

**Submission in respect of the Draft Convention on the Right to Development**

The International Service for Human Rights is an independent non-governmental organisation dedicated to promoting and protecting human rights by supporting human rights defenders, strengthening human rights systems, and leading and participating in human rights coalitions. ISHR has a mandate to prevent attacks and violations against human rights defenders and to seek justice and accountability when that happens.

1. **Summary:**

Human rights defenders play an essential role in upholding human rights and promoting democracy, sustainable development and respect for the rule of law. In order to protect the rights enshrined in international human rights treaties, individuals and groups of human rights defenders that promote those rights must be allowed to operate without undue interference or restrictions. A violation of the rights of such individuals or groups of defenders constitutes a violation of the rights they are protecting.

We welcome the recognition of the crucial role that human rights defenders play in upholding human rights by the drafters of the Convention on the Right to Development (the Draft Convention). The Draft Convention specifically states that everyone has the right to promote and to strive for the protection and realization of the right to development. Specifically, in Part I, Article 3, the Draft Convention recognizes the right and responsibility of individuals, groups and organs of society to promote and protect human rights – a right ensconced in the United Nations (UN) Declaration on the Right and Duty of Individuals, Groups and Institutions to Promote and Protect Human Rights and Fundamental Freedoms (hereinafter, the Declaration on Human Rights Defenders).[[1]](#footnote-1)

We propose that the Draft Convention build on this and include an additional article set out below. We have articulated the basis for this article in the sections that follow.

**Article X - Relationship with the rights of defenders**

1. **States Parties shall adopt and enforce all necessary and appropriate measures to ensure an enabling environment for all peoples to promote and defend the right to development.**
2. **A violation of the rights of an individual or group promoting or protecting the right to development constitutes a violation of the right to development**.
3. **The role of human rights defenders and the right to defend**

The Declaration on Human Rights Defenders was the first international instrument to clearly assert the right to defend rights (although this right is of course integral to the promotion, protection and realization of all other rights and also an integral aspect of the rights to freedom of expression, association and assembly, among others). In Article 1 it establishes that ‘Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms.’[[2]](#footnote-2) Many authorities on international law have affirmed and expanded on this right, including the Office of the UN High Commissioner for Human Rights[[3]](#footnote-3), the Special Representative of the UN Secretary General on human rights defenders[[4]](#footnote-4), the Council of Europe[[5]](#footnote-5) and the Commissioner for Human Rights of the Council of Europe.[[6]](#footnote-6) The UN General Assembly, the UN Committee on Economic, Social and Cultural Rights (CESCR), members of UN Treaty Bodies and the UN Special Rapporteur on the situation of human rights defenders have also affirmed this right’s important role in upholding democracy and human rights, as referenced below.

Individuals and groups that exercise the right to defend play a crucial role in upholding human rights for everyone. The UN General Assembly has stressed that ‘the right of everyone to promote and strive for the protection and realization of human rights and fundamental freedoms, without retaliation or fear thereof is an essential element in building and maintaining sustainable, open and democratic democratic societies’.[[7]](#footnote-7)In a [statement on human rights defenders](https://undocs.org/en/E/C.12/2016/2), the CESCR calls human rights defenders ‘essential in identifying human rights violations and drawing authorities’ attention to the consequences of their actions and omissions with regard to the enjoyment of human rights.’[[8]](#footnote-8)

Similarly, in a [joint statement](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23154&LangID=E), a group of Chairs, Vice-Chairs and members of UN human rights Treaty Bodies and the UN Special Rapporteur on the situation of human rights defenders declares that human rights defenders ‘assist State parties in the realization of the rights in the Treaties’ and says that the information they provide to Treaty Bodies is ‘essential to monitoring implementation of the treaties.’[[9]](#footnote-9)The UN Special Rapporteur on the situation of human rights defenders has also stated that, ‘Defenders can play a key role in safeguarding democracy and ensuring that it remains open, pluralistic and participatory and in line with the principles of rule of law and good governance. Defenders should be able to carry out their activities in an environment that empowers them to defend all human rights for all.’ [[10]](#footnote-10)

The Human Rights Council has explicitly addressed the vital link between the work of human rights defenders and promotion, protection and realisation of the right to development, with a 2016 resolution recognizing ‘the importance of the independent voice of human rights defenders and other civil society actors, and of partnerships between States and civil society in promoting, protecting and realizing all human rights, including economic, social and cultural rights, and the right to development’.[[11]](#footnote-11)

1. **Violations of human rights defenders’ rights constitute violations of the rights they protect**

In the 2018 joint statement referred to above, the UN Special Rapporteur on the situation of human rights defenders, together with representatives of the UN Treaty Bodies wrote that ‘the Treaty Bodies consider any interference, intimidation, abuse, threat, violence, reprisal or undue restrictions against human rights defenders as constituting violations of States parties’ obligations towards the realization of rights set out in the Treaties.’ This view is also reflected in the statement by CESCR referred to above, which states, ‘any threat or violence against human rights defenders constitutes a violation of the obligations of the States regarding the realization of the rights of the Covenant, since human rights defenders also contribute with their work to the realization of those rights.’[[12]](#footnote-12)

The UN Working Group on Enforced Disappearances has ruled similarly, stating that ‘when an individual becomes a victim of enforced disappearance as a result of the exercising or promoting economic, social and cultural rights, the enjoyment of those rights is also violated.’[[13]](#footnote-13) The UN Committee on the Elimination of Discrimination Against Women used the same logic in their determination that Libya violated Article 1 of the Convention Against the Elimination of all forms of Discrimination Against Women (CEDAW), inter alia, by discriminating against a human rights defender for her women’s rights activism.[[14]](#footnote-14)

1. **Obligation to ensure an enabling environment**

Article 2 of the Declaration on Human Rights Defenders states that ‘Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms by adopting such steps as may be necessary to create all conditions necessary...to ensure that all persons...are able to enjoy all those rights and freedoms in practice.’ The Declaration on Human Rights Defenders is not itself legally binding,[[15]](#footnote-15) but its principles are based on and reflect human rights standards enshrined in other legally binding instruments, such as the International Covenant on Civil and Political Rights (ICCPR), which, in Article 2, establishes the obligation of States to guarantee to all individuals within their territories and subject to their jurisdiction all of the rights enshrined in the ICCPR. A State’s responsibility to ‘create all conditions necessary’ for the fulfillment of these rights includes creating protections that allow human rights defenders to operate safely and effectively.

The UN Special Rapporteur on the situation of human rights defenders has held that the State’s obligation to protect the rights of human rights defenders derives from the responsibility and primary obligation of each State to protect all human rights, according to Article 2 of the ICCPR.[[16]](#footnote-16) According to the Special Rapporteur, this obligation includes adopting necessary measures ‘so that all persons subject to their jurisdiction can enjoy in practice all the rights and freedoms, including the right to promote and defend rights.’[[17]](#footnote-17)

The same sentiment has been expressed on the regional level by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights. The Inter-American Court of Human Rights stated in a decision that the obligation to guarantee due respect for the work of people who defend human rights is based on Articles 1.1 and 2 of the American Convention on Human Rights.[[18]](#footnote-18) Both the Court and Commission have agreed with the UN Human Rights Committee, the CESCR and the Organization for Security and Co-operation in Europe (OSCE) that the defense of human rights can only be exercised freely when the people who do so are not victims of threats or any type of physical, mental or moral aggression or other acts of harassment, retaliation or undue pressure.[[19]](#footnote-19) Additionally, the OSCE has stated that ‘the right to defend human rights is a universally recognized right: it derives from universal human rights, which are indivisible, interdependent and interrelated, and which OSCE participating States have committed to respect, protect and fulfil for everyone on their territory and subject to their jurisdiction.’[[20]](#footnote-20)

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1. UNGA *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. [↑](#footnote-ref-1)
2. UNGA, A/RES/53/144, 8 March 1999, Article 1. [↑](#footnote-ref-2)
3. UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights. 2004, page 23. [↑](#footnote-ref-3)
4. UN, report by the Special Representative of the United Nations Secretary General on the situation of human rights defenders. A/59/401. 1 October 2004, paragraph 49. [↑](#footnote-ref-4)
5. Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2008)11 ‘Recommendation to member States on the need to strengthen the protection and promotion of civil society space in Europe’ [↑](#footnote-ref-5)
6. Commissioner for Human Rights of the Council of Europe. Human Rights Comment, 13 September 2011. ‘Human rights defenders need solidarity from all parts of Europe when repressed by their governments.’; Commissioner for Human Rights of the Council of Europe. Human Rights Comment, 19 December 2012. ‘Restrictions on defenders of migrants’ rights should stop.’ [↑](#footnote-ref-6)
7. General Assembly of the United Nations. Resolution A/RES/72/247. January 2018. [↑](#footnote-ref-7)
8. CESCR, Human rights defenders and economic, social and cultural rights, March 2017, E/C.12.2016/2 [↑](#footnote-ref-8)
9. OHCHR, Joint statement by a group of Chairs, Vice-Chairs and members of the United Nations human rights Treaty Bodies and the UN Special Rapporteur on Human Rights Defenders, 2018. [↑](#footnote-ref-9)
10. UN, Report of the Special Rapporteur on the situation of human rights defenders. A/HRC/25/55. 23 December 2013, par. 60. [↑](#footnote-ref-10)
11. A/HRC/RES/31/32, OP 7, 24 March 2016 [↑](#footnote-ref-11)
12. CESCR, Human rights defenders and economic, social and cultural rights, March 2017, E/C.12.2016/2 [↑](#footnote-ref-12)
13. Working Group on Enforced or Involuntary Disappearances, A/HRC/22/45, paragraph 69, quoted in A/HRC/30/38Add.5. [↑](#footnote-ref-13)
14. CEDAW/C/78/D/130/2018, April 2021. [↑](#footnote-ref-14)
15. While General Assembly resolutions are not, generally speaking, strictly legally binding, the UN Treaty Bodies have concluded that the Declaration ‘reaffirms, is underpinned by, and elaborates binding human rights obligations, including rights set out in the Treaties, and is relevant to the interpretation and implementation of the Treaties’: see OHCHR, Joint statement by a group of Chairs, Vice-Chairs and members of the United Nations human rights Treaty Bodies and the UN Special Rapporteur on Human Rights Defenders, 2018. [↑](#footnote-ref-15)
16. UN, “Report on the Special Rapporteur on the situation of human rights defenders”. A/66/203. 28 July 2011, paragraph 9. [↑](#footnote-ref-16)
17. UN, Working Group on the situation of human rights defenders. A/HRC/25/55. 24 December 2013, paragraph 54. [↑](#footnote-ref-17)
18. Inter-American Court of Human Rights. Caso Escaleras Mejía y Otros v. Honduras. Sentenced 26 September 2018. Series C No. 361, paragraph 44. [↑](#footnote-ref-18)
19. Human Rights Committee, ‘General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life’. CCPR/C/GC/36. 30 October 2018, paragraph 53; CESCR, ‘Human rights defenders and economic, social and cultural rights’. E/C.12/2016/2. 29 March 2017, paragraph 6; OSCE, ‘Directions on the Protection of Human Rights Defenders’ published by the Office of Democratic Institutions and Human Rights of the OSCE, 2016, paragraph 20; Inter-American Court of Human Rights, Case of Acosta et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 25, 2017. Series C No. 334.; Inter-American Court of Human Rights, Case of Human Rights Defender et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283, paragraph 142.; Inter-American Court of Human Rights, Case of Fleury et al. v. Haiti, Merits and Reparations, Judgment of November 23, 2011, Series C No. 236, paragraph 81; and IACHR, ‘Report on the Situation of Human Rights Defenders in the Americas’. OEA/Ser.L/V/II.124, Doc. 5 rev.1. 7 March 2006, paragraph 46. [↑](#footnote-ref-19)
20. OSCE ‘Guidelines on the Protection of Human Rights Defenders’. Published by the OSCE Office for Democratic Institutions and Human Rights, 2016. [↑](#footnote-ref-20)