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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## Situation of human rights defenders

### Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights defenders, Michel Forst, in accordance with Assembly resolutions [66/164](#) and [68/181](#) and Human Rights Council resolutions [16/5](#) and [25/18](#).

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\* [A/74/50](#).



## **Report of the Special Rapporteur on the situation of human rights defenders**

### *Summary*

In the present report, the Special Rapporteur on the situation of human rights defenders, Michel Forst, discusses the persisting impunity for human rights violations committed against human rights defenders and the challenges that exist in combating it. He outlines a regulatory framework on the right to access to justice, including due diligence in investigations. He also elaborates on the de facto and legal barriers to access to justice. The Special Rapporteur offers essential guidelines for ensuring due diligence in the investigation of such violations. Subsequently, good practices implemented by States and civil society are described.

The report contains recommendations addressed to all relevant parties on how to combat impunity effectively.

## I. Introduction

1. Julián Carrillo, Somsuk Kohkrang, Natalia Estemirova, Zaman Mehsud, Daphne Caruana Galizia and Eric Ohena Lembembe are just a few of the individuals who have been killed for defending our rights. What has been done to punish those responsible for their deaths? What has been done to prevent the occurrence of similar events? What has been done to punish those responsible for the countless threats and attacks made against thousands of human rights defenders every day?

2. Impunity facilitates the recurrence of human rights violations, weakens people's trust in the rule of law and leaves them defenceless when confronted with injustice. Not only does it prevent recognition and reparation of the physical, social and psychological harm done to victims, but it also has profound and insidious consequences at all levels of society, as it undermines the fight against all forms of violence and obstructs access to the truth and to learning from experience.

3. There are few regions in the world that are free from impunity. It often thrives because of a lack of political will to address its causes in a holistic and systematic manner, allowing repetition of the same patterns of violence. Combating this scourge is an essential prerequisite to guarantee human rights and to advance towards equal societies that are free from fear and violence.

4. Impunity increases the impact of human rights violations committed against human rights defenders, as it conveys a lack of recognition for their role in society and constitutes an invitation to continue violating their rights.

5. The Special Rapporteur and other actors have consistently expressed<sup>1</sup> their concern at the various violations that affect the defence of human rights every day ([A/HRC/31/55](#) and [A/73/215](#)) by both State and non-State actors. In addition, States have been called upon to investigate such events and to end impunity.

6. States must not only develop a policy of zero tolerance towards attacks on human rights defenders but must also create the conditions for establishing a safe environment that is conducive to human rights defence efforts, which means building societies that resolutely support their work and where governmental institutions and processes promote the security and objectives of their activities ([A/HRC/31/55](#)).

7. One of the basic aspects of supporting such environments is to ensure access to justice and an end to impunity ([A/HRC/25/55](#)). This is critical not only as an individual right, but also in terms of the impact that it has on society. As well as causing immense suffering to victims, impunity discourages others from carrying out human rights defence work and reduces the civic space.

8. It is not possible to fully exercise the right to defend and promote human rights without also protecting the right to access to justice when violations occur that restrict that right. In other words, the protection of human rights defenders involves not only strengthening security measures in their favour, but also mitigating risks, addressing threats and obstacles and exercising due diligence in investigations of violence against them and other violations of their rights.

9. In this report, the Special Rapporteur describes the factors that foster impunity when human rights defenders are victims of violations of their rights. He also

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<sup>1</sup> Resolution 376 (LX) 2017 of the African Commission on Human and Peoples' Rights (Res. 376 (LX) 2017); Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights Defenders in the Americas (OEA/Ser.L/V/II. Doc. 66); Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities (2008); resolution 2928 of the General Assembly of the Organization of American States (AG/RES. 2928 (XLVIII-O/18)).

elaborates on the obligations of States to adequately address the issue and shares good practices. Lastly, the Special Rapporteur offers a series of recommendations to various actors involved in the protection of this group.

10. The Special Rapporteur is aware that the criminalization of human rights defenders is another of the obstacles that they face. However, this report will focus on impunity resulting from a lack of due diligence in investigations and the lack of prosecution and punishment for those responsible for violations of the human rights of this group.

## **II. Methodology**

11. This report is based on numerous discussions that the Special Rapporteur has had with human rights defenders around the world since the beginning of his mandate in 2014, and on the information that he continuously receives on the subject. In his official visits and during his participation in public activities of an academic or institutional nature, the Special Rapporteur received troubling information on the topic of the present report. Information is also taken from the 462 communications sent by the Special Rapporteur between January 2017 and December 2018.

12. In addition, the Special Rapporteur held five regional consultations with the participation of over 100 human rights defenders who shared their views on the specific challenges of combating impunity. Five virtual consultations were also carried out with experts on criminal investigation.

13. The available literature and research materials on impunity and due diligence were also used. Other sources were previous reports of the mandate holder, United Nations resolutions and regional bodies for the protection of human rights.

14. Lastly, the report is based on the 71 responses to a questionnaire that was issued with the objective of collecting information from the actors involved in the topic of this report.

## **III. Principal human rights violations against human rights defenders and the prevailing impunity**

15. Killings, extrajudicial executions, enforced disappearances, torture, cruel, inhuman or degrading treatment, arbitrary detentions, physical and digital threats, criminalization, forced displacement, harassment, stigmatization, digital attacks, restrictions on appearing before international bodies and administrative restrictions on the holding of demonstrations and on their work are the most prevalent human rights violations against human rights defenders.

16. These violations are not sporadic or isolated. Rather, they are part of systematic patterns that are intended to intimidate and silence the critical voices of human rights defenders, undermine their organizational movements and discourage other individuals from defending human rights.

17. There are individuals, groups and movements who are at greater risk of suffering some form of violence because of the type of right that they defend, or the economic or political interests that they face in certain contexts. In that regard, the Special Rapporteur draws attention to the heightened risks faced in certain contexts by defenders of land, the environment, peace, access to justice, sexual diversity, freedom of expression and gender equality ([A/HRC/16/44](#), [A/HRC/19/55](#), [A/70/217](#), [A/HRC/40/60](#) and [A/HRC/31/55](#)).

18. In 2017 and 2018, the United Nations verified 431 killings (at least 8 per week) of human rights defenders, journalists and trade unionists in 41 countries (E/2019/68). These figures show a worrying increase in relation to the average of previous years.

19. From the beginning of the mandate of the Special Rapporteur in 2014 to June 2019, 1,153 communications have been sent to States. Of those communications, 28 per cent referred to arbitrary detention; 19 per cent to torture or cruel, inhuman or degrading treatment; 18 per cent to extrajudicial executions or killings; 9 per cent to disappearances or abductions; 8 per cent to violence against human rights defenders and 0.5 per cent to forced displacement. Those communications contain descriptions of events that affected 2,810 human rights defenders in a direct and individual manner and an unknown number of collective victims. The Special Rapporteur also received information on other practices such as criminalization, office break-ins and digital attacks, which are not reflected in the above figures. Although the figures are not exhaustive, as they are based solely on the information sent by the Special Rapporteur, they do illustrate the types of aggression that human rights defenders are faced with every day.

20. In the case of human rights defenders, it is common for digital media to be used to violate their rights to privacy, honour or personal integrity, for example, through threats of sexual violence, comments on their sexuality, publication of private information about an individual on the Internet by a third party (“doxing”) and publication of fake or manipulated videos. In his report on the situation of women human rights defenders, the Special Rapporteur examined the risks related to gender and the specific violations faced, including sexual violence (A/HRC/40/60).

21. In addition, attacks such as blocking web pages, blocking network data traffic, denial of services (online streaming, for example), remote attacks to take control of equipment or extract information, use of malicious programmes (malware) to monitor and track communications, hacking accounts for theft of credentials, identity theft (phishing), blocking of profiles, creation of fake profiles or arbitrary removal of content by digital platforms are some of the ways in which many rights of human rights defenders are violated (A/HRC/17/27 and A/HRC/41/35).

22. The human rights violations described are attributable not only to State actors but also to non-State actors, including businesses,<sup>2</sup> organized crime and gangs (A/HRC/37/51/Add.1 and A/HRC/40/60).

23. Unfortunately, the overwhelming majority of human rights violations committed against human rights defenders remain unpunished. For the Special Rapporteur, this is a cause for grave concern owing to its negative impact, not only on the victims by preventing them from gaining access to justice, but also on the organizational movement that they are affiliated with (as it is generally weakened and other individuals are discouraged from participating) and on society itself (as it obstructs access to the truth and prevents measures being taken to avoid the recurrence of these events).

24. However, it has not been possible to produce statistics that reflect the magnitude of this issue owing to the lack of any official record of such events. In countries where there is widespread impunity, no separate records are kept on violations committed against human rights defenders.

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<sup>2</sup> According to the Business and Human Rights Resource Centre, 1,628 attacks against human rights defenders working in the area of business occurred between 2015 and May 2019; the information is available at [www.business-humanrights.org/search-human-rights-defenders](http://www.business-humanrights.org/search-human-rights-defenders).

## IV. Regulatory framework

### The right to defend human rights and the heightened obligations of States to respect and guarantee that right

25. The Universal Declaration of Human Rights and many universal and regional human rights treaties establish a catalogue of fundamental rights and freedoms that are inherent to all human beings, such as the right to life, humane treatment, personal freedom, freedom of expression, freedom of assembly and of association, the right to political participation, freedom of movement, privacy, equality and non-discrimination, access to justice and judicial guarantees. Respect for and protection of those rights make it possible to defend and promote human rights and, ultimately, to exercise the right to defend them.<sup>3</sup>

26. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) (General Assembly resolution 53/144, annex) is the first international instrument to recognize the defence of human rights as a right in itself (art. 1). Other international actors have joined in this recognition.<sup>4</sup> Everyone may exercise that right regardless of position: what matters is the action of defending human rights (A/73/215).

27. In accordance with the principles of universality, indivisibility and interdependence of human rights, the right to defend human rights cannot be subject to geographical restrictions. In addition, this right implies the right to freely defend civil, political, economic, social and cultural rights, and the right to a healthy environment. That is, rights that are universally accepted, and other new rights or elements of rights that are still under discussion.<sup>5</sup>

28. As the Special Rapporteur indicated more extensively in his previous report (A/73/215), the Declaration sets forth and restates a series of rights that are protected by binding treaties. The infringement of any of these rights that together constitute the right to defend human rights may constitute a violation of multiple legal norms.<sup>6</sup>

29. However, considering the provisions of the Declaration and of international treaties, the critical role of those provisions in supporting progress in societies towards the effective enjoyment of human rights, and the vulnerable situation of human rights defenders in certain countries, the Special Rapporteur considers that States have heightened obligations to respect and protect the rights of those defenders.<sup>7</sup>

<sup>3</sup> Inter-American Court of Human Rights, *Escaleras Mejía et al. v. Honduras*, Judgment of 26 September 2018.

<sup>4</sup> Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights, 2004; Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights Defenders in the Americas; European Union Guidelines on Human Rights Defenders; Grand Bay Declaration and Plan of Action on Human Rights in Africa.

<sup>5</sup> Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights Defenders in the Americas; Inter-American Court of Human Rights, *Kawas Fernández v. Honduras*, Judgment of 3 April 2009.

<sup>6</sup> Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 29.

<sup>7</sup> Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 23; Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights; Inter-American Court of Human Rights, *Human Rights Defender et al. v. Guatemala*, Judgment of 28 August 2014. See, also, A/HRC/WGAD/2012/39.

30. States must take special measures to protect human rights defenders, in particular their rights to life and to humane treatment, when there are specific threats or pre-existing patterns of violence.<sup>8</sup> Failure to adopt such measures to fulfil the heightened obligations must be considered by international bodies when determining the legal consequences of non-compliance, and in relation to reparations.

### The right of access to justice

31. The right of access to justice encompasses the right to be heard and to have access to impartial courts on an equal basis with others,<sup>9</sup> as well as to seek and obtain fair and timely redress in the event of rights violations.<sup>10</sup>

32. As part of Sustainable Development Goal 16, on peace, justice and strong institutions, States established the target: promote the rule of law at the national and international levels and ensure equal access to justice for all.

33. The International Covenant on Civil and Political Rights provides that States parties must ensure that all persons, including human rights defenders, have accessible and effective remedies to claim the rights recognized in the Covenant and to obtain appropriate reparation in the event of a violation (art. 2, para. 3; art. 9, para. 5; and art. 14, para. 6).

34. According to general comment No. 31 (2004) of the Human Rights Council, on the nature of the general legal obligation imposed on States parties to the Covenant, States parties must establish appropriate judicial and administrative mechanisms for addressing claims of rights violations (procedural dimension) and for providing reparation, which may include restitution, rehabilitation, compensation, measures of satisfaction and guarantees of non-repetition (substantive dimension). The procedural dimension is the means of securing substantive redress.<sup>11</sup>

35. Similarly, the International Covenant on Economic, Social and Cultural Rights<sup>12</sup> establishes the obligation to provide judicial and other remedies to claim the justiciable rights recognized therein ([E/C.12/2016/2](#)).

36. For remedies to be effective they must be appropriate for determining whether there has been a violation, establish punishments that are proportionate to the

<sup>8</sup> Human Rights Council, general comment No. 36, para. 19; Committee on Economic, Social and Cultural Rights, general comment No. 18 (2005) on the right to work, para. 51, and general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 48; Inter-American Court of Human Rights, *Luna López v. Honduras*, Judgment of 10 October 2013; *Kawas Fernández v. Honduras*; and *Human rights defender et al. v. Guatemala*.

<sup>9</sup> Human Rights Council, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

<sup>10</sup> Universal Declaration of Human Rights, arts. 7, 8, 10 and 11; International Covenant on Civil and Political Rights, art. 2, para. 3, and arts. 14 and 26; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14; Convention on the Rights of Persons with Disabilities, art. 13; American Convention on Human Rights, “Pact of San José, Costa Rica”, arts. 8 and 25; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), arts. 6 and 13; and African Charter on Human and Peoples’ Rights, arts. 7 and 26. See, also, [E/CN.4/2005/102/Add.1](#).

<sup>11</sup> *Rule-of-law tools for post-conflict States: Reparations programmes*. (United Nations publication, sales No. E.08.XIV.3), p. 6.

<sup>12</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties’ obligations, para. 4, and general comment No. 24, para. 40.

seriousness of the violation and provide for comprehensive reparation<sup>13</sup> that takes into account the vulnerability of certain groups.<sup>14</sup>

37. In addition, protecting access to justice involves protecting the imprescriptible right of victims, their families and society to know the truth about what happened ([E/CN.4/2005/102](#)).

### **The obligation to investigate human rights violations**

38. The Human Rights Committee has emphasized the general obligation to investigate allegations of human rights violations promptly, thoroughly and effectively; this is the role not only of the judiciary but also of administrative and quasi-judicial authorities,<sup>15</sup> including national human rights institutions. It has also emphasized the obligation to ensure that those responsible are brought to justice: failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.<sup>16</sup> The Committee on Economic, Social and Cultural Rights has made a similar pronouncement.<sup>17</sup>

39. The duty to investigate applies to actions or omissions by State and non-State actors ([A/HRC/25/55](#)). With regard to violations committed by businesses, the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework clearly establish the obligation of States to take appropriate measures to prevent, investigate, punish and redress such abuses by implementing appropriate policies, taking regulatory action and bringing perpetrators to justice ([A/HRC/17/31](#), [E/C.12/GC/24](#) and [A/HRC/32/19](#)).

40. Failure to comply with the abovementioned obligations leads to impunity, meaning “the impossibility, de jure or de facto, of bringing the perpetrators of violations to account – whether in criminal, civil, administrative or disciplinary proceedings – since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims” ([E/CN.4/2005/102/Add.1](#)).

### **Principles for due diligence in the investigation of human rights violations**

41. Although the obligation to investigate relates to means rather than results, in accordance with international standards and to combat impunity and ensure effective

<sup>13</sup> Inter-American Commission on Human Rights, *Directrices básicas para la investigación de violaciones a los derechos de las personas defensoras de derechos humanos en las Américas* (OEA/Ser.L/V/II. Doc. 211).

<sup>14</sup> Human Rights Committee, general comment No. 31, para. 15.

<sup>15</sup> *Ibid.*, paras 15 and 18. See, also: Committee on Economic, Social and Cultural Rights, general comment No. 24; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution [60/147](#), annex; Inter-American Commission on Human Rights, *Basic guidelines for the investigation of violations of the rights of human rights defenders in the Americas*; and [A/HRC/25/55](#).

<sup>16</sup> Human Rights Committee, general comment No. 31, para. 15.

<sup>17</sup> Committee on Economic, Social and Cultural Rights, general comment No. 24.

access to justice, States do have the duty to act with due diligence to identify all those responsible. That involves, at a minimum, application of the following principles:<sup>18</sup>

- Own initiative: once a State is aware of the occurrence of a human rights violation, it should initiate an investigation on its own initiative.
- Timeliness and expeditiousness: investigations should be initiated immediately and proactively, avoiding undue delays in order to complete the necessary procedures within a reasonable time frame. This duty is particularly important in relation to the first steps, which must be aimed at protecting the evidence and the crime scene.
- Competence: all proceedings should be conducted in a rigorous manner by professionals with suitable qualifications, using appropriate procedures and methods.
- Independence and impartiality: the bodies responsible for conducting the investigation must have these qualities, particularly in relation to anyone who might be implicated in violations. Impartiality requires that the proceedings not be affected by preconceptions or prejudices.
- Exhaustiveness: this means using all available means to establish the truth and identify all those responsible (materially and intellectually), as well as the systemic failings that made the violation possible.
- Participation of victims: the centrality of victims should be recognized, their dignity respected and their effective (real and not purely formal) participation at all stages of the process ensured. This should include: ensuring that victims have access to complete, accurate and accessible information, according to their needs; access to the available care programmes (psychosocial, legal); effective protection and security; and that their interests are defended in all trial proceedings, including by ensuring comprehensive reparations.
- Transparency: ensure public scrutiny of the investigation and its outcomes, to prevent the covering up or tolerance of unlawful acts.

42. The Special Rapporteur considers that these principles should be used not only for establishing criminal responsibility but also for establishing civil, administrative or disciplinary responsibility, when appropriate and not exclusively.

43. In addition, there are many protocols, sets of guidelines and codes that set out how the abovementioned principles should be applied, and provide guidelines for specific problems that arise in investigations. These include: the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol); the Minnesota Protocol on the Investigation of Potentially Unlawful Death; the Code of Conduct for Law

<sup>18</sup> These principles derive from a range of international jurisprudence and instruments, namely: Human Rights Committee, general comment No. 31; European Court of Human Rights, cases *Kolevi v. Bulgaria*, *Yaşa v. Turkey*, *Mahmut Kaya v. Turkey*, *Yaman v. Turkey*; Inter-American Court of Human Rights, *Juan Humberto Sánchez v. Honduras*, *Heliodoro Portugal v. Panamá*, *“Masacre de Mapiripán” v. Colombia*, *Comunidad Moiwana v. Surinam*. See also: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol); Minnesota Protocol on the Investigation of Potentially Unlawful Death; Updated Set of Principles for the protection and promotion of human rights through action to combat impunity; Organization for Security and Co-operation in Europe, Guidelines on the Protection of Human Rights Defenders; Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011); Latin American Model Protocol for the Investigation of Gender-related Killing of Women (femicide/feminicide); and Center for Justice and International Law, Due Diligence in the Investigation of Serious Human Rights Violations.

Enforcement Officials (General Assembly resolution [34/169](#), annex); the Basic Principles on the Independence of the Judiciary; the United Nations Guidelines on the Role of Prosecutors; and the Latin American Model Protocol for the Investigation of Gender-related Killing of Women (femicide/feminicide).

## V. Obstacles that restrict access to justice and foster impunity in human rights violations against human rights defenders

44. All regions of the world share the common challenge of eliminating impunity for human rights violations. The 2017 Global Impunity Index, which was calculated for 69 countries, showed that levels of impunity varied between 36 and 75 per cent.<sup>19</sup>

45. Institutional weakness, corruption, lack of independence of the judiciary ([A/69/294](#)), lack of a differentiated approach to access to justice ([A/67/278](#)), lack of access to public information and other structural barriers<sup>20</sup> are some of the factors that affect those levels. In addition, fragile States that are in democratic transition, have ongoing armed conflicts or are under occupation face particular challenges that further complicate the fight against impunity.

46. In the case of human rights defenders, there are additional barriers to access to justice that arise from their human rights defence work, which have a differentiated impact on them and increase the risk that violations of their rights remain unpunished.

47. At times, these barriers are mutually exacerbating, forming part of a vicious circle that is strengthened by an unwillingness to adopt effective reforms to justice systems, which openly contravenes international obligations and numerous recommendations made by relevant actors.

48. The obstacles identified are described below.

### Lack of political will

49. In many countries there is no clear political will to build safe environments in which human rights defenders can carry out their functions, and still less to prevent violence against them or to investigate it when it occurs.

50. Systematic practices of discrimination and stigmatization permeate institutions and encourage invalid or inadequate responses to the demands of justice, in some cases denying the status of the human rights defender or refusing to conduct investigations that take into account their work, thereby preventing appropriate and differentiated investigation measures from being taken.

### Lack of State recognition

51. In connection with the lack of political will, there is a lack of State recognition of the important work carried out by human rights defenders and, in general, limited compliance with the obligations set out in the Declaration on Human Rights Defenders ([A/73/215](#)) and other international instruments. This leads to many human rights defenders not identifying as such, and therefore not reporting the abuses perpetrated against them, or if they do so, not identifying themselves as human rights defenders to the authorities.

<sup>19</sup> J. A. Le Clercq Ortega y G. Rodríguez Sánchez Lara (coords.), *Global Impunity Index 2017. Global Impunity Dimensions*, Puebla, Fundación Universidad de las Américas, 2017.

<sup>20</sup> United Nations Development Programme, Access to Justice Practice Note (9 March 2004).

52. One case that exemplifies this lack of recognition is the extrajudicial execution by military personnel of the indigenous leader and environmentalist Saw O Moo, which occurred in Myanmar in 2018.<sup>21</sup> The Army denied his status as a human rights defender and claimed that he was a rebel suspected of being engaged in sabotage activities.

### **Lack of reporting**

53. This happens for a variety of reasons. Firstly, there is a lack of trust in State institutions that deters the reporting of human rights violations. For example, human rights defenders assume that physical or digital threats will not be investigated, and they therefore accept the risk and continue with their work.

54. In addition, some human rights defenders are unaware of their rights, or fear the criminalization and stigmatization of their defence activities. This is evident in countries that criminalize sexual orientation and gender identity, migration or abortion. This is also the case when the victims are individuals belonging to ethnic minorities that have historically been subjected to discrimination.

55. In the case of defenders in rural areas where the State presence is limited or non-existent, it is also difficult to report violations of their rights. This is exacerbated by a lack of free legal representation.

56. Fear of reporting is also evident in States where there are no effective protection mechanisms, or in those where such mechanisms do exist but fail to take a differentiated approach. In Kenya in 2017, numerous protests took place which were violently suppressed by State security forces.<sup>22</sup> As a result of the excessive use of force, at least 37 people were killed and hundreds injured.<sup>23</sup> A number of the direct and indirect victims of those events did not file complaints for fear of retaliation.<sup>24</sup>

57. The abovementioned fear of attacks and intimidation for defending human rights is genuine and justified in the experience of many of those who have dared to file reports. In India in 2018, for example, human rights defenders Rajeev Yadav and Akram Akhtar Chaudhary received threats from police officers because of their demand for the truth and justice in cases of dozens of extrajudicial executions of Muslims.<sup>25</sup>

58. In China in 2018, Yu Wensheng<sup>26</sup> and Sui Muqing<sup>27</sup> had their professional licences to practise as lawyers withdrawn because of their work as human rights defenders, thus preventing them from continuing their work.

### **Violations without consequences**

59. Human rights defenders are defenceless against violations that have no criminal, civil or administrative consequences. Examples of such violations include the blocking of web pages or online accounts, infiltration into indigenous organizations and communities, physical threats, digital attacks and stigmatization.

<sup>21</sup> MMR 2/2018, 4 June 2018.

<sup>22</sup> KEN 13/2017, 12 October 2017.

<sup>23</sup> <https://www.hrw.org/news/2018/02/25/kenya-fresh-evidence-election-period-abuses>.

<sup>24</sup> *Ibid.*

<sup>25</sup> IND 27/2018, 11 December 2018.

<sup>26</sup> CHN 5/2018, 6 March 2018.

<sup>27</sup> CHN 7/ 2018, 6 April 2018.

## **Lack of differentiated records**

60. States are not recording in a disaggregated manner the types of violence and other violations that affect human rights defenders. This is another obstacle to an understanding of the magnitude of the issue, the adoption of preventive and investigative actions that consider human rights defence as a factor and the identification of similar cases in order to demonstrate patterns.

## **Limited and inadequate internal standards of protection**

61. According to information gathered by the Special Rapporteur, there are nine countries in the world with some form of legislation whose primary aim is to protect human rights defenders. These countries are Brazil, Colombia, Mexico, Honduras, Côte d'Ivoire, Burkina Faso, Mali, Guatemala and, most recently, Peru.

62. The existence of such legislative provisions is a positive first step. However, the measures implemented thus far have not been sufficient to put an end to impunity.

63. In Africa, the actions required to implement the laws have not yet been taken, and so it is not possible to analyse their effectiveness.

64. In Latin America, standards have been adopted that do not constitute comprehensive public policies,<sup>28</sup> and priority has been given to the implementation of physical protection measures<sup>29</sup> along with, in some cases, prevention measures of limited scope. In all cases, aspects related to the investigation of human rights violations have the lowest levels of implementation and effectiveness.

65. There is a lack of coordination between the protection mechanisms and investigative bodies. While the institutional architecture provides for the participation of representatives of the investigative bodies (Honduras and Mexico), in practice, those representatives do not play a proactive role by activating the corresponding proceedings on their own initiative.

66. In addition, there is a lack of understanding of the preventive nature of investigation. The resources allocated for its functioning are also insufficient.

67. In federal States, such as Mexico and Brazil, there are no coordination mechanisms between the federal and State authorities. For example, there is no coordination on actions such as issuing arrest warrants or sharing resources. There are no homogenous criteria to investigate or criminalize acts of violation.

68. In Guatemala and Colombia specific guidelines have been adopted for investigations, which are very important. However, information has been received on the lack of political will to implement them. Furthermore, no effective mechanisms have been established to investigate threats or responsibility for omission, in cases where protection schemes have failed.

## **Negligent and irregular practices**

69. The Special Rapporteur has received abundant information on irregular and negligent practices of authorities regarding the receipt and processing of complaints. For example, rather than action being taken on the initiative of the authorities, the

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<sup>28</sup> *The Time is NOW: For effective policies to protect the right to defend rights*, Brussels/San José, Protection International – Center for Justice and International Law, 2017.

<sup>29</sup> Americas: the Situation of State Protection Mechanisms for Human Rights Defenders, available at: <https://www.amnesty.org/download/Documents/AMR0189122018ENGLISH.PDF>.

burden of proof is instead imposed on the complainants; the line of investigation that links the violation to human rights defence work is deliberately omitted or excluded; the context in which the individual carries out their work is not considered; similar events are not investigated in a coordinated manner to identify patterns or criminal organization; the initial proceedings are not conducted in a timely manner or there are periods of clear inactivity; prosecutors and investigators are changed without justification, resulting in a loss of valuable time for investigations or leading to application of the statute of limitations or closure of cases.

70. The torture and subsequent killing in 2013 of Eric Ohena Lembembe, director of the Cameroonian Foundation for AIDS, is one example of such practice.<sup>30</sup> The authorities failed to gather certain evidence and did not take any photos or collect any fingerprints at the scene of the crime. The death certificate does not mention certain injuries and burns found on his body. There was a failure to investigate not only this case, but also others related to threats and attacks on members of the same organization.

71. Similarly, the case of Ernesto Sernas García, who disappeared on 10 May 2018 in Mexico, shows negligence in the investigations to find him. Mr. Sernas García represented 23 members of the organization *Corriente del Pueblo Sol Rojo* who had been arbitrarily criminalized.<sup>31</sup> Over a year after his disappearance, the authorities have still not prioritized the investigation of his case as a human rights defender, or taken into account the prior threats received; even family members have reported obstacles to their participation in the investigation.

### **Lack of a differentiated and intersectional approach**

72. Another negligent practice that should be highlighted is the lack of a differentiated and intersectional approach, which has an impact on human rights defenders who belong to groups that have been historically excluded.

73. In cases of child human rights defenders, it is noted that they do not have access to information on their rights, and in particular on the possibility of filing complaints. When they do, they are further victimized by the authorities, are not taken seriously or additional legal representation requirements are imposed that act as an obstacle to the complaint.

74. Women human rights defenders encounter additional obstacles linked to gender discrimination. In this regard, as previously mentioned by the Special Rapporteur in his recent report [A/HRC/40/60](#), they are victims of stigmatization, they are exposed to sexist or misogynistic comments or their allegations are not taken seriously.

75. In addition to defending human rights, women also take responsibility for the care of their families; it is difficult for them to cover the costs involved in reporting and following up on a complaint. The absence of protection mechanisms to protect their families is also an obstacle to filing complaints. In general, there is both a physical and an emotional cost for women who face a system that reproduces gender stereotypes.

76. Persons who defend the rights of lesbian, gay, bisexual, transgender and intersex persons and people of African descent also face additional obstacles to access to justice, as they have to contend with a range of barriers of which they have little understanding.

<sup>30</sup> <https://www.protecting-defenders.org/sites/protecting-defenders.org/files/UNSR%20HRDs-%20World%20report%202018.pdf>.

<sup>31</sup> MEX 7/2019, 8 May 2019.

## **Failure to investigate various types of responsibility, particularly of intellectual authors**

77. In cases under investigation, the authorities focus their efforts on identifying material responsibility rather than the intellectual authors. This is insufficient to combat impunity and is problematic, as it does not identify powerful groups which may be behind human rights violations. Such failure also increases mistrust of justice systems.

78. The case of the well-known human rights defender Berta Cáceres, murdered in Honduras in 2016, illustrates this practice. The Special Rapporteur has closely followed the investigations. While a number of criminal perpetrators were sentenced in 2018, no instigator has been punished to date.<sup>32</sup>

79. In addition, States are not investigating responsibility for failure to protect in the cases of murder victims for whom protection measures had been provided by national or regional bodies. This contributes to impunity in many cases in which State officials were involved.

## **Lack of access to extraterritorial procedures**

80. When the alleged perpetrators are multinational enterprises, the defenders affected face economic, geographic and policy barriers to the initiation of extraterritorial procedures that could afford them greater protection for their rights (A/72/170 and A/HRC/32/19).

## **Limited resources and capacities**

81. In the various meetings held by the Special Rapporteur with justice officials, one constant concern is the lack of adequate resources to meet the challenges involved in investigating such cases. In this regard, the investigative bodies lack personnel with expertise, and do not have adequate economic or material resources to deploy effective investigative actions.

82. This is particularly evident in cases of digital attacks that require complex investigations. According to a recent report by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/41/35), most States have the resources to acquire technology that can be used in digital attacks on human rights defenders.<sup>33</sup> However, the existence of legislation restricting access to public information and the lack of independent accountability mechanisms makes it impossible to determine how the acquired technology is being used, let alone establishing responsibility.

83. In 2017, an investigation identified the use of a powerful software called “Pegasus” to infiltrate the technological devices of high-profile human rights defenders (A/HRC/38/35/Add.2) among others. The Mexican authorities admitted to having acquired the software, but denied any misuse. At the time, the Special Rapporteur requested that the State investigate those events in an independent manner

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<sup>32</sup> HND 4/2017, 17 May 2017.

<sup>33</sup> See also: Alert: FinFisher changes tactics to hook critics, Access Now, May 2018 (available at: [www.accessnow.org/cms/assets/uploads/2018/05/FinFisher-changes-tactics-to-hook-critics-AN.pdf](http://www.accessnow.org/cms/assets/uploads/2018/05/FinFisher-changes-tactics-to-hook-critics-AN.pdf)); Citizen Lab, Hide and Seek, 18 September 2018 (available at: <https://citizenlab.ca/2018/09/hide-and-peek-tracking-nso-groups-pegasus-spyware-to-operations-in-45-countries/>); Central American Observatory for Digital Security. Annual Report 2018, Fundación Acceso (available at: [https://acceso.or.cr/assets/files/Informe\\_OSD\\_2018\\_English.pdf](https://acceso.or.cr/assets/files/Informe_OSD_2018_English.pdf)).

and identify, punish and prosecute the perpetrators.<sup>34</sup> The case remains in a state of impunity.

### **Influence of powerful groups**

84. The aforementioned obstacles increase once the perpetrators have acquired some form of formal or de facto power. In such cases, human rights defenders face real walls of impunity, as the authorities deliberately engage in the obstruction of justice, limit the participation of victims in proceedings, prevent access to public information (for example, information held by the military or relating to the functioning of businesses) and, in general, delay investigations to prevent the timely identifications of all perpetrators.

85. Despite the recent progress in investigations, the prevailing impunity in the case of Marielle Franco is an example of such obstacles. Ms. Franco was a well-known leader and defender of the rights of persons of African descent and of sexual diversity in Brazil, who was killed in March 2018. Although the alleged perpetrators have been captured, the former Minister of Public Security reported a plot to obstruct investigations; meanwhile, witnesses and family members have received threats.<sup>35</sup>

86. The Special Rapporteur observes that justice systems do prove functional when it comes to subjecting human rights defenders to judicial proceedings for actions that constitute human rights defence.<sup>36</sup> In this regard, the Special Rapporteur has followed up on numerous cases involving the criminalization of human rights defenders, in which the administration of justice has been carried out expeditiously and effectively. This contrast shows that where there is political will, many of the previously mentioned structural challenges can be overcome.

## **VI. Due diligence in investigating human rights violations against human rights defenders**

87. As part of the heightened obligation of States to protect human rights defenders, the de jure and de facto obstacles described above must be eliminated, as they impede proper investigation and the establishment of responsibilities.

88. Following consultations with human rights defenders and experts, the Special Rapporteur has drafted the following guidelines, which, together with the principles set out above that have emerged from the jurisprudence of the human rights bodies (see chapter IV above), constitute minimum requirements for compliance with due diligence in investigations of human rights violations against human rights defenders, their family members or those who are close to them.

89. The Special Rapporteur would like to restate the need to act in a timely manner once it is known that a human rights violation against human rights defenders has taken place. The time immediately after the commission of the act is critical to the success of investigations. Therefore, it is a matter of priority to identify the urgent actions that must be carried out. These should include:

<sup>34</sup> MEX 4/2017, 14 July 2017.

<sup>35</sup> BRA 3/2018, 22 March 2018.

<sup>36</sup> International Federation for Human Rights, ([www.fidh.org/en/issues/human-rights-defenders/criminalisation-of-human-rights-defenders-must-stop-now](http://www.fidh.org/en/issues/human-rights-defenders/criminalisation-of-human-rights-defenders-must-stop-now)); Inter-American Commission on Human Rights, Criminalization of the Work of Human Rights Defenders (OEA/Ser.L/V/II. Doc. 49/15).

- Making a profile of the victim, not in order to criminalize or stigmatize them, but in order to understand what they were doing to defend human rights, their environment and their risk factors.
- Interviewing the organization to which the human rights defender belonged and any individuals who might know about the violation or the reasons for its occurrence.
- Protecting the scene of the crime and identifying the evidence to be collected, and when necessary ensuring the chain of custody of all evidence found.
- Preparing an urgent search plan if the person is missing.
- Inspecting places that may be connected with the violation in some way.
- Establishing whether any members of public security forces or private security companies were present near the scene of the crime.
- In general, taking any steps that are necessary and that may help to establish responsibility.

90. In addition, the protection of victims, witnesses, and all parties to the proceedings must remain paramount throughout the entire process.

91. In general, if the bodies responsible for ensuring access to justice are to remain independent, they must have protection from outside and internal interference, such as acts of violence or other improper interference by formal or de facto powers ([A/HRC/11/41](#)).

92. In addition to the above, the Special Rapporteur has set out six guidelines which complement and reinforce due diligence in the investigation of human rights violations against human rights defenders.

### **Guideline 1. The defence of human rights must be a key element of the investigative strategy**

93. The authorities must act on their own initiative, swiftly and in a timely manner once they become aware of a human rights violation against a human rights defender.

94. Sometimes, the person making a complaint will not self-identify as a human rights defender. In such cases, if there is evidence of their involvement in human rights advocacy, the authorities should proceed on the understanding that the State has a heightened obligation to identify all those responsible.

95. The Declaration on Human Rights Defenders should be used to help determine whether someone is a human rights defender; the crucial element is the action of defending rights, in a peaceful manner.

96. States should register complaints filed by human rights defenders and their outcomes in a separate registry – or in the general registry, so long as they are identified as human rights defenders. This will provide an indicator of the magnitude of the problem and contribute to the adoption of suitable preventive and investigative measures.

97. Under no circumstances may States establish additional requirements for the filing of complaints, such as endorsement or legal representation. The authorities should eliminate all geographical, regulatory and economic barriers that hinder the reporting of violations, including those related to victims' age, gender or membership of a historically excluded group.

98. Once the process is under way, the investigation must seek to establish a link between the violation and the work of defending human rights. This applies even if the person was not engaged in any act of defence when the violation was committed, since it might constitute retaliation for earlier actions.

99. This approach makes it possible to see whether the right to defend human rights is being hampered, and to establish the true motive for the crime. This approach is also essential if the authorities are to decide that there are aggravating circumstances or to treat the crime as a special category of offence, commensurate with its gravity. It also contributes to identifying and highlighting the power imbalances that generally exist in cases of violence against human rights defenders, and to take sustainable actions to redress them.

## **Guideline 2. Investigations should be geared towards determining degrees of responsibility and commensurate penalties**

100. The investigation and identification of all the perpetrators of and participants in violations are crucial for ensuring access to justice and eliminating risk factors.

101. In that regard, investigators should seek to establish not only material or direct responsibility, but, especially, intellectual responsibility in all its forms, including responsibility in the chain of command, and responsibility for failures in the duty to protect rights.

102. Recognition of command responsibility for violations involving members of State security forces entails an acknowledgement that these groups are organized structures, within which power is exercised hierarchically.<sup>37</sup> In such cases, when the human rights of human rights defenders are violated, it is not only the material perpetrators of a violent act who should be held responsible, but also those in the senior ranks who were aware of and had control over the violations.

103. Responsibility for failure in the duty to protect rights arises when a State agent, by virtue of their position, is a guarantor of a legally protected interest or a right, and, while aware of that situation and having the real and material capacity to prevent harm, fails to do so.<sup>38</sup>

104. Identification of all those responsible is part of the principle of exhaustiveness in investigations, which is important if power structures that encourage violence against human rights defenders are to be eradicated.

## **Guideline 3. Differentiated and intersectional approach**

105. A differentiated approach involves recognizing that certain peoples, groups or individuals need different levels of protection owing to specific situations of clear vulnerability, as well as historical inequities and power imbalances. This approach constitutes an analytical tool and a guide for public policy development.

106. Human rights defenders do not fall into a single category, rather they are millions of individuals with diverse identities influenced by culture, ethnicity, geographical location, gender, sexual orientation, age, disability and other factors.

107. These identities, which converge with the defence of human rights, must be taken into consideration at each stage of an investigation into an act of violence, from the time of receipt of the complaint or the start of an own-initiative investigation,

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<sup>37</sup> Colombia, Criminal Appeals Court, SP5333-2018, p. 82.

<sup>38</sup> *Ibid.*

through to the determination of reparations. Particular consideration and care should be taken in the case of victims of sexual violence.<sup>39</sup>

108. The protection of victims' dignity must underpin all State actions. States should take these identities into account in order to maintain these groups' confidence in the justice system.

109. If States fail to use a differentiated and intersectional approach, there is a negative impact on investigations. Failure to apply this approach, or practices that are sexist, racist, misogynistic or in any other way discriminatory, lead to revictimization and may even divert investigations away from the real perpetrators.

110. A differentiated approach also helps to establish which cultural or gender-related factors may have motivated the act of violence.

111. States can make use of soft law instruments that have been developed with the differentiated approach in mind. For instance, the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity and the Latin American Model Protocol for the Investigation of Gender-related Killing of Women are valuable tools for the investigation of violence against those historically excluded groups.

#### **Guideline 4. The investigative strategy should involve analysis of contextual and risk factors**

112. The context must be analysed in order to identify all individuals materially and intellectually responsible for violations, as well as the systems that made them possible, and the causes, beneficiaries and consequences.<sup>40</sup>

113. States should investigate the background of acts of violence, including the types of conflict that human rights defenders in the region where the violence occurred were involved in (whether there were ethnic, religious, land-based, environmental or any other type of conflict). In parallel, they should identify the types of perpetrators (State or non-State actors, networks), and determine whether they acted in a coordinated manner and the extent of their influence within the State.

114. Analysis of the context should highlight any patterns of attacks against human rights defenders, as well as uncover details of any prior complaints (made by relatives or other human rights defenders with similar profiles), including which powerful groups were accused. This analysis will support the identification of any participating entities.

115. States should take seriously any complaints of threats received by human rights defenders and develop effective mechanisms to investigate them. A significant number of serious human rights violations against human rights defenders are preceded by threats that are never investigated. The authorities must understand the risk factors faced by defenders and take action to neutralize those risks and identify the persons responsible.

116. When violations occur in the context of social protest, it is vital to determine whether there were abuses of the use of force, and to find out whether protocols for action existed and, if so, whether they were followed. It is essential to find out who had command responsibility for the forces involved in the repressive action.

<sup>39</sup> Inter-American Court of Human Rights, *Fernández Ortega et al. v. Mexico*, Judgment of 30 August 2010.

<sup>40</sup> Inter-American Court of Human Rights, *Manuel Cepeda Vargas v. Colombia*, Judgment of 26 May 2010.

117. Expertise in specific areas (culture, linguistics or anthropology) may be required to help understand aspects of the context.

118. Conducting a proper analysis of the context may lead to new investigative theories. Such analysis cannot be done in isolation; it must be part of a process that provides the support needed to understand the systems working behind the attacks.

### **Guideline 5. The methods of investigation should reflect the complexity of the violation**

119. Human rights defenders are victims of different types of violations that occur as part of complex criminal phenomena, carried out by organized crime groups or powerful criminal organizations.

120. States should use special investigative methods when dealing with complex violations or those perpetrated in the context of high levels of conflict or crime. For example, analysis of networks or the use of undercover agents, telephone tapping or effective collaborators could be appropriate techniques to investigate certain violations, provided that those techniques are authorized and comply with legal protections. In addition, the authorities should consider requesting the assistance of other States.

121. Cyberattacks present unique challenges. Given that it is primarily State actors who have the capacity to carry out such attacks, States should establish independent monitoring and investigative bodies that have sufficient resources, including specialized training.

### **Guideline 6. Investigations should include ways of proving harm and ensuring reparations**

122. Combating impunity and ensuring that justice is served are important remedies for victims.

123. Depending on the particular case, penalties may be criminal, civil, administrative or disciplinary. It is advisable to establish institutional responsibility, if appropriate. Penalties such as barring access to public office when human rights have been violated or terminating agreements with companies that have resorted to violence are examples of non-criminal consequences, but they do not preclude the further imposition of criminal consequences.

124. States should provide effective mechanisms for claiming reparations that meet the highest international standards. Reparations should be transformative and should be determined with a differential approach, taking into account the human rights defenders' specific needs and identities and the harm that the violation may have caused them. As such, it is essential to take victims' perspectives into account.

125. Given that there is also a collective impact, it is equally important to decide on reparations that are comprehensive and have a positive impact on the relevant organized movement, on communities and on society.

126. The investigative strategy employed should include the identification of sufficient proof of the harm caused (such as psychosocial or other expert reports) so that when the complaint reaches trial, a solid case can be made and the desired outcomes achieved.

127. When reparations involve the payment of compensation for the action of a State agent, the official responsible should be made to repay that amount to the State, so

that the individual is held personally accountable, rather than the compensation coming from the public treasury.

128. With regard to the responsibility of non-State actors, such as business enterprises, the Special Rapporteur would like to reiterate a statement made in an earlier report (A/72/170). In addition to the State responsibility to investigate, if it is found that business enterprises have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes. States must understand the obstacles that prevent human rights defenders from gaining access to remedy and take action to eliminate them (A/HRC/32/19). When a violation is committed by a multinational corporation, the responsibility lies with both the States in which the violation occurs (host States) and the States of origin.

## VII. Good practices for combating impunity

129. In a previous report (A/HRC/31/55), the Special Rapporteur referred to successful practices to strengthen safe and enabling environments for the defence of human rights.

130. In the present report, he highlights those good practices that contribute to effectively combating impunity, some implemented by States and others promoted by civil society actors. They reflect the information received by the Special Rapporteur; as findings they are not exhaustive but rather examples of actions that are considered positive.

### Good practices implemented by States

131. The Special Rapporteur reaffirms his favourable assessment of the regulatory frameworks for the protection of human rights defenders that have been adopted in a number of States. He urges States to pursue the steadfast enforcement of such regulations in order to begin transforming the cultures of violence in which those who defend our human rights conduct their work.

132. In addition to protection mechanisms consisting of legislation or executive decrees, the Special Rapporteur considers the development of specific frameworks to address impunity to be a good practice. In this regard, the guidelines for the conduct of public legal service staff adopted in Guatemala and Colombia are worthy of emulation. The Special Rapporteur emphasizes the importance of the participation of civil society and experts in the development of those instruments, which should also incorporate best international investigative practices.

133. When establishing regulatory frameworks, States must ensure that they include mechanisms for monitoring compliance and measuring effectiveness. If the mechanisms prove ineffective, the authorities should undertake timely reforms to achieve the desired objective.

134. Another good practice is to clearly define behaviours that violate the human rights of human rights defenders. The criminal legislation of El Salvador provides for aggravated criminal responsibility when the motive for the crime is to impede the defence of human rights.<sup>41</sup> Burkina Faso codified a series of criminal offences in order to punish various violations that harmed human rights defenders. It is important that such regulations be established through dialogue with human rights defenders and that the definitions of offences comply with the principle of legality.

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<sup>41</sup> Criminal Code of El Salvador, art. 30, para. 21.

135. The establishment of prosecutors' offices that specialize in the investigation of human rights violations against human rights defenders is a good practice which is under way in Guatemala, Honduras and Colombia. The existence of such bodies means that there are staff who focus exclusively on the prosecution of such crimes. However, those bodies must be provided with sufficient resources to fulfil their mandate; in particular, they must be afforded a guarantee of independence and have personnel who are highly trained in human rights matters.

136. The Special Rapporteur received information on the creation of joint working groups comprised of representatives of investigative authorities and human rights defenders, established to follow up on specific cases. Such groups have been established in countries including Colombia, Guatemala, Honduras, Kenya and Mexico. In some cases, the coordinated work led to positive results and justice was served.

137. Those joint efforts are very valuable, as they advance progress towards a common goal, and are an opportunity for victims to exercise their right to participate in proceedings. Therefore, the authorities should act transparently and in good faith. When working groups of this kind are created, the Special Rapporteur believes that their objectives and work plan should be clearly established and should provide for periodic reviews of progress or challenges. It is recommended that other actors participate as observers (for example, representatives of the Office of the United Nations High Commissioner for Human Rights, the international community or national human rights organizations).

138. In places where human rights defenders are at high risk, a good practice could be the adoption and implementation of contingency plans. This was done in Mexico, specifically in the state of Chihuahua. In this case, based on requests made by human rights organizations, the State adopted a plan that had been developed with the beneficiary population. The plan identified risk factors, priority actions, responsible authorities, means of implementation and time frames for actions. There are also working groups for each priority area, which include human rights defenders. The plan has been flexible rather than static, so that it can be modified based on the needs and priorities established.

139. The Special Rapporteur believes that such plans are important. He also recommends that they incorporate indicators and monitoring mechanisms for periodic analysis of their effectiveness.

140. Timely interventions by national human rights organizations in response to certain types of human rights violations also constitute good practices. A noteworthy example occurred in Guatemala, when the Office of the Counsel for Human Rights learned of a complaint made against a non-State actor who was promoting hatred and stigmatization of a group of human rights defenders. In that instance, the Counsel issued a recommendation condemning the behaviour of the non-State actor and providing recommendations for other authorities.

### **Good practices employed by civil society**

141. Although the primary responsibility for combating impunity lies with States, the Special Rapporteur has been informed of various civil society initiatives that have effectively contributed to meeting this objective.

142. In Honduras, in response to the death of the leader Berta Cáceres, the Civic Council of Popular and Indigenous Organizations, with the support of other organizations, formed a group of experts to conduct a parallel investigation, which led to the identification of various participants in the crime, some of whom were

subsequently sentenced.<sup>42</sup> This initiative served to scrutinize the conduct of the authorities and highlight some of the obstacles to the investigation and, in addition, helped with the conviction of the material authors of the crime.

143. Civil society has also set up observer missions and observatories to follow judicial proceedings relating to violations of the rights of human rights defenders. The work is carried out by national and international experts who attend hearings or hold regular meetings with authorities to receive updates regarding the progress of investigations. The results have been positive, as the missions highlight the attention that a State is giving to a case, contribute to informing the public and offer valuable recommendations.

144. There are other extremely positive civil society practices, such as the production of national or regional reports on the types of violations suffered by defenders, which include degrees of impunity as a variable in their analysis; in addition to the provision of legal and psychosocial support for victims or members of their families so that they can participate actively in investigative processes.

## VIII. Conclusions and recommendations

### A. Conclusions

145. Combating impunity is an obligation that derives from the protection of the right to access to justice, and is indispensable for the creation of safe environments for the defence of human rights. The first step towards fulfilling these obligations is political will; without it, any other action will be insufficient and possibly ineffective.

146. States should take decisive action to put an end to this scourge; the standards, guidelines and good practices that have been described constitute specific and valuable input that can make a difference to the lives of thousands of human rights defenders and to society. Progress towards justice and truth will make it possible to break the cycles of violence, thus strengthening confidence in institutions and in democracy itself.

### B. Recommendations

147. **The Special Rapporteur recommends that States:**

(a) **Incorporate into their domestic legislation the rights and obligations set out in the Declaration on Human Rights Defenders, after consultation with the various groups of human rights defenders;**

(b) **Strengthen the independence of investigative and judicial bodies; establish legal safeguards against undue internal or external interference;**

(c) **Eliminate de facto and de jure barriers that impede access to public information and to justice, taking into account the diversity of human rights defenders;**

(d) **Adopt public policies to protect the right to defend human rights in safe environments, which recognize diversity (women; boys and girls; lesbian, gay, bisexual, transgender and intersex persons; indigenous persons; persons of African descent; rural dwellers; and persons with disabilities) and the obstacles that different groups face, including impunity. Such policies should include**

<sup>42</sup> *Represa de violencia. El plan que asesinó a Berta Cáceres*, International Expert Advisory Group (GAIPE), November 2017.

mechanisms for periodic evaluation and be developed with the participation of beneficiary populations and experts; they should also be allocated adequate resources;

(e) Assess the effectiveness of and strengthen national mechanisms for the protection of human rights defenders, in order to integrate them into comprehensive public policies and facilitate the establishment of open channels for coordination with investigative bodies;

(f) Criminalize acts of violence against human rights defenders appropriately, and impose consequences commensurate with their gravity (whether criminal, civil, administrative or disciplinary in nature). Include effective mechanisms for access to comprehensive reparations;

(g) Establish investigation policies that include the principles, guidelines and good practices described in this report. They should be flexible and contain mechanisms for regular evaluation. There should be a particular emphasis on identifying the intellectual authors;

(h) Establish specialized bodies composed of independent, qualified professionals with training in and awareness of the defence of human rights, which use a differentiated approach and possess sufficient (material and human) resources for their operation;

(i) Establish ad hoc investigative mechanisms that include international actors when there are indications of the involvement of State agents or there is reasonable doubt regarding the independence of bodies, for emblematic cases or cases of systematic violence against human rights defenders;

(j) Enact the legal reforms required to ensure that victims, family members and representative organizations can participate at all stages of the investigation process;

(k) Establish or strengthen mechanisms for the protection of witnesses and justice system personnel, taking into account the differentiated approach;

(l) Record human rights violations committed against human rights defenders in a disaggregated manner, taking into account their specific characteristics and including actions taken by the State to ensure justice and the results achieved;

(m) As noted in a report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression ([A/HRC/41/35](#)), independent mechanisms should be established to monitor and investigate the use of digital technologies for surveillance, to ensure that any such use is consistent with the principles of legality, necessity and legitimacy of objectives;

(n) Prevent the involvement of the armed forces in public security tasks or control of social protests;

(o) Establish independent and effective mechanisms for the supervision of all public security forces;

(p) Protect the right to consultation of indigenous peoples and communities affected by extractive or other projects.

148. The Special Rapporteur recommends that national human rights institutions:

(a) Establish protection of the right to defend human rights and protection of human rights defenders as a major focus of strategic plans;

(b) **Generate disaggregated records of violations committed against human rights defenders and follow up on those cases, within their areas of competence;**

(c) **Monitor and take note of instances of violence against human rights defenders.**

**149. The Special Rapporteur recommends that enterprises:**

(a) **Integrate the Guiding Principles on Business and Human Rights and the guidelines set out in a recent report of the United Nations High Commissioner for Human Rights on the topic (A/HRC/32/19) into their practices and internal regulations;**

(b) **Exercise due diligence to ensure respect for the human rights of human rights defenders throughout the entire production chain. Companies that sell surveillance technology should refrain from doing so if there are indications that it is being used in ways that violate human rights. Companies that employ private security personnel must provide the necessary training so that their staff understand the role of human rights defenders.**

**150. The Special Rapporteur recommends that the United Nations system and regional bodies for the protection of human rights:**

(a) **Declare an international day against impunity for violations of the rights of human rights defenders;**

(b) **Promote the adoption of an international protocol for the investigation, with due diligence and a differentiated approach, of threats made against human rights defenders;**

(c) **Instruct the United Nations specialized agencies to provide technical support to States in the development of legislation to prevent and eradicate impunity for cases of violence against human rights defenders;**

(d) **Establish ad hoc follow-up mechanisms for emblematic cases and for situations of systematic violence against human rights defenders;**

(e) **Ensure that acts of intimidation and retaliation against human rights defenders who cooperate with the United Nations or with other international bodies are categorically condemned, lead to diplomatic consequences and are taken into account when recruiting for official positions in such international bodies;**

(f) **Strengthen strategies for follow-up to cases of violence against human rights defenders, focusing on the individual aspects of each case, and include impunity as a factor in the monitoring indicators for Sustainable Development Goal 16.**

**151. The Special Rapporteur recommends that multilateral financial institutions:**

**Establish internal due diligence standards to prevent violence against human rights defenders in connection with any projects funded and, when applicable, establish objective mechanisms to penalize such practices and ensure access to reparations.**

**152. The Special Rapporteur recommends that civil society organizations and academic institutions:**

(a) **Ascertain what de facto or de jure obstacles are impeding human rights defenders' access to justice and promote litigation and impact strategies (including observatories and reports) to eliminate those obstacles;**

(b) **Monitor the extent of impunity and report on that subject to international mechanism;**

(c) **Assess existing forms of protection and conduct research on the types of violence faced by human rights defenders (including the psychosocial impacts of impunity) and on the barriers that restrict their right to access to justice, and make recommendations;**

(d) **Create inclusive spaces for reflecting and shedding light on the obstacles faced by human rights defenders and make recommendations.**

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