



## Input on the the Effectiveness of the United Nations “Human Rights Defenders Declaration” on its Twentieth Anniversary

**From** Destination Justice

**To** Ms. Peggy Hicks, Director  
Thematic Engagement, Special Procedures and Right to Development Division  
United Nations Office of the High Commissioner for Human Rights

By e-mail: [sbayarmagnai@ohchr.org](mailto:sbayarmagnai@ohchr.org)

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### Introduction

In this memorandum, Destination Justice responds to OHCHR's 21 March 2018 invitation to civil society to offer input on the effectiveness of 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 (the **Declaration**) on its twentieth anniversary and in light of General Assembly resolution A/RES/72/247 calling for the Secretary-General to provide an assessment of such.

### About Destination Justice

Established in 2011, Destination Justice is a social change organisation. We are changemakers who believe that justice is key to a peaceful society – particularly a society where people can resolve their issues by resorting to independent, fair and transparent justice; a society where laws are made by the people, for them, and freely accessible to them; and furthermore, a society where everybody is equal no matter who they are, what they think, or who they love. Destination Justice is headquartered in France, and has an office in Cambodia which is both a Southeast Asian regional office and a country office.

Destination Justice's input draws upon our longstanding work with human rights defenders (**HRDs**), in particular in Southeast and Central Asia and in Eastern Europe. This work has taken the form of litigation before UN and regional bodies; trial monitoring; capacity-building initiatives; and research and reporting.

### Focus of Input

With reference to the areas in which OHCHR seeks input from civil society, Destination Justice's comments focus on suggesting recommendations regarding measures to promote the Declaration and to ensure its implementation. In the course of doing so, we also identify certain challenges regarding the implementation of the Declaration, as well as cite examples of effective practices currently in place.

Destination Justice further notes that our input draws specific examples from our forthcoming report, *Revealing the Rainbow: The Human Rights Situation of Southeast Asia's LGBTIQ Communities and Their Defenders*, publication of which has been funded by OHCHR's Cambodia country office. That report systematically examines the human rights situation of HRDs who work with Lesbian, Gay, Bisexual, Trans\*, Intersex and Queer (**LGBTIQ**) communities in every State in Southeast Asia, including through in-depth interviews with HRDs in each State.



## Recommendations for Promoting and Ensuring Respect for the Declaration

### Recommendation 1: Place Greater Reliance on the Universal Periodic Review Process

**Destination Justice's first recommendation is for the UN and other stakeholders to place greater reliance on the Universal Periodic Review process (UPR) as a vehicle for promoting and ensuring respect for the Declaration.**

The UPR, as a relatively new and politicised process, is undoubtedly imperfect. Nevertheless, with two full UPR cycles now complete, the UPR has proven able, on occasion, to elicit constructive dialogue aiming to improve States' human rights record; commitments from States to implement improvements; and actual improvements.

Thus far, however, the Declaration has been overlooked in the UPR process. During the first two UPR cycles, only 1% (791) of all 57,686 recommendations<sup>1</sup> given to States referred to HRDs at all. Among that 1% of recommendations, only 43<sup>2</sup> referred to the Declaration, urging States to comply with, ensure respect for, guarantee the rights in, or widely disseminate the Declaration. In contrast, 95% of all UPR recommendations regarding HRDs in the first two cycles failed to mention the Declaration whatsoever.

By way of example, Cambodia's UPR experience demonstrates how although the UPR is an effective platform to engage in dialogue regarding the situation of HRDs in a State under review, the Declaration is largely omitted from such dialogue. The Declaration was not cited at all in the compilation of relevant documentation prepared by OHCHR for the first cycle,<sup>3</sup> despite a wide range of references to reports from various Special Rapporteurs including on the situation of HRDs, and from other UN bodies.<sup>4</sup> Ultimately, Cambodia received only one recommendation out of 138 referencing the Declaration,<sup>5</sup> and five others on the situation of the HRDs. During Cambodia's second UPR cycle, none of the eight recommendations it received on HRDs made reference to the Declaration.<sup>6</sup>

In order to promote not merely the visibility but also the relevance of the Declaration, we therefore specifically recommend that OHCHR, other UN bodies, and civil society systematically reference the Declaration in communications in the lead up to a State's UPR. Efforts should also be made to emphasise the Declaration during engagement with UN Member States that are preparing recommendations for the State under review, with a view to heightening the Declaration's role in the eventual UPR recommendations offered. In addition, all relevant stakeholders should emphasise that although the Declaration is non-binding, the rights it contains are drawn from other binding international human rights instruments or in some instances, enjoy the status of customary international law.

### Recommendation 2: Ensure the Protection of All HRDs, Including Those Defending LGBTIQ Rights

**Destination Justice's second recommendation is for the UN to ensure the effective application of Article 1 of the Declaration to all HRDs, including to HRDs defending LGBTIQ rights, so that all HRDs**

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<sup>1</sup> UPR Info, "Statistics of Recommendations", available at <https://www.upr-info.org/database/statistics/> (last visited 15 April 2018).

<sup>2</sup> UPR Info, "Database of Recommendations", (all SuR, all ReS, all cycles, all issues and keywords "Human Rights Defenders Declaration" shows 43 results) available at <https://www.upr-info.org/database/> (last visited 15 April 2018).

<sup>3</sup> Human Rights Council, "Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (B) of the Annex to Human Rights Council Resolution 5/1: Cambodia", A/HRC/WG.6/6/KHM/2, 18 September 2009, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A\\_HRC\\_WG6\\_6\\_KHM\\_2\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A_HRC_WG6_6_KHM_2_E.pdf) (last visited 14 April 2018).

<sup>4</sup> Human Rights Council, A/HRC/WG.6/6/KHM/2, (2009), *ibidem*.

<sup>5</sup> "[A]dopt appropriate measures to disseminate widely and ensure full observance of the Declaration on Human Rights Defenders" (Norway).

<sup>6</sup> Report of the Working Group on the Universal Periodic Review: Cambodia, U.N. Doc. A/HRC/13/4, 27 March 2014, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/127/27/PDF/G1412727.pdf?OpenElement> (last visited 14 April 2018).



**are able to fully exercise their right to promote and strive for the protection and realisation of human rights and fundamental freedoms.**

While it is clear that LGBTIQ communities are becoming increasingly visible, including within UN processes such as the UPR, significant room for improved human rights protection remain, including room for the Declaration to be used in a more meaningful way to protect those HRDs who work in the LGBTIQ rights space.

As of May 2017, the International Lesbian and Gay Association (**ILGA**) has classified over one-third of all UN Member States (72 States) as States that criminalise same-sex sexual relations.<sup>7</sup> Among these States, 45 (24 in Africa, 13, in Asia, 6 in the Americas and 2 in Oceania) apply such criminalisation to women as well as men.<sup>8</sup> Within this already precarious space for LGBTIQ communities, the HRDs who defend those communities' rights are at heightened risk. As Destination Justice details in our forthcoming report on the situation of LGBTIQ HRDs in Southeast Asia, *Revealing the Rainbow*, within the region there have been multiple instances of HRDs working on LGBTIQ rights being targeted because of their work, including in Brunei Darussalam, Indonesia, Malaysia, Singapore, and Thailand.<sup>9</sup>

Consistent with the UN's commitment to the protection of LGBTIQ rights, notably through its Free and Equal campaign, Destination Justice therefore specifically recommends that efforts to ensure the efficacy of the Declaration take into account the particular vulnerability and unique needs of defenders working on LGBTIQ rights. In addition, it is important that any measures taken by the UN and other stakeholders to promote and ensure implementation of the Declaration adopt an approach consistent with LGBTIQ rights and sensitive to sexual orientation, gender identity and expression, and sexual characteristics (**SOGIESC**).

### **Recommendation 3: Reaffirm the Universality of Human Rights**

**Destination Justice's third recommendation is for the UN and other stakeholders to strongly reaffirm the universality of human rights during efforts to promote and ensure the implementation of the Declaration.**

Destination Justice notes that in Southeast Asia for example, certain States are continuing the trend begun in the 1980s to cite the alleged uniqueness of so-called "Asian values"<sup>10</sup> to justify limiting basic human rights and freedoms, including freedoms of expression, opinion, assembly, association, and participation in the cultural life of the community.<sup>11</sup> These are the very fundamental freedoms that the Declaration was established to protect, and this type of argument from States amounts, therefore, to a claim that cultural relativism is an acceptable limit on the rights of HRDs to operate.

Under these circumstances, Destination Justice therefore specifically recommends that efforts to promote and ensure the implementation of the Declaration consistently emphasise the universality of human rights and identify the benefits to States of ensuring greater human rights protections. Efforts should also be made to bolster the relevance of the Declaration by identifying other human rights

<sup>7</sup> ILGA, "State-sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition", May 2017, 12th Edition, available at [https://www.ilga.org/downloads/2017/ILGA\\_State\\_Sponsored\\_Homophobia\\_2017\\_WEB.pdf](https://www.ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf) (last visited 14 April 2018).

<sup>8</sup> ILGA, "State-sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition", May 2017.

<sup>9</sup> Destination Justice, "Revealing the Rainbow: The Human Rights Situation of Southeast Asia's LGBTIQ Communities and Their Defenders", to be published on 17 May 2018, will be available on [www.destinationjustice.org](http://www.destinationjustice.org), pp. 26-39 (Brunei-Darussalam), pp. 57-78 (Indonesia), pp. 92-108 (Malaysia), pp. 143-159 (Singapore), and pp. 161-174 (Thailand).

<sup>10</sup> See e.g., Amartya Sen, "Human Rights and Asian Values", presented at the Sixteenth Annual Morgenthau Memorial Lecture on Ethics and Foreign Policy, 25 May 1997, available at <http://www.nyu.edu/classes/gmoran/SEN.pdf> (last visited 15 April 2018).

<sup>11</sup> Destination Justice, "Revealing the Rainbow: The Human Rights Situation of Southeast Asia's LGBTIQ Communities and Their Defenders", pp. 26-39 (Brunei Darussalam), pp. 57-78 (Indonesia), pp. 92-108 (Malaysia), pp. 110-123 (Myanmar) and pp. 143-159 (Singapore).



instruments in which the rights are enumerated (for instance, in the case of Southeast Asia, in the ASEAN Human Rights Declaration).

#### **Recommendation 4: Encourage the Establishment of Southeast Asian Regional Mechanism on HRDs**

**Destination Justice's fourth recommendation is for the UN to encourage and work with ASEAN to develop a regional mechanism for the protection of HRDs in Southeast Asia.**

Apart from ASEAN, all other regional bodies have developed specific mandates to further protect HRDs in compliance with the Declaration.<sup>12</sup> Cooperation between these regional mechanisms and structures (and with the UN) includes sharing of experiences and information, comparing and mutually reinforcing working methods, and identifying common objectives. In Southeast Asia, such a mechanism, even if non-binding, would serve to raise awareness of the situation of the HRDs and particularly their function and rights. This would assist in dispelling the common regional misconception that being an HRD is inherently negative and could assist HRDs in the region to be able to operate more effectively.

#### **Recommendation 5: Continue to disseminate the Declaration at all levels in Cambodia**

**Destination Justice's fifth recommendation is for the UN in Cambodia to continue to disseminate the Declaration by training HRDs, CSOs, communities, as well as local and national authorities, and additionally to enhance the general public's knowledge of HRDs and the Declaration.**

During the time that OHCHR has maintained a presence in Cambodia, and in particular over the past decade, it has made significant efforts to train HRDs including CSOs, activists, community leaders, journalists, as well as local and national authorities.<sup>13</sup> Nevertheless, HRDs in Cambodia have never been at greater risk, particularly given the domestic political situation is becoming increasingly tense. There is room within this environment for increased efforts to better promote and ensure the implementation of the Declaration, for although the Declaration has been translated into Khmer, its effective use and knowledge by the HRDs themselves remains superficial.

We further note that the Special Rapporteur on HRDs' request for a visit is still pending, although he visited personally in November 2017. In addition, we note that while HRDs are listed as a thematic priority in OHCHR-Cambodia's Management Plan for 2014-2017, there is no mention of HRDs in the United Nations Development Assistance Framework (UNDAF) for 2016-2018. We therefore specifically recommend that UN agencies in Cambodia counteract this and heighten protection of HRDs by linking efforts to protect and ensure the implementation of the Declaration with the realisation of the SDGs.<sup>14</sup>

#### **For Further Information**

For further information, please contact Doreen Chen, Director, at [doreen@destinationjustice.org](mailto:doreen@destinationjustice.org) or by telephone at +33788152052.

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<sup>12</sup> See the Special Rapporteur on Human Rights Defenders of the African Commission on Human and Peoples' Rights; the Special Rapporteur on Human Rights Defenders of the Inter-American Commission for Human Rights; the Council of Europe and its Commissioner for Human Rights whose mandate on human rights defenders has been recently enhanced by the declaration on human rights defenders adopted by the Committee of Ministers of the Council of Europe in February 2008; the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR); and the 2008 European Union Guidelines on Human Rights Defenders. For tips and guidance on how to use the EU Guidelines.

<sup>13</sup> See Human Rights Council "Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights", yearly reports from 2008 to 2017. Available at <http://cambodia.ohchr.org/en/publications-materials/reports> (last visited 14 April 2018).

<sup>14</sup> See e.g., the UPR-SDG database explorer released on 14 April 2018 by the Danish Institute for Human Rights, available at <http://upr.humanrights.dk/> (last visited 15 April 2018).

