall encourage all businesses to carry out human rights due diligence.

C. Strong, independent, and effective national human rights institutions

Effective and independent national human rights institutions (NHRIs) contribute

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81 See infra Section IV.B, Obligation to Investigate, Punish, and Repair, which discusses the scope of investigations under human rights mechanisms.


towards the creation of an enabling environment for human rights defenders. NHRIs play a significant role in “advocating in favor of a conducive work environment for defenders, and public support when violations against defenders are perpetrated”. 86 These institutions should establish a focal point with the specific mandate of addressing concerns of HRDs, 87 “monitoring their situation, including risks to their security, and legal and other impediments to a safe and conducive environment for defenders”. 88

NHRIs that comply with the Paris Principles are pivotal in protecting HRDs. For those institutions with the mandate to investigate complaints and provide effective protection, they may play an important role where courts or other domestic mechanisms are unable or unwilling to investigate or adjudicate alleged violations against HRDs. 89 They may also “play an important role in disseminating information about protection programmes for defenders, where they exist and ensuring that defenders are closely involved in the design, implementation and evaluation thereof.” 90

D. Effective protection policies and mechanisms

As discussed above, to comply with the U.N. Declaration on HRDs, States are obliged to design and develop broad and comprehensive domestic laws and policies to protect the right to defend rights. This obligation is far-reaching and should not be limited to the creation of protection schemes that focus on direct violence against HRDs. 91 In that regard, protection schemes should be

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87 Id.
88 Id. ¶ 80.
89 Id. ¶ 79.
90 Id. ¶ 82.
complementary to other actions taken by the State to ensure the right to defend rights, and should apply in exceptional circumstances when needed to prevent violations and protect those defending rights.

HRDs, civil society, and experts should participate in the design, implementation, and evaluation of policies and mechanisms to ensure the protection of HRDs and address their specific needs.92

These programs should be defined by law and include an early warning system “in order to anticipate and trigger the launch of protective measures.” 93 States must provide the budgetary and logistical resources needed to ensure protection programs are effective. 94 They should also include measures of coordination among institutions in order for them to most effectively discharge their duty of protecting HRDs. 95

Protection programs should include comprehensive individual and collective risk analysis that assess the differentiated risks faced by of HRDs, taking into account the specific vulnerability of some groups and identify differentiated responses applying a gender, ethnic, racial, and cultural perspective. 96 The time-

period between receiving notice of the risk, completing the risk assessment, and implementing the protection measures should be kept at a minimum to prevent greater risk for the HRD.  

Protective measures should function as early warning and rapid response mechanisms that enable HRDs, when threaten, to have immediate access to authorities that are competent and adequately resourced to provide effective protection.  

Further, protection programs should include a system of assessing the situation of the defenders’ family members and relatives. In this regard, the work of WHRDs, especially those working on women’s rights and gender issues, often has consequences on their partners, spouses, and family members. When WHRDs are subjected to arrests, ill-treatment, torture, criminalization, unwarranted judicial proceedings, stigmatization, attacks, threats, sexual violence, and killings, in many cases, their family members are also targeted.  

In the Inter-American system, the obligation to protect against threats extends not only to the relatives of HRDs, but also to justice operators and witnesses involved in judicial proceedings concerning human rights violations. Additionally, this obligation extends to both persons “individually” and “in association with others.”

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97 Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *End of Mission Statement on the situation of human rights defenders on his visit to Honduras*, 29 April to 12 May 2018.


100 Id. ¶ 99.


When protection measures are considered, HRDs must be consulted, given an active role in their planning and implementation, and should be kept informed on the progress made in their execution.\(^{103}\)

States must implement a general, comprehensive policy of public security in its prevention and prosecution mechanisms that is geared towards preventing “risk factors and strengthening institutions that can provide an effective response” in order to ensure free and full exercise of human rights.\(^{104}\) Good practices for protecting HRDs should contribute to the full respect of their rights and strengthen security, “by mitigating the risks they face, addressing threats, and building support for their work.”\(^{105}\)

The assessment regarding the desirability, continuity, nature, and scope of protection measures are the responsibility of the State and should not be contingent on a petitioner’s application for protection.\(^{106}\)

The obligation to set up effective protection policies and mechanisms is not limited to instances where State agents are the alleged perpetrators, but also extends to threats issued by non-State actors whose conduct is otherwise not

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\(^{106}\) Human Rights Defender et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 155 (noting that “the assessment of whether or not a person requires protection measures and what those measures should be, is the State’s obligation, and should not be limited to requiring Petitioner to apply to “the competent authorities,” without knowing exactly which authority is best able to address his situation, since it is the State’s “responsibility to establish measures of coordination between its institutions and officials for that purpose”); Vélez Restrepo and Relatives v. Columbia, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 201 (Sep. 3, 2012).
attributable to the State. 107

Furthermore, the focus of protective measures should be on “holistic security” of defenders to ensure their physical safety, digital security, and psychosocial well-being. 108 For instance, in the context of threats amounting to torture, or cruel, inhuman, and degrading treatment, general measures of protection may include provisional measures to ensure physical, moral, and economic security of persons and their families. 109 Under the ICCPR, States must take necessary measures to respond to death threats received by HRDs in “reprisal for promoting and striving to protect and realize human rights” by providing adequate protection to HRDs. 110

E. Policies and Practices against Impunity

The State is obligated to combat a situation of impunity by all available legal


109 BMB v. Tunisia, U.N. Comm. Against Torture (May 5, 1994) (adopting provisional measures to protect Petitioner’s family, the alleged victim’s family, and the witnesses and their families from threats and intimidation to ensure physical, moral, and economic security of those persons in connection with their filing of a CAT petition).

means. The duty to combat impunity arises from the fact that impunity promotes the chronic repetition of the human rights violations and the total defenselessness of the victims and their next of kin. Impunity is borne out of a lack of protection from threats, a failure to investigate violations originating from threats, and a failure to prosecute perpetrators. In that regard, States should investigate threats and acts of intimidation against HRDs,


including acts beyond physical violence. Accordingly, impunity in the face of threats and attacks on the life and physical integrity of HRDs is particularly serious in a democratic society, where it can become a catalyst that multiplies threats or attacks against HRDs, as other actors wishing to silence or impede the work of a HRD realize that they too are unlikely to be held to account.

States should take measures in their investigations to establish the truth relating to the events leading to the deprivation of life, including the reasons and legal basis for targeting certain individuals (journalists, activists and others) and the procedures employed by the State forces before, during and after the killing.

Within a reasonable time, States should also comply diligently with their obligation to investigate violations; investigate and sanction officials accused of irregularities in conducting investigations; exercise judicial control to ensure

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adequate punishment of perpetrators; and provide redress to victims. Further, States should publicly condemn, investigate, and hold accountable all State and non State actors who threaten HRDs in order to combat impunity.

V. SPECIFIC DUE DILIGENCE OBLIGATIONS OF THE STATE

A. Triggering the States’ Specific Due Diligence Obligations and the Requirement of a Reasonable Response

The States’ specific due diligence obligation is triggered when State authorities, knew, were made aware, or when they ought to have known of the existence of a real and immediate risk. For instance, the due diligence obligation is triggered when a HRD and her family gives notice of acts of intimidation by State agents to police authorities and/or the public prosecutor’s office. By way of another example, the obligation to protect is triggered when officials themselves verify that a group or community is especially vulnerable due to circumstances that have rendered them

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landless. Conversely, the specific duty is not triggered when the State did not or could not have known, or when the threat is not real or imminent. For instance, the Inter-Am. Ct. H.R held that a complaint against threats issued to a HRD and her son did not trigger the State’s due diligence obligation with respect to another family member who was not mentioned in the complaint.

Further, as soon as the State becomes aware of real and imminent risks arising from threats to a specific individual or group of individuals and there is a reasonable possibility of preventing or avoiding such risks, the State should

126 Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 187–89, 192–93, 217; The jurisprudence reviewed for this memorandum does not provide clarification of what would constitute the “should have known” standard of knowledge.
127 Chinhamo v. Zimbabwe, App. No. 307/05, Afr. Comm’n H.P.R., ¶ 76 (Nov. 28, 2007) (finding the case inadmissible due to lack of exhaustion of local remedies but noting that it would be inappropriate to hold the State responsible for the lack of investigation or protection against the intimidation and threats received by the Petitioner, an active HRD and employee of Amnesty International in Zimbabwe, because the intimidation and threats were not brought to the attention of the State and the State was not in a position to know about them).
128 Bitiyeva and X v. Russia, App. Nos. 57953/00 & 37392/03, Eur. Ct. H.R., ¶ 166 (June 21, 2007) (finding that the Petitioner’s perception of general fear and intimidation regarding her safety, security, and life any time she made any contact with State authorities after her experience of being threatened and harassed by State authorities does not trigger the State’s duty to investigate threats because it “leaves the State authorities without appropriate recourse if they wish to investigate the complaints and to ensure protection from the alleged threats”).

Reasonable measures to prevent violations against HRDs also include “the duty of law enforcement to warn intended victims of threats to their safety” when they are aware of real and imminent risk, arising from threats by individuals, companies or other State agents.\footnote{Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi. A/HRC/41/CRP.1, 19 June 2019, ¶¶ 348-353.} Such obligations exist even extraterritorially when a State becomes aware of threats of human rights violations against HRDs in third countries.\footnote{\textit{Id.} ¶ 364.}
The States of countries where HRDs have found residence or exile are under an obligation to respect their human rights, and to protect them against violence by the States from which they escaped. 136

The reasonableness of State response may also depend on the gravity of risk and identity of those involved. 137 The State may also have a more rigorous due diligence obligation in certain circumstances which carry associated risks, for example, in cases involving death threats issued in the context of political violence138 or insecurity in the face of prison violence. 139 In a similar vein, the Human Rights Committee held that adequate measures of protection for death threats must be based on an objective standard of seriousness of the threats.140 Further, the absence of threats for a period of time does not necessarily imply that risk to the victim has ceased and States should investigate the underlying cause(s) before deciding that protection measures are no longer necessary.141

The duty to protect requires States to be aware of the vulnerabilities of some individuals who may be particularly at risk because of their activities or identity,

136 Id. ¶ 384.
137 See infra Part V Reinforced Obligations for Human Rights Defenders, which discusses human rights defenders.
138 Manuel Cepeda Vargas v. Colombia, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 213, ¶ 101 (May 26, 2010) (holding that the State had a heightened duty of due diligence in context of political violence in Colombia, which required it to promptly investigate death threats that preceded the assassination of the Senator and take necessary measures to prevent it).
140 Jiménez Vaca v. Colombia, Comm. No. 859/1999, Hum. Rts. Comm., CCPR/C/74/ D/859/1999, ¶ 7.2 (Apr. 15, 2002) (stating that “Mr. Jiménez Vaca had an objective need for the State to take steps to ensure his safety, given the threats made against him . . .” and finding that the State’s failure to protect Petitioner in light of this constituted a violation of his ICCPR, art. 9(1) right to integrity and security).
including HRDs, those fighting corruption, humanitarian workers, and others.\textsuperscript{142}

In summary, the State’s obligation to protect and prevent against threats is one of means or conduct,\textsuperscript{143} and its failure to comply with the same is not established merely through proof of violations of rights, but determined on the basis of numerous factors, including but not limited to a) knowledge of risk, b) nature of risk involved, c) reasonable possibility of preventing and protecting against the risk, d) the nature, scope, and proportionality (reasonableness) of the State response, e) assessment of State’s capability and capacity to respond, f) identity and specific circumstances surrounding the victim and perpetrator, g) nature of the work undertaken by the victim, and h) the context in which the actions can be perpetrated.

\textbf{B. Obligation to Investigate, Punish, and Repair}

The State’s specific due diligence obligations in the context of threats are rooted in the dual principles of protection and guarantee, which entail the positive obligations to investigate, prosecute, and punish perpetrators and to provide remedy and redress for the victims.\textsuperscript{144} In the context of the Inter American system’s precautionary measures regime, investigations serve the added purpose of clarifying and eliminating the causes for which such measures have been granted while mitigating risks to beneficiaries, in keeping with the State’s obligation to protect.\textsuperscript{145} Further, the Inter-Am. Ct. H.R has held that that:

“[while] the effectiveness of the investigations and proceedings into the facts that prompted the measures of protection go to

\textsuperscript{142} Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi. A/HRC/41/CRP.1, 19 June 2019, ¶ 347.


the merits of a contentious case, it has also accepted that in some cases it can be shown that the failure to investigate or an ineffective investigation can be a contributing factor to the situation of extreme gravity and urgency, in which case an investigation would be needed to prevent irreparable harm to the specific beneficiary.\(^1\)\(^4\)\(^6\)

Therefore, the obligation to investigate and punish \(^1\)\(^4\)\(^7\) perpetrators of threats serve to prevent harm and curb chronic repetition of risks, danger, and associated violations.\(^1\)\(^4\)\(^8\)

**Duty to Investigate, Prosecute and Punish.** The duty to investigate, prosecute and punish is critical for defusing risks, preventing attacks, ensuring punishment of perpetrators of threats, and in certain cases, providing necessary reparations to victims. In order to fight impunity and fulfill its duty to investigate and punish, States must investigate, prosecute, and punish any acts of intimidation or threat that violate the human rights of victims.\(^1\)\(^4\)\(^9\)

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\(^1\)\(^4\)\(^7\) See infra Duty to Investigate and Punish.


Duty to Remedy and Repair. International human rights law provides for the right to effective remedy and reparations. In order to fulfill this right, the State must provide appropriate forms of redress to victims whose human rights have been violated through threats and intimidation. Appropriate forms of redress include access to effective remedies, as well as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. These remedies and reparations should be “appropriately adapted so as to take account of the special vulnerabilities of certain categories of people.”

In the case of threats, judicial bodies have held that the State is obligated to provide reparations in order to reduce the mental suffering of persons who have


UDHR, art. 8; ICCPR, arts. 2(3), 9(5); CAT, arts. 13, 14; ICERD, art. 6; ACHPR, art. 7; ACHR, art. 25; ECHR, art. 13; U.N. Declaration on HRDs, art. 9.


suffered violations of human rights due to threats.\textsuperscript{154} The State’s obligation to provide reparations includes providing monetary compensation for threats,\textsuperscript{155} issuing guarantees of non-repetition to prevent similar violations arising from threats in the future,\textsuperscript{156} taking rehabilitative measures like guaranteeing adequate conditions for the return of persons displaced from their residence due to threats,\textsuperscript{157} and enacting “provisional or interim measures to avoid continuing violations

\textsuperscript{154} Garcia-Prieto et al. v. El Salvador, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 268, ¶¶ 194, 201 (Nov. 20, 2007) (stating that investigations into the murder of Garcia Prieto, and subsequent threats and harassment of Mr. Prieto’s family lacked adequate diligence, caused suffering and violated various rights; and holding that the State was obligated to provide reparations in the form of adequate and indefinite medical, psychological and psychiatric treatment).

\textsuperscript{155} Gutiérrez-Soler v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 69 (Sep. 12, 2005) (noting that the Petitioner was detained by State authorities and tortured. After his release, he and his family were subjected to a campaign of threats and harassment and finding that they were all victims who suffered violation of their ACHR, art. 5(1) right to personal integrity and were entitled to monetary compensation).

\textsuperscript{156} Dias v. Angola, Comm. No 711/1996, Hum. Rts. Comm., CCPR/C/68/D/711/1996, ¶ 10 (Mar. 31, 2000) (finding Petitioner was entitled to effective remedy and the State party was under obligation to “take measures to prevent similar violations in the future” in response to a finding of violations of Petitioner’s ICCPR, art. 9(1) right to integrity and security and ICCPR, art. 2(3)(a) failure to take adequate measures of protection when Petitioner received threats (including threats from police) during his attempt to investigate the death of his business partner, which caused him to leave Angola to which he has not returned); Bautista de Arellana v. Colombia, Comm. No. 563/1993, Hum. Rts. Comm., CCPR/C/55/D/563/1993, ¶ 10 (Oct. 27, 1995) (stating that the “State party is further under an obligation to ensure that similar events do not occur in the future” regarding the family of a torture victim who received death threats and was subjected to intimidation and monitoring because of their insistence in pursuing the case); Jiménez Vaca v. Colombia, Comm. No. 859/1999, Hum. Rts. Comm., CCPR/C/74/D/859/1999, ¶ 5.4 (Apr. 15, 2002) (“The State party is also under an obligation to try to prevent similar violations in the future.”).

\textsuperscript{157} Human Rights Defender et al. v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 167, 256 (Aug. 28, 2014) (noting that the State had neither effectively investigated threats to HRD’s their family members, nor provided adequate measures for their safety, leading to their forcible displacement, and holding that the State had to guarantee their safety and provide for their expenses, if they chose to return to their former place of residence); Jiménez Vaca v. Colombia, Comm. No. 859/1999, Hum. Rts. Comm., CCPR/C/74/D/859/1999, ¶ 5.4 (stating that under ICCPR, art. 2(3), “the State party is under an obligation to provide Mr. Luis Asdrúbal Jiménez Vaca with an effective remedy, including compensation, and to take appropriate measures to protect his security of person and his life so as to allow him to return to the country.”).
and to endeavor to repair at the earliest possible opportunity any harm that may have been caused by such violations.”

Rehabilitative measures may be especially relevant for certain types of threats and associated violations.

VI. REINFORCED OBLIGATIONS FOR HUMAN RIGHTS DEFENDERS

A. Nature of Reinforced Obligations to Human Rights Defenders

Apart from and in addition to the State’s general duty to protect and promote all human rights, States are bound by a reinforced or special obligation to protect HRDs and prevent violations against them. This special or reinforced obligation derives from the vitally important role that HRDs play in fostering the rule of law and “safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.” In this way, ensuring protections that

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enable HRDs to pursue human rights work is “fundamental to achieving universal respect for human rights.” 162

Furthermore, HRDs face structural discrimination and patterns of violence, heightened, or special risk 163 arising from the context of their work 164 (e.g., combating corruption, fighting for environmental and land protection), the areas in which they operate (e.g., conflict or post-conflict zones, rural settings, urban areas), or their association with marginalized groups (e.g., women, LGBTI persons, members of indigenous peoples, defenders of persons suffering from albinism). 165 States are required to take “special or specific measures” to protect such HRDs, whose lives are placed at particular risk because of threats. 166

Examples of the structural discrimination and patterns and contexts of violence faced by HRDs include:

- **Women HRDs** face special risk in the context of threats and intimidation because of “their status as women and because they strove to defend and promote human rights,” meaning that such violations are often gender-based violations based on patriarchal cultures and deeply-rooted stereotypes. 167 Women HRDs experience

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166 Hum. Rts. Comm., *General Comment No. 36: on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, ¶ 27 (advanced unedited version). Included are also ethnic and religious minorities, indigenous peoples, LGBTI persons, and women.

167 U.N. G.A. Res. 70/217, ¶¶ 61–62 (2015); Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, ¶ 6 (1992); *Egyptian Initiative for Personal Rights v. Egypt*, Comm. 323/06, Afr. Comm’n H.P.R., ¶¶ 154, 152 (Dec. 16, 2011) (finding gender discrimination for petitioners, four journalist WHRDs who were threatened, harassed, sexually assaulted, and beaten at a political protest in Egypt while the perpetrators and nearby state authorities used words including “slut,” “whore,” and “This is so that you stop coming to the areas belonging to men!” during the assault).
“particularly virulent harassment, defamation and stigmatization campaigns” online that attack their “respectability and credibility as a woman defender, woman, mother, or citizen.” 168

- **Environmental and land HRDs** face increasing threats owing to their work, 169 which is facilitated by weak institutional systems and a lack of effective mechanisms for corporate accountability. 170 Such threats and intimidation violate their right to protest 171 as well as other fundamental human rights. 172

- **Indigenous and afro-descendant leaders and HRDs** are exposed to threats and attacks for their advocacy of, for example, defending their lands or working to achieve autonomy 173 and are increasingly at risk of threats and attacks that cause forced displacement. 174 This is compounded by the lack of, or failure to, implement legal and institutional framework that recognizes the rights of indigenous communities 175

- **Trade Union leaders and HRDs** face threats, intimidation, and illegal intelligence activities, which “could be used for harassment, assault and other forms of aggression against union members.” 176

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169 *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 148 (Apr. 3, 2009) (stating that “[t]he recognition of the work in defense of the environment and its link to human rights is becoming more prominent across the countries of the region, in which an increasing number of incidents have been reported involving threats and acts of violence against and murders of environmentalists owing to their work” in a case considering murder of HRD).
170 U.N. G.A. Res. 70/217, ¶ 68.
171 Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 79 (2011).
172 There is specific recognition on the role of environmental and land HRDs, their contributions and protection needs. See Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted in Escazú, Costa Rica on 4 March 2018; HRC Resolution recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development. A/HRC/40/L.22/Rev. 1 of 20 March 2019.
175 U.N. G.A. Res. 70/217, ¶ 73.
• **Journalists and HRDs** disseminating information face special risk owing to the exercise of their profession, the type of events they cover, the public interest of the information they disseminate, or the areas they must go to in order to do their work, and States are required to adopt special measures for prevention and protection.\textsuperscript{177}

• **LGBTI HRDs** often face acts of aggression, harassment, threats and smear campaigns waged by State and non-State actors alike for defending the rights of lesbian, gay, bisexual, transsexual and intersex (LGBTI) persons.\textsuperscript{178}

**B. Effects of the Reinforced Obligations to Human Rights Defenders**

In addition to the State’s obligation to create a safe and enabling environment and general measures to protect HRDs, the reinforced obligation to protect, prevent, and ensure the rights of HRDs requires States to take special measures to protect these defenders against threats that hinder their human rights work.\textsuperscript{179} Broadly,

177 Vélez Restrepo and Relatives v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 194 (Sep. 3, 2012) (stating that “[j]ournalism can only be exercised freely” when journalists are “not victims of threats or physical, mental or moral attacks or other acts of harassment”).


179 Human Rights Defender et al. v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 141–42, 157, 263 (Aug. 28, 2014) (holding that the State had a heightened obligation under ACHR, art. 1 towards HRDs and laying down various protective measures that States had to implement for HRDs [at ¶ 157] in consultation with the HRD, in a case where the State had failed to adequately and punctually investigate threats and protect HRDs/their family members); Lysias Fleury et al. v. Haiti, Merits, Reparations, and Cost, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 236, ¶ 81 (Nov. 23, 2011) (observing that HRDs could defend rights only if they were not victimized by threats and violence and holding that that States are obligated to take special measures to protect them in a case where a HRD was detained without a warrant, beaten and threatened repeatedly); Lysias Fleury, Provisional Measures, Order of the Court, “Considering,” ¶ 5 (Inter-Am. Ct. H. R. June 7, 2003), http://www.corteidh.or.cr/docs/medidas/fleury_se_01_ing.pdf (considering that the State had to pay special attention to protect HRDs against actions that limit or hinder their work directly or indirectly in the case of an HRD who had been detained and beaten and, since his release, had been living in hiding due to continuous threats despite previous provisional measures).
such measures include:

- guaranteeing everyone the right to engage in the activities of a defender;  
  \[180\]
- “specific and enhanced protection at local, national and international levels;”  
  \[181\]
- “publicly acknowledge[ing] the important and legitimate role of human rights defenders;”  
  \[182\]
- enacting “relevant legislative and policy frameworks,”  
  \[183\]
- adopting or fulfilling judicial and administrative measures to protect HRDs,  
  \[184\]
- investigating threats and attacks.

Specifically, and depending on individual circumstances, reinforced obligations may require States to take the following special measures aimed at protecting HRDs against threats and preventing violation of their rights: promptly investigating and punishing persons responsible for threats and providing adequate redress to the defender,  

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\[184\] Kawas-Fernández v. Honduras, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 213 (Apr. 3, 2009) (considering that in the context of attacks and threats against Environmental HRDs, States are obligated to fulfil and/or “adopt legislative, administrative and judicial measures, or to fulfill those already in place, guaranteeing the free performance of environmental advocacy activities”).

and situations of risks,\footnote{186} assigning police protection,\footnote{187} issuing protection or restraining orders against potential aggressors,\footnote{188} and refraining from increasing risks through adverse official speeches.

While assessing the suitability of the aforementioned special measures for HRDs, States are required to take the following principles into account:

- protective measures must be decided in consultation with HRDs in order to “ensure a timely and focused intervention, proportionate to the danger;”\footnote{189}
- measures must be decided while considering the functions performed by the HRD;\footnote{190}
- measures must be decided while considering the level of risk faced by the HRD\footnote{191} and monitor those that are in force;\footnote{192}


\footnote{187} Hum. Rts. Comm., General Comment No. 36: on article 6 of the International Covenant on Civil and Political Rights, on the right to life, ¶ 27 (advanced unedited version).

\footnote{188} Id.


• measures must be modifiable “in accordance with changes in the level of danger;”

• States must take a “gender-based approach within the risk-assessment procedure;” and

• States must take into account gender-based violence while implementing specific measures to protect women HRDs, their families, and associates.

Once States have decided on the nature of special measures to be implemented for HRDs on the basis of the aforementioned principles, the State must implement these measures in the following manner to be effective:

• measures should be implemented in a timely manner, requiring the State to respond immediately after it becomes aware of the danger,

• personnel involved in protection of HRDs should have the necessary training “to perform their functions and understand the importance of their actions,” and

• “measures must be kept in effect for as long as the victims of violence


or threats require them.” 198

VII. OBLIGATIONS BY NON-STATE ACTORS

Although States bear the primary responsibility to protect HRDs from the actions of State and non-States actors, as examined above, the U.N. Declaration on HRDs is addressed not only to States but to all individuals, groups, and organs of society.199

Some of the non-State actors that most commonly violate the rights of HRDs include armed groups, private corporations, individuals, and the media. 200 These non-State actors are obliged to comply with national laws in conformity with international standards and norms and can, therefore, be held accountable for criminal offenses under national law. 201 Additionally, pursuant to the U.N. Declaration on HRDs, non-State actors should refrain from limiting the enjoyment of human rights by HRDs, including the right to defend rights. 202

Specifically, national and transnational corporations have a responsibility to protect human rights, including those of HRDs. 203 This obligation is also envisaged in the U.N. Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights. 204

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199 Preamble and Articles 11, 12.3 and 19 of the U.N. Declaration on HRDs.
201 Id. ¶ 21.
202 Id. ¶ 22.
Businesses must ensure that their activities do not infringe upon the rights of defenders, which means they should identify and prevent human rights violations against HRDs that may result from its activities and operations. 205 Further, companies should: include a reference to the U.N. Declaration on HRDs in their corporate social responsibility and human rights policies; systematically consider involving HRDs in their country assessment prior to undertaking investment in a given State; influence their national parent companies to adopt the same approach; and consider developing national human rights policies in cooperation with HRDs. 206

Business leaders need to take a strong interest in keeping civic space open wherever they operate, as it is only in an environment where HRDs are able to speak freely that businesses can effectively identify and prevent negative human rights impacts. 207

According to the U.N. Guiding Principles on Business and Human Rights, companies are expected to respect human rights and conduct due diligence wherever they operate, and to use their leverage to reduce harm and mitigate human rights risks. 208

**VIII. SUBSTANTIVE HUMAN RIGHTS VIOLATED BY THREATS**

Threats and intimidation can violate substantive human rights in three distinct ways. First, the existence of threats and intimidation can be a direct violation of

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206 *Id.* ¶¶ 26-27.


the substantive right. Second, the existence of threats and intimidation combined with the failure of the State to fulfil its obligation to protect, prevent, or investigate can constitute a violation of the substantive right. Third, the existence of threats and intimidation combined with the failure of the State to fulfil its obligation to protect, prevent or investigate, followed by an actual attack on the person, can rise to the level of a violation of the substantive right. All rights enumerated below—except for the right to life—include jurisprudence finding violations of the first category and some important rights—such as the right to security and integrity of persons—include jurisprudence of rights violated due to threats in all three categories.

A. The Right to Life

The right to life and the right to the protection of life is guaranteed under international law. 209 In its most progressive and evolving expression, the obligation of States to protect the right to life extends to “all threats that can result in loss of life . . . even if such threats have not actually resulted in loss of life.” 210 States must take appropriate legal measures to protect the right to life from threats originating from both State and non-State actors. 211 The responsibility to respect the right to life applies extraterritorially, at a minimum to those under the effective control of the State. 212 The duty to investigate violations of the right to life is an integral part of the duty to protect the right to life guaranteed by Article 6.1 of the ICCPR.

209 UDHR, art. 3 (“Everyone has the right to life . . . ”); ICCPR, art. 6(1) (“Every human being has the inherent right to life. This right shall be protected by law”); ACHR, art. 4 (“Every human being shall be entitled to respect for his life . . . ”); ACHPR, art. 4 (“Every person has the right to have his life respected. This right shall be protected by law . . . ”); ECHR, art. 2 (“Everyone’s right to life shall be protected by law”).


In the European system, death threats may amount to a violation of the right to the protection of life if the State fails to prevent and protect persons against such threats which then ultimately leads to the death of the person, including when failing to investigate those threats.

In the Inter-American system, death threats present an irreparable danger to the right to life, thus giving rise to State obligations to prevent violations of the right to life.

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213 *Osman v. United Kingdom*, App. No. 23452/94, Eur. Ct. H.R., ¶ 117 (Oct. 28, 1998) (establishing the Eur. Ct. H.R. standard for death threats as a violation of ECHR, art. 2 right to life and finding a violation of the State’s positive obligation to protect the right to life when “the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual . . . from the criminal acts of a third party” and that “the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge”); *Mahmut Kaya v. Turkey*, App. No. 22535/93, Eur. Ct. H.R., ¶¶ 101–02 (Mar. 28, 2000) (finding a violation of ECHR, art. 2 right to life because authorities failed to take reasonable measures to prevent a real and imminent risk to the life of the applicant, a doctor who had been threatened (including death threats) and harassed prior to being disappeared, tortured, and killed for advocating to improve prison conditions and treating demonstrators who had been hurt in demonstrations).

214 *Jiménez Vaca v. Colombia*, Comm. No. 859/1999, Hum. Rts. Comm., CCPR/C/74/D/859/1999, ¶ 7.3 (Apr. 15, 2002) (finding that the State’s failure to investigate the numerous complaints of the Petitioner (a HRD, lawyer, and legal adviser to trade unions and other people’s and peasants’ organization as well as advocate on labor and social commissions) regarding threats and harassment, including constant surveillance, death threats, harassment via phone calls, and threatening messages targeting Petitioner and his family, which lead to an attempt on his life is a violation of his ICCPR, art. 6 right to life); *Mahmut Kaya v. Turkey*, App. No. 22535/93, Eur. Ct. H.R., ¶¶ 101–02 (finding a violation of Petitioner’s ECHR, art. 2 right to life because authorities failed to take reasonable measures available—including some form of effective official investigation—to prevent a real and imminent risk to the life of the applicant, a doctor who had been threatened (including death threats) and harassed prior to being disappeared, tortured, and killed for advocating to improve prison conditions and treating demonstrators who had been hurt in demonstrations); *Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt*, Comm. 323/06, Afr. Comm’n H.P.R., ¶¶ 230, 233 (Dec. 16, 2011) (holding that the investigation carried out for arguable claims of ill-treatment in breach of the ACHPR must be prompt and impartial to be effective).

to life. However, death threats or threats of other kind, in themselves do not constitute a violation of the right to life. Instead, threats coupled with the State’s failure to respond adequately amount to State failure to fulfil its obligation to guarantee the right to life in relation to its general obligation under ACHR, art. 1.

In the African system, the African Commission has noted that to find a violation of the right to life only when a person has been deprived of it would constitute an excessively narrow interpretation of the right. Therefore, actions by the State that cause persons to live in hiding due to a constant fear and threat to their life after they had been subjected to arbitrary arrest, detention, and inhuman treatment by State authorities is a violation of the right to life.

B. The Right to Security and Integrity of Persons

was murdered by Honduran State agents); Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 151 (2006) (“In general, disappearances and extrajudicial executions are preceded by the lack of adequate protection for human rights defenders who report having been victims of persecution and threats. The Commission notes that the lack of adequate protection for defenders who report having been victims of persecution, surveillance, and threats, entails a lack of protection and total defenselessness that fosters attacks on their lives.”).

However, in the case of survivors of massacres, the Inter-Am. Ct. H.R held that attempted killing warrants the application of ACHR, art. 4 right to life. See La Rouchela Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 175, ¶¶ 127–28, “Concurring Opinion,” ¶ 5 (Jan. 28, 2008) (holding that a massacre/execution constitutes a threat to life when the victims are not killed or escape, but that threats, in and of themselves, do not amount to a violation of the right to life, which requires an attack on the protected sphere with sufficient gravity).


Id. ¶¶ 17–18.
The right to security and integrity of persons is protected under international law. The right to liberty includes the freedom from confinement of the body; the right to security of persons includes the freedom from injury to the body, mind, or physical and mental integrity of the person. The Inter-American system couches the right to physical, mental and moral integrity, and right against deprivation of liberty within the right to humane treatment, which also subsumes the right to be free from torture and ill-treatment. The U.N. Human Rights Committee notes that the right to security and integrity of persons may be invoked not only in the context of arrests and detentions, but also in terms of threats against persons outside of detention since “an interpretation of [the right] which would allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction would render ineffective the guarantees of the [ICCPR].” Therefore, the right to security is afforded to detained and non-detained persons equally and protects against the intentional infliction of bodily and psychological injury.

In relation to the right to liberty, a detention is arbitrary and unlawful when done outside of the grounds and the formalities prescribed by law, when it is executed without observing the procedures that the law prescribes, and when there has been

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220 UDHR, art. 3 (“Everyone has the right to . . . liberty and security of person.”); ICCPR, art. 9 (“Everyone has the right to liberty and security of person.”); ACHR, art. 5 (“Every person has the right to have his physical, mental, and moral integrity respected.”), 7 (“Every person has the right to personal liberty and security.”); ECHR, art. 5 (“Everyone has the right to liberty and security of person.”).


222 ACHR, art. 5.

223 See infra Section VI.C The Right to be Free from Torture and Cruel, Inhuman, Degrading, or Ill-Treatment.


an abuse of the powers of arrest, that is, when the arrest is made for purposes other than those the law prescribes and requires.226

The State is obligated to take appropriate measures in response to death threats in the public sphere and to protect persons from foreseeable threats to life or bodily integrity originating from both State and non-State actors.227 Generally, the right to personal security is broader than the right to life or the right to the protection of life since it encompasses non-life-threatening injuries.228 While some human rights mechanisms consider the lack of protection or investigation of death threats as a violation of the right to life,229 others view this as a violation of the right to integrity and security of persons. 230

Threats, including threats aimed at diminishing physical and mental capacity,231 death threats, and harassment constitute violations of the right to security or integrity of persons in the following circumstances. First, threats themselves may constitute a violation of the right to security and integrity,232 particularly when

228 Id. ¶ 55.
229 See supra Section IV.A The Right to Life, which discusses the approaches of the Inter-American, European, and African human rights mechanisms.
230 Notably, U.N. Hum. Rts. Comm. jurisprudence. The draft of the forthcoming General Comment No. 36 on the right to life sheds light on the issue, stating the right to life “goes beyond injury to bodily or mental integrity or threat thereto, which are prohibited by [ICCPR] article 9, paragraph 1” and extends to “deliberate or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission.” Hum. Rts. Comm., General Comment No. 36: on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, ¶ 6 (advanced unedited version).
issued by State authorities, including threats received from police officers and heads of state. Second, threats may violate the right to security and integrity of persons when coupled with the State’s failure to take appropriate or adequate measures of protection. Additionally, the State violates the right to integrity if it fails to adequately respond despite being aware of a campaign of threats,

233 Ghazi Suleiman v. Sudan, Comm. No. 228/99, Afr. Comm’n H.P.R., ¶ 53 (May 29, 2003) (finding a violation of the ACHPR, art. 6 right to liberty and security of persons when State authorities first threatened to arrest and detain Petitioner, a human rights lawyer, and later arrested and detained him to prevent him from traveling and speaking to a group of human rights defenders in a different part of the country).


235 Jayawardena v. Sri Lanka, Comm. No. 916/2000, Hum. Rts. Comm., CCPR/C/75/D/916/2000, ¶ 7.2 (July 26, 2002) (finding a violation of Petitioner’s ICCPR, art. 9(1) right to security of person because the President of Sri Lanka threatened Petitioner and, because the accusations were widely publicized through radio, TV, and newspaper, the Petitioner received of hundreds of death threats that caused him to fear for his life and stating that “because the statements in question were made by the Head of State acting under immunity enacted by the State party” the Committee finds a violation); Bahamonde v. Equatorial Guinea, Comm. No. 468/1991, Hum. Rts. Comm., CCPR/C/49/D/468/1991, ¶ 9.2 (Oct. 20, 1993) (finding a violation of Petitioner’s ICCPR, art. 9(1) right to integrity and security because of the State’s failure to protect Petitioner from harassment, intimidation, and threats by State officials, including members of the government of President Obiang Nguema).

236 Delgado Páez v. Colombia, Comm. No. 195/1985, Hum. Rts. Comm., CCPR/C/39/D/195/1985, ¶ 5.6 (July 12, 1990) (finding that “States parties are under an obligation to take reasonable and appropriate measures to protect” persons within their jurisdiction from threats and finding a violation of Petitioner’s ICCPR, art. 9 right to liberty and security because the state failed to take reasonable and appropriate measures to protect him from death threats he received at his home and teaching residence even after one of his colleagues was shot to death outside of her teaching residence); Jiménez Vaca v. Colombia, Comm. No. 859/1999, Hum. Rts. Comm., CCPR/C/74/D/859/1999, ¶ 7.2 (Apr. 15, 2002) (finding a violation of the Petitioner’s ICCPR, art. 9(1) right to integrity and security after the State failed to take steps to ensure Petitioner’s safety in light of the threats made against him, particularly considering the subsequent attempt on the Petitioner’s life); Dias v. Angola, Comm. No 711/1996, Hum. Rts. Comm., CCPR/C/68/D/711/1996, ¶ 8.3 (Mar. 31, 2000) (finding a violation of Petitioner’s ICCPR, art. 9(1) right to integrity and security and ICCPR, art. 2(3)(a) failure to take adequate measures of protection when Petitioner received threats
harassment, and surveillance that has caused victims distress and fear.\textsuperscript{237} Third, threats (including death threats) violate the right to security and integrity of persons if the State fails to investigate such threats. Failure to investigate may manifest as failure to investigate after numerous complaints,\textsuperscript{238} failure to conduct investigations in a timely, effective, and complete manner,\textsuperscript{239} or failure to investigate which leads to a subsequent attempt on the person’s life.\textsuperscript{240}

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  \item Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 rev. ¶ 44 (2011); \textit{Gutiérrez-Soler v. Colombia}, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶¶ 56–57 (Sep. 12, 2005) (holding a violation of their right of personal integrity under ACHR, art. 5(1), in relation to Article 1(1), because the Petitioner was detained by State authorities and tortured to extract a confession and, after his release, Petitioner and his family were subjected to a campaign of threats and harassment, due to which they suffered constant fear, distress, and family separation).
\end{itemize}
Additionally, the arbitrary detention of HRDs is often used as a mechanism to keep defenders from doing their work. As such, the arbitrary arrest of HRDs (e.g., under administrative detention or preventive detention during a state of emergency, social unrest or armed conflict) can constitute a serious threat against HRDs in some situations, which infringes upon the right to liberty. Even in peacetime, an arrest or threat of arrest under false charges would constitute arbitrary arrest and therefore violate the right to liberty.

C. The Right to be Free from Torture and Cruel, Inhuman, Degrading or Ill-Treatment

The right to be free from torture and cruel, inhuman, degrading, and ill-treatment is protected under international law. The right includes protection of the “dignity and the physical and mental integrity of the individual” and is protected whether it is “inflicted by people acting in their official capacity, outside their official capacity, or in a private capacity.”

The right to be free from torture and ill-treatment may be violated due to threats in light of the threats made against him and failed to investigate the threats, particularly considering the subsequent attempt on the Petitioner’s life).

242 Valle-Jaramillo et al. v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 69 (Nov. 27, 2008);
243 UDHR, art. 5 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); ICCPR, art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); CAT, art. 2 (“Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”); ACHPR, art. 5 “All forms of exploitation and degradation of man particularly . . . torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”; ACHR, art. 5 (“No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.”); ECHR, art. 3 (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”).
and intimidation in three distinct ways. First, threats issued to persons in detention may amount to psychological torture or cruel, inhuman, and degrading treatment in violation of the right to be free from torture and ill-treatment. Such cases include threats of torture, threats of severe pain, or threats of physical harm.\footnote{Estrella v. Uruguay, Comm. No. 74/1980, Hum. Rts. Comm., CCPR/C/18/D/74/1980, ¶¶ 8.6, 10 (Mar. 19, 1983) (finding inhuman treatment, torture, prison conditions and repeated threats of physical injury, including mock amputations of arms, during Petitioner’s detention constituted violation of his rights); Baldeón-García v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 147, ¶ 119 (Apr. 6, 2006) (finding that the Petitioner, an elderly peasant, was tortured due to threats and real dangers of physical harm, which caused “a degree of moral anguish” tantamount to psychological torture when Petitioner was arbitrarily arrested, threatened, tortured, and murdered by the Peruvian armed forces); Cantoral-Benavides v. Peru, Merits, Inter-Am. Ct. H.R. (ser. C) No. 69, ¶ 102 (Aug. 18, 2000) (holding that the State had psychologically tortured the Petitioner and violated his rights under ACHR, art. 5 while considering his detention by State authorities without a warrant, beatings, and threats of physical torture); Tibi v. Ecuador, Preliminary Objections, Merits, Reparations and Costs., Inter-Am. Ct. H.R., Series C No. 114, ¶¶ 147, 149 (Sep. 7, 2004) (noting that the Petitioner was forcibly detained for years by authorities, tortured, and threatened, which, in and of itself, constituted psychological torture); Loayza Tamayo v. Peru, Compliance with Judgment, Inter-Am. Ct. H.R. (ser. C) No. 60, ¶ 58 (Sep. 17, 1995) (noting that the Petitioner was detained by the Peruvian counter-terrorism bureau on suspicion of associating with an alleged terrorist group where she was subjected to torture, degrading public treatment, and threats of physical violence, the latter which, by itself, constituted cruel, degrading and inhuman treatment under ACHR, art. 5(2)); Valle-Jaramillo et al. v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 108 (finding a violation for a HRD who was threatened on multiple occasions and abducted along with two other associates who witnessed his murder and were themselves assaulted and threatened with further physical violence); Eksi and Others v. Turkey, App. Nos. 23145/93 & 25091/94, Eur. Ct. H.R., ¶ 649 (Nov. 13, 2003) (finding numerous serious violation of ECHR, art. 3 prohibition of torture and inhuman or degrading treatment regarding sixteen detained Petitioners (all human rights lawyers in Turkey) of which some were insulted, assaulted, stripped naked, and hosed down with freezing cold water while others were “insulted, humiliated, slapped, and terrified into signing any document put before them”); Gälgen v. Germany, App. No. 22978/05, Eur. Ct. H.R., ¶ 108 (June 3, 2010) (finding inhuman treatment in violation of CAT, ECHR, and other international law and noting that fear of physical torture may itself constitute mental torture when a police officer threatened the Petitioner with torture and severe pain while he was in detention if applicant did not disclose the location of his kidnapping victim).}
such a degree of moral anguish” that it may be considered psychological torture. Notably, mental suffering does not have to leave medically certifiable physical or psychological scars to constitute ill treatment. Second, threats including intimidation, surveillance, and harassment may amount to torture or cruel, inhuman, and degrading treatment even in cases not involving detention when there is clear evidence of the participation of State authorities or where the violation occurred as a result of the actions of a non-State actor acting under the guidance of State authorities. Third, threats violate the right to be free from acts of torture and cruel, inhuman, and degrading treatment where non-State actors are engaged in these acts, if the State fails to protect persons through appropriate steps, which may amount to acquiescence, tolerance, and complicity.

246 Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶¶ 69, 92 (Nov. 27, 2003) (finding that abducting and threatening the life and physical harm of Petitioner was violation of ACHR and the Inter-Am. Convention to Prevent and Punish Torture, where Petitioner, a member of a revolutionary group, engaged in armed uprising and was detained and threatened with physical violence to extract a confession).

247 Dikme v. Turkey, App. No. 20869/92, Eur. Ct. H.R., ¶ 80 (July 11, 2000) (finding the mental suffering of detained Petitioner, who “had been constantly subjected to threats and abuse, had been stripped naked several times and had undergone a mock execution,” may fall within ill-treatment even though it was not medically certifiable).

248 Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt, Comm. 323/06, Afr. Comm’n H.P.R., ¶ 209 (Dec. 16, 2011) (finding a violation of ACHPR, art. 5 inhuman treatment when four journalist WHRDs suffered debasing and humiliating treatment that caused physical and emotional trauma when they were threatened, intimidated, harassed, sexually assaulted, and beaten at a political protest in Egypt and state officials witnessing the assault failed to intervene during the commission of the acts and failed to investigate the women’s complaints after the fact); Gómez López v. Guatemala, Case 11.303, Inter-Am. Comm’n H.R., Report No. 29/96, OEA/Ser.L/V/II.95, doc. 7 rev. 425 ¶ 77 (1996) (finding periodic threats and intimidation by State authorities that leave psychological scars or seek to destroy the Petitioner’s personality with the aim of dissuade them from social work constitute cruel, inhuman and degrading treatment in light of the fact that the Petitioner was a HRD and union leader who was periodically threatened, intimidated, and almost killed, resulting in his forcible departure from Guatemala).

with the violations.\textsuperscript{250} Finally, severe mental pain inflicted by State authorities through credible threats and sleep deprivation in addition to physical beatings against HRDs in detention and the subsequent failure of the State to investigate, punish, and repair such acts once the allegations of torture were brought to the State’s attention constitutes a violation of the right to be free from torture and ill-treatment.\textsuperscript{251}

D. The Right to Freedom of Opinion and Expression

The right to freedom of opinion and expression is protected under international law,\textsuperscript{252} and encompasses the right to hold opinions without interference, the right of access to information, and the right to impart information and ideas of all

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250 \textit{Dzemaj et al v. Yugoslavia}, Complaint No. 161/2000, U.N. Comm. against Torture, CAT/C/29/D/161/2000, ¶¶ 9.2, 9.6 (Nov. 21, 2002) (holding that the burning down of Roma homes by a mob constituted an act of cruel, inhuman, and degrading treatment and the State’s failure to take appropriate steps to protect the Petitioners, Roma community members, against risks and threats amounted to acquiescence to these acts, given that police were informed of the immediate risk and present during the incident).

251 \textit{Monim Elgak, Osman Hummeida, and Amir Suliman v. Sudan}, Comm. 379/09, Afr. Comm’n H.P.R., ¶¶ 76, 99–101 (Mar. 14, 2014) (finding a violation of the three Petitioners, prominent HRDS who the State authorities accused of working with the International Criminal Court, ACHPR, art. 5 right to be free from torture when they, in addition to severe and sustained beatings, were subjected to “credible threats and a pervasive climate of fear” that caused severe mental paint and suffering (including threats of execution, rape, torture, having gun pointed at head, threats of putting cigarettes out in eye, being exposed to torture instruments, etc.) with the intentional purpose of extracting information about their alleged crime of colluding with the ICC).

252 UDHR, art 19 (“Everyone has the right to freedom of opinion and expression . . . .”); ICCPR, art. 19(1) (“Everyone shall have the right to hold opinions without interference.”), 19(2) (“Everyone shall have the right to freedom of expression . . . .”); ICERD, art. 5(d)(viii) (stating that State parties undertake to prohibit discrimination in the enjoyment of the right to freedom of opinion and expression); ACHPR, art. 9 (“Every individual shall have the right to express and disseminate his opinions within the law.”); ACHR, art. 13 (“Everyone has the right to freedom of thought and expression.”); ECHR, art. 10 (“Everyone has the right to freedom of expression.”); U.N. Declaration on HRDs, art. 6 (stating that everyone has the right to “know, seek, obtain, receive and hold information” and to “form and hold opinions” related to human rights and “freely to publish, impart or disseminate” those views to others).
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kinds. For HRDs, this right also includes the right to develop and discuss new human rights ideas in order to “guarantee the ongoing development of human rights and to protect those defenders that advocate new visions and ideas of human rights.” The right to freedom of opinion and expression is an “indispensable condition” for the development of both persons and society and is considered “the foundation stone for every free and democratic society.”

Threats and intimidation violate the right to freedom of opinion and expression when they interfere or impede the work of HRDs, including those who are investigating human rights abuses, gathering information on human rights violations, attempting to access information, or denouncing the lack of transparency between States and companies. Further, threats of criminal prosecution for critical statements concerning matters of public interest and threats against those who disseminate news and information violate the right

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253 UDHR, art. 19; ICCPR, art. 19(2); ACHPR, art. 9(1); ACHR, art. 13(1); ECHR, art. 10(1); U.N. Declaration on HRDs, art. 6; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23, ¶ 24 (2010).
254 U.N. Declaration on HRDs, art. 7; Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), Commentary on the U.N. Declaration on HRDs, at 84 (2011).
256 Gharej Suleiman v. Sudan, Comm. No. 228/99, Afr. Comm’n H.P.R., ¶ 53 (May 29, 2003) (finding a violation of ACHPR, art. 9 freedom of opinion and expression when State authorities threatened to arrest and detain Petitioner, a human rights lawyer, in relation to his speech regarding the promotion and protection of human rights by preventing him from traveling and speaking to a group of human rights defenders in a different part of the country); Huri-Laws v. Nigeria, Comm. No. 225/98, Afr. Comm’n H.P.R., ¶¶ 47–48 (Nov. 6, 2000) (finding a violation of ACHPR, art. 9 freedom of expression when State authorities persecuted employees, detained co-workers, and conducted raids of the offices of the Petitioner, a human rights organization working to promote human rights by organizing programs aimed at enlightening the people of their rights, “in an attempt to undermine its ability to function in this regard”).
257 Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), Commentary on the U.N. Declaration on HRDs, at 59, 63–64 (2011).
to freedom of expression.\textsuperscript{259} While States may impose some limitations on the freedom of expression in other circumstances,\textsuperscript{260} States may not invoke limitations to “muzzle” human rights advocacy.\textsuperscript{261} Threats against HRDs issued by State authorities do not serve a legitimate purpose in imposing limitations on the right to freedom of expression and, therefore, violate this right.\textsuperscript{262}

E. The Right to Freedom of Assembly

The right to freedom of assembly is protected under international law.\textsuperscript{263} For HRDs, the right to freedom of peaceful assembly is defined as the right to


\textsuperscript{260} The State may impose certain limitations on the freedom of expression in accordance with ICCPR, arts. 19(3), 20, which requires that any limitations on the freedom of expression must be in accordance with the rule of law and meet the strict requirements of necessity and proportionality. Freedom of opinion does not allow for any limitations or restrictions. Hum. Rts. Comm., General Comment No. 34: Article 19: Freedoms of Opinion and Expression, ¶ 9, 22, U.N. Doc. CCPR/C/GC/34 (2011).


\textsuperscript{262} Njarn v. Cameroon, Comm. No. 1353/2005, Hum. Rts. Comm., CCPR/C/89/D/1353/2005, ¶ 6.4 (Apr. 3, 2007) (finding a violation of the Petitioner’s ICCPR, art. 19(2) right to freedom of expression because Petitioner, a journalist and human rights advocate, was subjected to arrest, torture, and death threats by State authorities due to his investigations related to police corruption and the Committee found that “there can be no legitimate restriction under [ICCPR, art. 19(3)] which would justify these actions by state officials”); Tulzhenkova v. Belarus, Comm. No. 1838/2008, Hum. Rts. Comm., CCPR/C/103/D/1838/2008, ¶ 9.2 (Jan. 17, 2012) (finding a violation of the Petitioner’s ICCPR, art. 19(2) right to freedom of expression because the State was unable to justify its limitation of his right under the ICCPR, art. 19(3) strict necessity and proportionality test when it arrested and fined him for distributing leaflets containing information on an upcoming peaceful gathering for which she did not yet have a permit); Sudalenko v. Belarus, Comm. No. 1750/2008, Hum. Rts. Comm., CCPR/C/104/D/1750/2008, ¶ 9.3. (May 3, 2012) (finding a violation of the Petitioner’s ICCPR, art. 19(2) right to freedom of expression because the State was unable to justify its limitation of the Petitioner’s right under ICCPR, art. 19(3) necessity for the protection of national security or public order when it seized and destroyed leaflets of Petitioner, a journalist who disseminated information relating to the State’s refusal to register him as a candidate for the National Assembly election).

\textsuperscript{263} UDHR, art. 20 (“Everyone has the right to freedom of peaceful assembly . . . .”); ICCPR,
assemble with the aim of promoting and protecting human rights.\textsuperscript{264} It includes meetings in private residences, meetings and conferences in public places, demonstrations, vigils, marches, picket lines, and other assemblies indoors or outdoors.\textsuperscript{265} As part of its obligation to protect, States should ensure HRDs can participate in peaceful assemblies free from threats of use of force, arrest or detention, inhuman or degrading treatment, or abuse of criminal and civil proceedings.\textsuperscript{266}

The right to freedom of assembly is violated when HRDs or their relatives receive threats or intimidation prior, during, or after participation in peaceful assemblies or protests.\textsuperscript{267} Threats violate the right whether they are verbal or non-verbal (e.g., funeral wreaths and condolence cards implying the death of a HRD or a relative of an HRD).\textsuperscript{268} The right to freedom of assembly can be violated by both State authorities and non-State actors.\textsuperscript{269}

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\textsuperscript{264} U.N. Declaration on HRDs, arts. 5, 12; Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), \textit{Commentary on the U.N. Declaration on HRDs}, at 25 (2011).
\textsuperscript{265} Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), \textit{Commentary on the U.N. Declaration on HRDs}, at 25 (2011).
\textsuperscript{267} Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), \textit{Commentary on the U.N. Declaration on HRDs}, at 29; \textit{Ghazi Suleiman v. Sudan}, Comm. No. 228/99, Afr. Comm’n H.P.R., ¶ 56 (29 May 2003) (finding a violation of ACHPR, art. 11 freedom of assembly when State authorities threatened to arrest Petitioner, a human rights lawyer, to prevent him “from gathering with others to discuss human rights and by punishing him for doing so” when he attempted to travel and speak to a group of human rights defenders in a different part of the country).
\textsuperscript{268} Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), \textit{Commentary on the U.N. Declaration on HRDs}, at 29.
\textsuperscript{269} \textit{Id.}
\end{flushright}
The right to peaceful protest is included in the right to freedom of assembly and may be violated through threats and intimidation. For example, the right to protest is violated when State authorities threaten protestors with arrests, threaten to blacklist NGOs who participate in public protests, or threaten HRDs, human rights monitors, and journalists who are monitoring or covering demonstrations.

F. The Right to Freedom of Association

The right to freedom of association is protected under international law and is defined as the right of individuals to “interact and organize among themselves to collectively express, promote, pursue and defend common interests”. It includes the right of HRDs to promote and pursue the protection of human rights.  

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270 ICESCR, art. 8; American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, art. 8(1)(b) (1988); Inter-American Charter on Social Guarantees, art. 27; European Social Charter, art. 6 (4); ILO, Freedom of Association and Protection of the Right to Organize Convention, No. 87 (1948); U.N. Declaration on HRDs 5 (a). In addition to the right to freedom of association, the right to peaceful protests most commonly consists of the right to freedom of opinion and expression (see supra Section VI.D), freedom of peaceful assembly (see Section VI.E), and trade union rights.

271 Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), Commentary on the U.N. Declaration on HRDs, at 74, 78, 80.

272 UDHR, art. 20 (“Everyone has the right to freedom of . . . association.”); ICCPR, art. 22 (“Everyone shall have the right to freedom of association with others . . . .”); ICERD, art. 5(d)(ix) (stating that State parties undertake to prohibit discrimination in the enjoyment of the right to freedom of association); ICESCR, art. 8 (“The States Parties to the present Covenant undertake to ensure . . . the right of everyone to form trade unions and join the trade union of his choice . . . .”); CEDAW, art. 7 (stating that States Parties shall take all appropriate measures to eliminate discrimination against women to ensure the right “[t]o participate in non-governmental organizations and associations concerned with the public and political life of the country”); ACHPR, art. 10 (“Every individual shall have the right to free association provided that he abides by the law”); ACHR, art. 16 (“Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.”); ECHR, art. 11 (“Everyone has the right . . . to freedom of association with others”).

273 Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), Commentary on the U.N. Declaration on HRDs, at 35.
rights, subject to minimal lawful restrictions.

A vital dimension of the right to association is the freedom to seek the common attainment of a lawful purpose, without pressures or meddling that could alter or thwart its aim. Thus, the right has an individual and collective dimension, which may be violated through threats, intimidation and harassment. With regard to the individual dimension, threats and moral and psychological aggression that discourage defenders from doing their work violate their individual right to association. Likewise, death threats that lead to forcible exile or departure directly violate the right to association. Human rights defense is often done in association with others, and threats are often directed to chilling actions by groups of claimants or defenders.

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274 U.N. Declaration on HRDs, art. 1.  
276 Huilca Tecce v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 121, ¶¶ 69–72 (Mar. 3, 2005) (noting that the extrajudicial execution of a union leader in retaliation for his human rights activities had an intimidating effect on the workers of the Peruvian trade union movement and thereby reduced the freedom of a specific group to exercise the right to association); Huri-Laws v. Nigeria, Comm. No. 225/98, Afr. Comm’n H.P.R., ¶¶ 47–49 (Nov. 6, 2000) (finding a violation of ACHPR, art. 10 freedom of association when State authorities persecuted employees, detained co-workers, and conducted raids of the offices of the Petitioner, a human rights organization working to promote human rights by organizing programs aimed at enlightening the people of their rights, “in an attempt to undermine its ability to function in this regard”).  
278 Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 76 (2006); Gómez López v. Guatemala, Case 11.303, Inter-Am. Comm’n H.R., Report No. 29/96, OEA/Ser.L/V/II.95, doc. 7 rev. 425 ¶ 94 (Oct. 16, 1996) (finding that the periodic threats and intimidation by State Agents amounted to cruel, inhuman and degrading treatment as well as a violation of the right to association of the Petitioner, a union leader, who was periodically threatened and intimidated before and after almost fatal attempts on his life, resulting in his
With regard to the collective, the right of an organization may be infringed due to the intimidating effect produced by the killing of an associate or defender, which may be exacerbated by the State’s failure to investigate. Further, harassment in the form of dismissal of union leaders on false charges or the illegal monitoring of an association’s telephones may create fear and tension that violates the collective right to freedom of association.

forcible departure from Guatemala); *Dianna Ortiz v. Guatemala*, Case 10.526, Inter-Am. Comm’n H.R., Report No. 31/96, OEA/Ser.L./V/II.95, doc. 7 rev. 332 ¶ 119 (Oct. 16, 1996) (finding a violation of the right to freedom of association where the Petitioner was surveilled by State agents, received death threats and intimidating letters, and was eventually kidnapped, tortured and sexually assaulted in detention before being released, and subsequently left the country and was unable to continue her work).


G. The Right to Access and Communicate with International Bodies

The right to access and communicate with international bodies guarantees that individuals or groups who seek to cooperate or have cooperated with the U.N., its representatives and mechanisms in the field of human rights are free from intimidation and reprisals. For HRDs, access and communication with international bodies includes a broad range of collaborative activities such as submission of information and complaints regarding human rights violations and abuses. States should prevent all acts of intimidation and reprisals against HRDs, their family members, and “all those who have provided legal or other assistance” to such individuals, who “[a] vail or have availed themselves of procedures established under the auspices of the United Nations for the protection of human rights and fundamental freedoms.” Various treaty monitoring bodies also protect the right to access and communicate with international bodies by finding a violation of the right when State parties fail to take all necessary measures to prevent and protect persons who access, cooperate, or communicate with international human rights bodies.

Threats against HRDs who communicate, cooperate, and interact with international human rights bodies violate the right to access and communicate. For


example, the rights of HRDs are violated when they face threats and intimidation for participating in international human rights events, including the denial of permission to leave their country to participate in such an event or harassment and reprisals against HRDs upon their return. The right is also violated when HRDs are threatened and targeted after submitting information or complaints to international human rights mechanisms, including to special procedures of the U.N. Human Rights Council. When funding originates from U.N. agencies or bodies, the universal system also considers funding restrictions as acts of threats, reprisals, or intimidation that violate the right to access and communicate with international bodies.

H. The Right to Fair Trial and Judicial Protection

The right to fair trial and judicial protection is protected under international law.

286 Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), Commentary on the U.N. Declaration on HRDs, at 52–53 (noting that the right of HRDs to access and communicate with international bodies has been violated when they are threatened, intimidated, and attacked for reporting through human rights mechanisms and their activities are threatened when they are barred from traveling by having their travel documents seized or are detained at airports to “prevent them from reporting about the human rights situation in their country to international forum and bodies”).

287 Id.

288 Id. at 98.

289 UDHR, art. 11 (“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”); ICCPR, arts. 9 (stating that fair trial rights include the right to be informed of the reason of the arrest and charges, the right to be promptly brought before a judge, and the right to be entitled to a trial within a reasonable time), 14 (stating legal principles including the right to equality before the law, the right to be presumed innocent until proven guilty, etc.); ACHPR, art. 7 (stating that fair trial rights include the right to have a person’s cause heard, the right to be presumed innocent until proven guilty, the right to defense, and the right to be tried within a reasonable time); ACHR, arts. 8 (stating the right to a hearing, the right to be presumed innocent until proven guilty, the right to public criminal proceedings, etc.); ECHR, arts. 6–7 (stating that the right to fair trial includes the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law,” the right to be presumed innocent until proven guilty, the right to no punishment without law, etc.).
The right to fair trial and judicial protection aims to guarantee simple, prompt, and effective recourse to judicial bodies for the purpose of protecting fundamental human rights and includes within its scope the right to a time-bound and impartial determination of rights and obligations.\textsuperscript{290}

Threats (including death threats) and harassment of victims, along with the State’s failure to investigate effectively, thoroughly, and promptly, violates the right to fair trial and judicial protection.\textsuperscript{291} Similarly, the State’s failure to protect witnesses, deponents, investigators, and justice operators involved in judicial proceedings from threats, resulting in continued impunity beyond a reasonable time, constitutes a violation of the right to fair trial and judicial protection.\textsuperscript{292}

I. The Right to Freedom of Movement, Residence, and Protection from Forced Displacement

The right to freedom of movement, residence, and protection from forced displacement guarantees all persons lawfully within the territory of a State to be free to move and choose their residence within the country, as well as to be free to leave any country including their own.\textsuperscript{293}

\textsuperscript{290} ACHR, arts. 8.

\textsuperscript{291} \textit{Garcia-Prieto et al. v. El Salvador}, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 168, ¶¶ 154–55, 159–60 (Nov. 20, 2007) (finding that the State had violated of the right to fair trial and judicial protection, in conjunction with the its general obligation [Art. 1(1)] because of failure to conduct effective investigation(s) into the threats and harassment of Garcia Prieto and his family, resulting in continuation of the same); \textit{Human Rights Defender et al. v. Guatemala}, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 242 (Aug. 28, 2014) (finding that the State’s failure to thoroughly and effectively investigate threats to a murdered HRD’s family members involved in judicial proceedings, amount to a flagrant violation of the right to fair trial and guarantees of judicial protection).


\textsuperscript{293} UDHR, art. 13 (stating that everyone has the right to freedom of movement and residence within the borders of each state as well as the right to leave any country, including their own, and to return to their country); ICCPR, art. 12 (stating that everyone lawfully within the country has the right to liberty of movement and freedom to choose their residence as well
Threats, intimidation, and harassment violates the right to freedom of movement and residence if the defender is forced to leave their residence, neighborhood, city, or country or prohibited from leaving. Further, threats by State or non-State actors, coupled with the State’s failure to provide effective domestic remedies, including protection and investigation aimed at ensuring their return, may also amount to a violation of the right.

as the right to leave any country, including their own, and to return to their country without arbitrary interference); ACHPR, art. 12 (“Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. Every individual shall have the right to leave any country including his own, and to return to his country.”); ACHR, art. 22 (“Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law. Every person has the right to leave any country freely, including his own.”); ECHR, Protocol No. 4, art. 2 (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own.”).


J. The Right to Privacy, Honor, and Dignity

The right to privacy is protected under international law. The right to privacy, honor, and dignity protects against arbitrary and unlawful interference with personal, informational, and spatial aspects of the privacy of individuals and provides protection against unlawful attacks on their honor and reputation. The Inter-Am. Ct. H.R has stated that “the sphere of privacy is characterized by

297 UDHR, art. 12 (“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”); ICCPR, art. 17 (“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”); ACHR, art. 11 (“Everyone has the right to have his honor respected and his dignity recognized. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. Everyone has the right to the protection of the law against such interference or attacks.”); ECHR, art. 8 (“Everyone has the right to respect for his private and family life, his home and his correspondence”).
being exempt and immune from abusive and arbitrary invasion by third parties or public authorities.”

In the Inter-American system, death threats, intimidation, and harassment constitute a violation of the right to privacy when, for example, State authorities illegally surveil and threaten a private citizen. The Inter-Am. Ct. H.R has found a violation of the right to privacy, honor, and dignity when, for example, State authorities relentlessly threaten, harass, intimidate, and blame a private citizen for judicially unproven deeds or monitor and then publicly disseminate telephone records of a private citizen.

K. The Right to Defend Rights

The State has the primary duty to promote and protect human rights, which includes guaranteeing “[e]veryone the right, individually and in association with others, to promote and to strive for protection and realization of human rights

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300 Dianna Ortiz v. Guatemala, Case 10.526, Inter-Am. Comm’n H.R., Report No. 31/96, OEA/Ser.L./V/II.95, doc. 7 rev. 332 ¶ 116 (Oct. 16, 1996) (noting that the Petitioner was surveilled by State agents, received threats, and was eventually kidnapped, tortured and sexually assaulted in detention before being released and finding that threatening persons and placing them under surveillance rendered them objects of arbitrary and abusive interference and constituted violations of their right to privacy).
301 Gallardo Rodríguez v. Mexico, Case 11.430, Inter-Am. Comm’n H.R., Report No. 43/96, OEA/Ser.L./V/II.95, doc. 7 rev. 485 ¶¶ 76, 119 (Oct. 15, 1996) (noting that Petitioner was a Brigadier in the Mexican Army who had been subjected to relentless threats, harassment, intimidation, unjust judicial procedures and imprisonment, public statements by the State blaming him for unproven deeds and attacking his honor, dignity and good name and holding that public accusations made by the State without judicial verification amount to violation of the right to honor, and requiring that those responsible should be investigated and punished).
302 Escher et al. v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 200, ¶¶ 158–59 (July 6, 2009) (finding that illegal monitoring of Petitioner’s telecommunication by the State and, subsequently, publicizing them by leaking to newspapers was threatening behavior that violated the right to privacy, honor, and reputation under the ACHR).
and fundamental freedoms at the national and international levels.”³⁰³ The right
to defend rights is not limited to the enumerated rights in the U.N. Declaration
on HRDs³⁰⁴ but is further protected by international human rights treaties,
conventions, and declarations that protect and promote the human rights and
fundamental freedoms of every person in the world.³⁰⁵

³⁰³ U.N. Declaration on HRDs, art. 1. See U.N. G.A. Res. 64/226, ¶ 57 (2009) (stating “the
promotion and protection of human rights is a legitimate purpose for an association to
pursue” as guaranteed by article 1 of the U.N. Declaration on HRDs).
³⁰⁴ The U.N. Declaration on HRDs does not create new rights but articulates existing rights
in the context of the work of human rights defenders. Enumerated rights and protections
include: seeking the protection and realization of human rights; conducting human rights
work individually or in association with others; forming associations or non-governmental
organizations; peaceful assembly; seeking, obtaining, receiving, holding information related to
human rights; developing and discussing new human rights ideas; making complaints about
official policies and acts and having such complaints reviewed; providing legal assistance or
advice in the defense of human rights; attending public hearings, proceedings, and trials;
having unhindered access to NGOs; benefiting from effective remedy; receiving, soliciting,
and utilizing resources for the purpose of protecting human rights. For a full list of rights and
State obligations see U.N. High Commissioner on Human Rights, Declaration on Human Rights
visited Mar. 11, 2018).
Declaration on HRDs strives to serve “the important role of international cooperation for, and the
valuable work of individuals, groups and associations in contributing to, the effective elimination
of all violations of human rights and fundamental freedoms of people and individuals” and, in
that context, is guided by the U.N. Charter and UDHR and should be considered against the legal
background of all international human rights instruments including the ICCPR (particularly the
obligations of States to protect the rights to movement and residence; privacy, family, home, and
correspondence; opinion and expression; assembly; and association), the ICESCR; CAT (particularly
those guarantees to promptly and impartially examine all complaints of torture and to protect
Petitioners and witnesses against ill-treatment or intimidation as a consequence of their complaint);
ICERD; CEDAW; Convention on the Rights of the Child; ILO, Freedom of Association and
Protection to the Right to Organize Convention, No. 87); U.N. Declaration on HRDs, preamble
(2011) (reaffirming the importance of the purpose and principles of the U.N. Charter “for the
promotion and protection of all human rights and fundamental freedoms for all persons in
all countries of the world” as well as importance of international and regional human rights
instruments that further promote universal respect for human rights). See also Inter-Am. Comm’n
Doc. 5 rev. 1, ¶ 35 (2006) (stating that the “inter-American system has established components of
many rights whose guarantee makes possible the work of human rights defenders”).
The right to defend rights is vitally important because human rights defenders who implement international human rights standards within their countries are often the first line of defense for guarding against human rights abuses and violations, making them the target of human rights violations themselves.\textsuperscript{306} Recognizing the right of human rights defenders to defend rights is therefore “fundamental to achieving universal respect for human rights.”\textsuperscript{307} Because of its universal scope, the right to defend rights may not be subject to geographical restrictions.\textsuperscript{308}

States should take all necessary measures to protect the rights and safety of HRDs who, in doing their work, “exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly, and association, to participate in public affairs, and to seek an effective remedy.”\textsuperscript{309} A violation of any of the substantive human rights discussed in Part VIII that is based on threats made against human rights defenders who are exercising their right to defend rights may, therefore, constitute a violation of the defender’s right to defend rights.

\section*{IX. CONCLUSION}

A review of universal and regional norms suggests that States can be liable for human rights violations when threats are issued by State or non-State actors against HRDs. States may be liable either by way of omission or commission of certain acts that fail to prevent and protect against violations, foster impunity, or lack accountability for perpetrators. The States’ obligations to respond to threats range from long-term systemic commitments, which create conducive socio-legal environments for the enjoyment of rights, the prevention of


\textsuperscript{308} Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 36 (2006) (“The observance of human rights is a matter of universal concern, accordingly, the right to defend those rights may not be subject to geographical restrictions.”).

violations, and the curtailment of impunity, to specific obligations, which are tailored to respond to individual and particular circumstances. The State’s obligation is fulfilled only when the threshold of applicable due diligence standards is met and includes the investigation of threats, the punishment of perpetrators, the implementation of measures to protect victims, the prevention of further violations, and the provision of redress for violations incurred. Because of the devastating impact threats have on the enjoyment of human rights and the work of HRDs, the State’s obligations are heightened in such contexts and are further differentiated on the basis of intersectional identities of victims, most notably pertaining to the defenders’ gender, sexual orientation, and social role.

While no single international legal instrument comprehensively captures the States’ due diligence obligations in relation to threats, the framework can be derived from a synthesis of existing legal instruments and jurisprudence. A systematic analysis of international and regional legal systems not only demonstrates the existence of a common baseline for the States’ due diligence obligations across jurisdictions, but also signals a gradual convergence of legal norms facilitated by cross-pollination of jurisprudence.

Variations among the legal norms of regional systems are not so much the result of substantial divergence in the jurisprudence of each system, but a function of differing priorities that correspond to unique problems germane to each jurisdiction. In fact, all regional systems and the overarching international legal framework display an acute awareness of threats against HRDs and often address the spectrum of concerns with a degree of nuance. While some regional systems, such as the Inter-American system, deal with threats against HRDs in comparatively greater detail, the European and African human rights systems have often followed suit to adopt principles and standards to ensure the protection and prevention of threats against HRDs. This is not meant to imply that the Inter-American system is more robust or expresses greater concern for HRDs than other system; more appropriately, it reflects a proportional institutional response to the adverse socio-political realities that HRDs must contend with in specific jurisdictions. Over the past few decades, all regional legal mechanisms have rigorously extrapolated from international
human rights commitments, leading to a very limited scope of discord between the jurisprudential frameworks of each legal system. It is apt, therefore, that jurisprudence of the universal and regional systems is synthesized to draw out best practices that can inform and standardize the international legal framework concerning the States’ due diligence obligations for threats against HRDs.