



Washington, D.C., June 14, 2021

**Ms. Irene Khan**  
**Special Rapporteur on the promotion and protection**  
**of the right to freedom of opinion and expression**  
**United Nations High Commissioner for Human**  
**Rights**

Re: Call for Inputs on Gender Justice and the Right to  
Freedom of Opinion and Expression

Dear Ms. Khan,

The Center for Justice and International Law (CEJIL) welcomes the Special Rapporteur's Call for Inputs on Gender Justice and the Right to Freedom of Opinion and Expression.

CEJIL is a regional NGO dedicated to strategic litigation and advocacy for human rights in the Americas, principally within the Inter-American Human Rights System, that has advocated with, accompanied, and represented women human rights defenders (WHRDs) in the Americas for three decades. CEJIL is also currently leading an initiative, with support from defenders and organizations from across the world, to create the Esperanza Protocol (*Protocolo La Esperanza*)<sup>1</sup> to improve State responses to threats against human rights defenders and foster an enabling environment for the defense of human rights. The following response will thus draw on insights from information and expertise gathered during the drafting of the Esperanza Protocol, as well as our experience working with and representing WHRDs across the region.

When women journalists, human rights defenders, politicians, feminist activists and other public figures are targets of discrimination, harassment, and intimidation for raising their voices, this can violate both their right to a life free from violence and restrict their freedom of expression. Disparities in violence against women who speak up perpetuate and entrench inequalities that women continue to face in all spheres.

In this response to the Special Rapporteur's Call for Inputs on this topic, we will consider the impact of violence and impunity on WHRDs.<sup>2</sup> Harassment, intimidation, and threats both online

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<sup>1</sup> Protocolo La Esperanza is named for La Esperanza, Intibucá, Honduras, home of internationally recognized indigenous environmental rights activist Berta Caceres, who was murdered for her environmental activism in 2016 following a pattern of threats against her that went uninvestigated by authorities. "Esperanza" also means "hope" in Spanish. See [hope4defenders.org](http://hope4defenders.org) for more information.

<sup>2</sup> Recalling that under the definition established in the UN Declaration on Human Rights Defenders, many or most "women journalists, human rights defenders, politicians, feminist activists and other public figures"

and offline are extremely common and can impede women’s exercise of free expression, including the right to protest; they have a chilling effect on speech and activism, and also often indicate an intent by the perpetrator to cause future harm. For this reason, threats against WHRDs, whether communicated on or offline, must be taken seriously by States and by societies at large. A lack of prosecution and accountability for threats against WHRDs fuels the cycle of violence against them, inhibit the actions of those who wish to promote and defend human rights. Writ large, this situation threatens the stability of democratic institutions and the promotion of human rights around the world.

A gendered perspective on the right to freedom of expression must take seriously the true impact of threats and harassment on women’s ability to participate fully—or at all—in the public sphere. Multiple actors have important responsibilities in this regard, from State authorities to companies and online platforms to society at large; however, this response will primarily consider State responsibilities to exercise due diligence in response to threats or limitations to WHRDs’ freedom of expression, and to ensure an enabling environment for the exercise of this human right.

### **1. Threats, harassment, and intimidation limit WHRDs’ ability to fully participate in public life, including by exercising their freedom of expression**

Threats to WHRDs have serious impacts on those who receive them. Threats often indicate an intent to cause future harm,<sup>3</sup> but they also cause harm in themselves. They have psychological and emotional impacts on WHRDs, their families, communities, and organizational and social processes in which they participate. Indeed, threats may in themselves constitute inhuman treatment or torture,<sup>4</sup> raising a series of considerations regarding States’ due diligence obligations to prevent and investigate.

#### **a. It is necessary to properly interpret gendered threats in their cultural and political context, paying attention to symbolic and contextual elements**

WHRDs “often face additional and different risks and obstacles that are gendered, intersectional and shaped by entrenched gender stereotypes and deeply held ideas and norms about who women are and how women should be.”<sup>5</sup> In this regard, “Women leaders who represent their groups and speak out on issues tend to be targeted for their visibility –not only to silence them

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may qualify as human rights defenders; that is, individuals who “individually and in association with others, [] promote and [] strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”. UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144, 8 March 1999.

<sup>3</sup> Indeed, Berta Cáceres received at least 33 threats prior to her assassination, none of which were diligently investigated by authorities.

<sup>4</sup> UN, *Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor*, December 24, 2020, A/HRC/46/35, para. 56, available at: <https://undocs.org/en/A/HRC/46/35>.

<sup>5</sup> UN, *Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst*, A/HRC/40/60, January 10, 2019, para. 6, available at: <https://undocs.org/A/HRC/40/60>; see also Asociadas por lo Justo, Centro por la Justicia y el Derecho Internacional, Protection International. *El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras*. 2016. Available at: <https://www.justassociates.org/es/publicaciones/enfoque-genero-proteccion-defensoras-experiencias-mexico-honduras>. Pg. 11.

but also to discourage broader dissent.”<sup>6</sup> Thus, WHRDs often receive threats for reasons fundamentally rooted in gender discrimination (i.e. an underlying belief that they should not speak out or participate in public spaces); the kind of threats and violence they experience are also frequently gendered.

The role that gender stereotypes play in violations of WHRDs’ human rights are evident in the forms in which these violations occur. Misogynistic language, references to their families, and specific threats or instances of gendered violence, such as sexual assault, are all violations that result from and reinforce gender norms and stereotypes.

Threats to WHRDs often have symbolic or differential content that must be properly analyzed and placed in context to understand the nature of the threat and, in consequence, its impact on WHRDs’ rights, including freedom of expression. A proper cultural and situational understanding and contextualization of derogatory terms (e.g. words that refer to prostitutes, female anatomy, trans women, etc.) and of symbols (e.g. receiving funerary bouquets) is necessary to properly understand the content and weight of a threat—both its impact on the recipient and the seriousness of the threat of future harm. In this regard, training for justice operators on women’s rights and the operation of gender stereotypes and seeking gender parity in State institutions, including the judiciary, are important measures to encourage building this sensibility and expertise on the part of the State.

Regarding symbolic threats, CEJIL and the Corporación Colectivo de Abogados “José Alvear Restrepo” (CAJAR) currently represent CAJAR in litigation against Colombia at the Inter-American Court of Human Rights. Lawyers and employees of CCAJAR have for years been systematically harassed, illegally surveilled, threatened, stigmatized, and intimidated in retaliation for their defense of human rights causes and cases for decades, by State actors and third parties acting with State acquiescence. In this context, CAJAR’s female staff have received specifically gendered threats. For example, one woman who had a young daughter suffered an attempt on her life while returning from the office one night; for days afterward, she received multiple anonymous phone calls to her home that played recordings of children’s laughter. She was later sent a doll, headless, quartered, and drenched in red nail polish, with a message not to “sacrifice” her family. These are examples of threats that were clearly directed at the woman’s daughter and family, employing symbols and images of gender-based violence against her daughter in an attempt to intimidate her into abandoning her work.

Threats and violence, including sexual violence, are often used in an attempt to force women to retreat from the public sphere and to silence their voices, whether online or offline. This consequence must be taken seriously for its impact on women’s enjoyment of human rights and for its larger ripple effects on society and democracy.

For example, CEJIL and the Foundation for Press Freedom (FLIP) represent journalist Jineth Bedoya—currently Deputy Director of *El Tiempo*, one of Colombia’s leading newspapers—in her fight for justice and accountability for her brutal kidnapping, torture, and rape on May 25, 2000, in retaliation for her reporting on Colombia’s armed conflict inside its prisons.<sup>7</sup> This event was

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<sup>6</sup> UN, *Report of the Special Rapporteur on the situation of human rights defenders*, Michel Forst, A/HRC/40/60, January 10, 2019, para. 68, available at: <https://undocs.org/A/HRC/40/60>.

<sup>7</sup> See, e.g., The Atlantic, “One Victim’s Battle to End Sexual Violence Against Journalists,” November 4, 2011, available at: <https://www.theatlantic.com/international/archive/2011/11/one-victims-battle-to-end-sexual-violence-against-journalists/247870/>; The Guardian, “‘It opens a window of hope’: case will

preceded by years of threats against her and her colleagues, which went uninvestigated. Her reporting as a young, female journalist in the late 1990s uncovered collusion between paramilitaries, guerrilla, and government authorities inside Bogotá's La Modelo prison, including arms trafficking and a kidnapping ring run from inside the prison, and massacres, executions and disappearances committed inside the prison. As Ms. Bedoya communicated to the Inter-American Court of Human Rights during the hearing in her case, held in March 2021, her kidnappers told her in no uncertain terms that day that her kidnapping was a message and a warning to the press; she continues to receive threats to this day for her continued reporting and activism, in which callers remind her of the torture and rape and threaten that they will do it again.<sup>8</sup> The case exemplifies both the specifically gendered ways in which Ms. Bedoya has been targeted and violated for her exercise of freedom of expression, as well as the steep costs of continuing impunity in her case—twenty years later, it still has not been exhaustively investigated—, which permit the perpetrators to continue operating and threatening her. In this case, continuing impunity means continuing threats and thus continuing acute suffering for Ms. Bedoya.

CEJIL also works closely with MODATIMA Women (Movement for the Defense of Water, the Earth, and Environmental Protection) in Petorca, Valparaíso Region, Chile, near Valparaíso. These WHRDs are often targeted for their public defense of the region's water supply and denouncing illegal water extraction, and are followed by cars with tinted windows, receive anonymous phone calls, and have had death threats painted on their houses, but these threats are not investigated. Most are primary caregivers, as their husbands tend to leave the region to work in other parts of Chile, and their children have also been the targets of threats. The women also have important community roles in water distribution, which are similarly impeded by the threats they receive.<sup>9</sup>

Likewise, CEJIL and the Nicaraguan Initiative of Women Human Rights Defenders (IND) and the Human Rights Collective Nicaragua Never Again (Nicaragua Nunca +) represent 36 WHRD beneficiaries of precautionary measures who have been victims of harassment, surveillance, detention, criminalization, death threats and sexual threats; these threats have extended to their families, including minor children.<sup>10</sup> These threats are intended to silence these WHRDs, and are gendered (e.g. sexual threats). The Inter-American Commission on Human Rights has recognized that WHRDs in Nicaragua are “particularly exposed to various forms of violence, including sexual

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potentially set precedent for sexual violence survivors in Colombia,” March 15, 2021, available at: <https://www.theguardian.com/global-development/2021/mar/15/jineth-bedoya-colombian-journalist-sexual-violence>.

<sup>8</sup> See recordings of the hearing in *Bedoya Lima y otra vs. Colombia* before the Inter-American Court at: <https://www.youtube.com/watch?v=uG7865Sgo70>.

<sup>9</sup> See, e.g., Amnesty International, “La lucha de las Mujeres Modatima es vital, igual que el agua que defienden,” June 5, 2021, available at: <https://amnistia.org.ar/la-lucha-de-las-mujeres-modatima-en-chile-es-vital-igual-que-el-agua-que-defienden/>.

<sup>10</sup> IACHR. PM 1067-18. *Seventeen women human rights defenders regarding Nicaragua*. Res. 70/2018. September 18, 2018. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2018/70-18MC939-18-NI.pdf>; IACHR. PM No. 1067-18 *Sofía Isabel Montenegro Alarcón and sixteen other women human rights defenders regarding Nicaragua (Extension)*. Res. 60/2019. December 24, 2019. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/60-19MC1067-18-NI-Ampliacion.pdf>; IACHR. PM No. 1067-18 *R.A.F. and family regarding Nicaragua (Extension)*. Res. 20/2020. May 12, 2020. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2020/20-20MC1067-18-NI-Ampliacion.pdf>; IACHR. PM No. 1067-18 *Danelia del Rosario Argüello Cano and family regarding Nicaragua (Extension)*. Res. 27/2021. May 12, 2020. Available at: [http://www.oas.org/es/cidh/decisiones/mc/2021/res\\_27-21\\_mc\\_1067-18\\_ni\\_es.pdf](http://www.oas.org/es/cidh/decisiones/mc/2021/res_27-21_mc_1067-18_ni_es.pdf)

violence, as well as against their families in retaliation for their work [...] they are exposed to the use of gender stereotypes to delegitimize their work and even ridicule them.”<sup>11</sup>

**b. The magnitude of harm inflicted by threats, harassment, and intimidation can constitute torture or inhuman treatment**

Torture is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as intimidation or coercion, punishment, investigation, or any other purpose, or for reasons based on discrimination.<sup>12</sup> The purpose element is always fulfilled in cases of gender-based violence against women, because such violence is inherently discriminatory.<sup>13</sup> Additionally, torture may be committed even by private actors, thus invoking, among others, the due diligence obligations of States to prevent torture.<sup>14</sup>

To understand the intensity of pain and suffering that victims of gender-based torture experience, the totality of the circumstances must be considered: both the particular condition or characteristics of the victim, and factors such as the existence of a discriminatory institutional framework that exacerbates harm.<sup>15</sup> The Special Rapporteur has recognized that mental and moral suffering and anguish caused by “serious and credible threats, as well as death threats, to the physical integrity of the victim or a third person amounts to cruel, inhuman or degrading treatment or torture”<sup>16</sup>.

In this context, we must take seriously that threats “have a damaging emotional impact, leaving the recipient in a state of constant fear and seriously affecting the well-being of those defending human rights. Threats are themselves a human rights violation and can also be considered acts of torture.”<sup>17</sup> Threats, including intimidation, harassment, and surveillance can also undoubtedly constitute cruel, inhuman, and degrading treatment. WHRDs in particular often receive threats

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<sup>11</sup> IACHR. PM 1067-18. *Seventeen women human rights defenders regarding Nicaragua*. Res. 70/2018. September 18, 2018, para. 66.

<sup>12</sup> See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1.1.

<sup>13</sup> UN, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, A/HRC/7/3, January 15, 2008, para. 68, available at: <https://undocs.org/en/A/HRC/7/3>.

<sup>14</sup> UN, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer*, A/HRC/34/54, 14 February 2017, paras. 44-48, available at: <https://undocs.org/A/HRC/34/54>; I/A Ct. H.R. *López Soto and others vs. Venezuela*. Merits, Reparations, and Costs. Judgment of September 26, 2018, para. 189.

<sup>15</sup> UN, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Méndez*, A/HRC/31/57, January 5, 2016, para. 68, available at: <https://undocs.org/en/A/HRC/31/57>; UN, Committee Against Torture, *General Comment No. 2, Implementation of article 2 by States parties*, CAT/C/GC/2, January 24, 2008, para. 22, available at: <https://www.refworld.org/docid/47ac78ce2.html>.

<sup>16</sup> UN, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to The Gambia (3–7 November 2014)*, A/HRC/28/68/Add.4, para. 103, available at: <https://www.refworld.org/pdfid/550827ed7.pdf>; see also UN, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum*, A/HRC/28/68/Add.1, March 5, 2015, paras. 293, 412, 457, 477, available at: <https://digitallibrary.un.org/record/793910>; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1.1 (establishing that acts committed for the purpose of intimidation or coercion may constitute torture).

<sup>17</sup> UN, *Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor*, December 24, 2020, A/HRC/46/35, para. 56, available at: <https://undocs.org/en/A/HRC/46/35>.

that are gender-based and discriminatory, such as sexualized threats or threats to commit sexual violence, defamation and smear campaigns with references to their personal lives, and others.<sup>18</sup>

Moreover, impunity, failure to investigate and failure to provide reparation for torture may deepen the pain and anguish of victims and permit “continuing abuse and retraumatization.”<sup>19</sup> This analysis thus raises serious considerations regarding the State’s responsibility to prevent torture, including through the adequate investigation and punishment, where applicable, of threats against WHRDs, particularly where the threats occur over an extended period and the State is aware or should be aware of the situation but fails to act; and about the State’s responsibility not to perpetuate torture, including through ensuring accountability. These considerations from other areas of human rights law (torture and human rights defenders) have clear implications for debates concerning freedom of expression, to the extent that they suggest or reinforce 1) clear limits on freedom of expression where it constitutes a threat and 2) positive obligations to ensure an enabling environment for women’s enjoyment of human rights, including the right to freedom of expression. We will consider these obligations further in section four.

## **2. Empirical evidence on threats against WHRDs from the Esperanza Protocol**

Historically and globally, threats have been used to intimidate HRDs and impede their work yet are generally not investigated and punished.<sup>20</sup> And when HRDs are murdered, their deaths are usually preceded by a series or pattern of threats<sup>21</sup>—indicating the potential for effective preventative action. In the course of CEJIL’s work on the Esperanza Protocol, we constructed a survey examining threats and their impact, potential sources of impunity, and specific conclusions for WHRDs in order to deepen our understanding of the kinds of threats human rights defenders (HRDs) face and how threats to female and male HRDs differ, in collaboration with UN Women through the Spotlight Initiative.<sup>22</sup>

Among respondents from the Latin American and Caribbean region (LAC), we found that women were more likely to report being victims of threats in their specific modalities of intimidation and internet trolling/hacking/wiretapping than men, raising particular concerns about their right to

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<sup>18</sup> UN, *Report of the Special Rapporteur on the situation of human rights defenders*, Mary Lawlor, December 24, 2020, A/HRC/46/35, paras 65, 68, 70, available at: <https://undocs.org/en/A/HRC/46/35>.

<sup>19</sup> UN, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Manfred Nowak, A/HRC/7/3, January 15, 2008, para. 65, available at: <https://undocs.org/en/A/HRC/7/3>.

<sup>20</sup> Annual Report on Human Rights Defenders at Risk in 2017, Front Line Defenders 6 (Jan. 22, 2018), <https://www.frontlinedefenders.org/en/resource-publication/annual-report-human-rights-defenders-risk-2017>.

<sup>21</sup> *Id.*

<sup>22</sup> A note on methodology: The Survey included both multiple-choice and open-ended questions, and was distributed in six languages (English, Arabic, French, Portuguese, Russian, and Spanish) between February and March 2019 to approximately 607 HRDs via email and WhatsApp; of these, 196 completed the Survey. The Latin America and Caribbean (LAC) region was heavily represented in the responses, comprising 64.8 percent of total responses. For this reason, the results of this survey are communicated as “LAC” and “non-LAC” responses, due to the smaller number of responses from other regions of the world. Translation of responses, coding, and statistical analysis were supervised by a UN Women statistician. Because the sample of HRDs was not random but based on snowball sampling, while some of the survey’s results may be relevant to broader populations of HRDs, its conclusions and statistics are representative only of the sample. The results of this survey will be published in their entirety later this year.

freedom of expression online. LAC women are also significantly less likely to report threats to authorities, significantly more likely to identify authorities as the source of threats against them, and significantly more likely to be threatened by religious or fundamentalist groups than LAC men.

Among all respondents to our survey, we found that more than 35 percent indicated that they most prevalently receive threats online, while an important 16 percent of all respondents indicated that threats were communicated via traditional news media (television, radio, and newspapers), raising a different set of concerns relating to freedom of expression to the extent that some of these media may be State-owned or -regulated.

First, 85 percent of the 196 respondents to the survey said that they or someone they know has received a threat in the past 24 months, demonstrating that threats are remarkably common. In the Latin American and Caribbean region (LAC), women reported markedly higher rates than men of “intimidation” (24.4 percent vs. 11.5 percent, respectively) and “internet trolling-hacking-wiretapping” (17.9 percent versus 7.7 percent), whereas men reported higher rates of “being followed” and “physical attack.” Men and women reported similar rates of “criminalization-reprisal-stigmatization” (26.9 percent (women) versus 30.8 percent (men)) and “death threat” (16.7 percent (women) versus 19.2 percent (men)).

Moreover, women in the LAC region were significantly less likely to report these threats to authorities compared with men (52.6 percent versus 84.6 percent reported, respectively). Perhaps related, women in the LAC region reported that threats came from authorities much more often than men. Whereas 51.4 percent of male LAC respondents reported that private actors, such as parastate actors, criminal organizations, and business enterprises, were the source of threats against them, just 23.3 percent of female LAC respondents named these as the source of threats.

Importantly, WHRDs, especially those who advocate for sexual and reproductive rights, frequently face attacks from churches and conservative groups (political, religious, or cultural).<sup>23</sup> In our survey, 16.3 percent of women in the LAC region named “religious leaders/movements/fundamentalists” as the source of threats, compared with 4.4 percent of male LAC respondents.

Regarding the purpose of threats received, women in the LAC region were more likely than men to report that the threats were “to warn of future acts of violence against a group” (16.8 percent versus 4.3 percent, respectively) and “to warn of future acts of violence based on gender/sexual violence” (11.6 percent versus 2.1 percent), and comparatively less likely than men to report that threats were “to stop a specific activity,” “to warn of future acts of violence against the recipient” or “to warn of damage to reputation/honor.”<sup>24</sup>

Fully 35.5 percent of all survey respondents reported that the most prevalent medium for receiving threats was online via Facebook, Twitter, WhatsApp, email, or other social media; in particular, 15.5 percent of respondents named Facebook as the most common medium for receiving threats.

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<sup>23</sup> Asociadas por lo Justo, CEJIL, Protection International. *El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras*. 2016. Available at: <https://www.justassociates.org/es/publicaciones/enfoque-genero-proteccion-defensoras-experiencias-mexico-honduras>, pg. 12.

<sup>24</sup> Respondents were permitted to select more than one response to this question. Other responses for which response rates by gender were similar included “to warn of future acts of violence against the recipient’s family,” “to warn of crimes against property,” and “to cause psychological or psychosocial harm to recipient.”

Telephonic threats (12.4 percent), communications through others/rumors to convey the threat (10.5 percent) were the other most common methods. Concerningly, 15.9 percent of respondents indicated that threats were most prevalently made through traditional media, including television, radio, and newspapers.

### 3. Concerning trends in women's right to protest

In light of the current situation in Latin America, we feel it important to say a few words about women's right to protest. Gendered discrimination is also prevalent against women in protest contexts and impacts their ability to fully participate in protest; this is evident both in official attitudes toward women's marches, and in the particular kinds of violence to which women may be subject in protests. For example, International Women's Day protests across Latin America have faced repression and official stigmatization in recent years. In Mexico, where marchers in 2021 protested the country's high rate of femicides and the president's official support for a gubernatorial candidate accused of rape, among other issues, they were met with tear gas and flash-bang grenades.<sup>25</sup> Likewise, in Chile, police interrupted peaceful protests on International Women's Day with tear gas<sup>26</sup>. These violent methods affect WHRDs' rights to freedom of expression, as they may limit who goes out to peacefully protest.

Extremely concerning, too, is the situation of women in the current protests in Colombia. Against a backdrop of the doubling of the number of WHRDs murdered in Colombia in 2019, where indigenous and Afro-descendant WHRDs are particularly affected,<sup>27</sup> the violence has continued during the protests of 2021. For example, a group called the Mothers on the Front Line have been attending protests to physically place themselves between young protesters and the police, facing physical harm from the police, but also anonymous threats<sup>28</sup>. Even more alarming is the rise in reports of sexual violence and assault at the hands of police. One woman reported being detained at a protest, forced to strip, and then being sexual assaulted while she was arbitrarily detained.<sup>29</sup> Another woman was reportedly fired on with teargas despite having her hands up, then sexually abused by an officer in front of his companions.<sup>30</sup> Local NGOs have reported at least 21 cases of

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<sup>25</sup> New York Times, "A Women's March in Mexico City Turns Violent, With at Least 81 Injured," March 8, 2021, available at: <https://www.nytimes.com/2021/03/08/world/americas/mexico-city-womens-day-protest.html>; see also, New York Times, "In Mexico, Women Go on Strike Nationwide to Protest Violence," March 9, 2020, available at: <https://www.nytimes.com/2020/03/09/world/americas/mexico-women-strike-protest.html>.

<sup>26</sup> Al Jazeera, "From Dictatorship to Now: Chilean Women at the Forefront of Protests," March 9, 2021, available at: <https://www.aljazeera.com/news/2020/3/9/from-dictatorship-to-now-chilean-women-at-forefront-of-protests>.

<sup>27</sup> UN, "Colombia: 'Staggering number' of human rights defenders killed in 2019," January 14, 2020, available at: <https://news.un.org/en/story/2020/01/1055272>

<sup>28</sup> Al Jazeera, "The mothers on the front line of Colombia's mass protests," May 26, 2021, available at: <https://www.aljazeera.com/news/2021/5/26/mothers-on-the-front-line-of-colombias-ongoing-protests>.

<sup>29</sup> Juan Diego Duque-Salazar, "Women's Roles in the Colombian National Strike," *Georgetown Institute for Women, Peace, and Security*, May 25, 2021, available at: <https://giwps.georgetown.edu/womens-roles-in-the-colombian-national-strike/>.

<sup>30</sup> Amnesty International, "Colombia: Concerning reports of disappearances and sexual violence against protesters," May 7, 2021, available at: <https://www.amnesty.org/en/latest/news/2021/05/colombia-preocupan-las-denuncias-de-desapariciones-y-violencia-sexual-contra-manifestantes/>.



sexual violence at the hands of police, but it is likely there are many more cases that have not been reported out of fear of reprisal or retaliation<sup>31</sup>.

In these examples, it is clear that female WHRDs, journalists, and protesters are targeted in particular ways for the fact of being women. Fear of gender-based violence, including rape, may lead WHRDs to desist from their activities in defense of human rights. Fear of being physically and sexually assaulted may limit women's involvement in or coverage of protests, which is a violation of their right to freedom of expression and opinion. Failure to address these challenges that specifically harm WHRDs perpetuates discrimination against women and creates an environment that limits their ability to fully exercise their rights to freedom of expression and opinion.

#### **4. State obligations to prevent and investigate threats, and ensure an enabling environment for the defense of human rights, including the exercise of freedom of expression**

The question of guaranteeing women's right to freedom of expression in a context of entrenched discrimination against women may seem—like limitations on freedom of expression regarding hate speech—to “demand a reconciliation of two sets of values: democratic society's requirements to allow open debate and individual autonomy and development with the also compelling obligation to prevent attacks on vulnerable communities and ensure the equal and non-discriminatory participation of all individuals in public life.”<sup>32</sup> However, protection of women's right to freedom of expression and the global right to freedom of expression should be mutually reinforcing.

Speech against individual WHRDs or groups of WHRDs that constitutes threats, intimidation, and harassment of WHRDs by private individuals may be the subject of criminal and human rights law. Where threats to WHRDs are concerned, States have diverse obligations. Here, we will emphasize two: due diligence obligations to ensure the investigation of threats and the prevention of torture and inhuman treatment, and the obligation to ensure that States propitiate an enabling environment for the exercise of rights, free of discrimination.

First, as outlined above, threats cause serious harm to those who receive them—indeed, can even constitute torture or inhuman treatment—and often indicate an intention to cause future harm; for these reasons, States must diligently investigate and act to prevent future harm. Furthermore, States must act to prevent continuing harm to the victims of threats, including through ensuring accountability.

Second, diverse United Nations mechanisms have repeatedly found that States have an obligation to take active steps to eliminate norms and stereotypes that promote discrimination and violence against women<sup>33</sup>. Nonetheless, significant barriers to achieving this in practice exist.

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<sup>31</sup> Juan Diego Duque-Salazar, “Women's Roles in the Colombian National Strike,” *Georgetown Institute for Women, Peace, and Security*, May 25, 2021, available at: <https://giwps.georgetown.edu/womens-roles-in-the-colombian-national-strike/>.

<sup>32</sup> UN, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, A/74/486*, October 9, 2019, para. 4, available at: <https://undocs.org/A/74/486>.

<sup>33</sup> See, e.g., UN - General Assembly. *Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights*

State actors often fail to diligently investigate threats against WHRDs based on stereotypes that discredit women or diminish the seriousness of the threats they face,<sup>34</sup> a situation that is compounded where State actors are responsible for the violations, using tactics such as intimidation, smear campaigns, threats, excessive use of force, among others.<sup>35</sup> Rather than raise the voices of WHRDs and promote their work, oftentimes States have retaliated against them and continued to enforce patriarchal norms where women are silenced.<sup>36</sup>

These insights from thematic focuses on human rights defenders and torture are relevant in the context of freedom of expression to develop more nuanced guidelines regarding what kind of statements are protected speech and what kind of statements should, in context and considering both explicit and symbolic content, be considered threats. Threats constitute a serious problem for the defense of human rights and the exercise of free expression; their frequent purpose is to silence, intimidate, and drive women from participating in public life. By including this focus within analyses of freedom of expression, we can widen the lens to better understand the challenges that women face in exercising this right and the obligations of States to facilitate the right.

Sincerely,

**Center for Justice and International Law**

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*and Fundamental Freedoms: protection women human rights defenders*. UN Doc. A/Res/68/181. January 30, 2014. Para. 5.

<sup>34</sup> Asociadas por lo Justo, CEJIL, Protection International. *El enfoque de género en la protección a defensoras de derechos humanos: Las experiencias de México y Honduras*. 2016, pp. 23-24. Available at: <https://www.justassociates.org/es/publicaciones/enfoque-genero-proteccion-defensoras-experiencias-mexico-honduras>.

<sup>35</sup> Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. *Cuerpos, Territorios y Movimiento en Resistencia en Mesoamérica. Informe 2015-2016 de agresiones a defensoras*. 2016, pp. 30, 25. Available at: <https://im-defensoras.org/2018/05/informe-2015-2016-de-agresiones-a-defensoras-cuerpos-territorios-y-movimientos-en-resistencia-en-mesoamerica/>; See also Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. *Situación de la Defensa de Derechos Humanos y la Libre Expresión en México a partir de la Pandemia por COVID-19*. October 2020. Available at: <http://im-defensoras.org/2021/02/mexico-informe-expone-ataques-sistematicos-contra-personas-defensoras-de-ddhh-y-periodistas-en-el-marco-de-la-pandemia/>. Pg. 37.

<sup>36</sup> Amnesty International. *Challenging Power, Fighting Discrimination: A Call to Action to Recognise and Protect Women Human Rights Defenders*. October 2019. Available at: <https://www.amnesty.org/en/documents/act30/1139/2019/en/>. Pg. 58.