

POSITION PAPER

Towards a safe and enabling environment for the right to defend human rights



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1. Introduction

In recent years, democratic values and civil and political rights and freedoms have been eroded in various countries, a phenomenon which has often been accompanied by the repression of different forms of human rights work. Factors that contribute to this trend include the rise of authoritarianism, anti-rights populism, fundamentalism¹ and the growing influence of non-state actors (e.g. international corporations or the organised crime). Weakening state power and corruption further challenge democratic governance and the rule of law, and so do global geopolitical tensions and a declining multilateral system. As a result, almost 30% of the global population live in countries with a closed civic space and are therefore deprived of most of their civil and political rights and freedoms, while over 40% live in countries with a civic space considered “repressed”².

A particular emphasis should be put on the fact that while the power of non-state actors³ has significantly increased, the power of the state as a guarantor of rights has been weakened and challenged in many cases⁴. Moreover, widespread corruption amongst political elites and growing authoritarianism in many countries have continued to increase the risks linked to citizen participation.

With this position paper, Protection International (PI) aims to lay the groundwork for a better understanding of the barriers to exercise the **right to defend human rights (RDHR)**, and to provide policy recommendations about how state authorities and third parties can support and promote a more enabling environment for the RDHR in which people enjoy their fundamental freedoms, participate in public affairs and are free to exercise their RDHR.

¹ Fundamentalism is defined by the Cambridge dictionary as “the belief in old and traditional forms of religion, or the belief that what is written in a holy book, such as the Christian Bible, is completely true”.

² See CIVICUS Monitor *Global Findings* at <https://monitor.civicus.org/globalfindings/>

³ Including both legal (e.g. large corporations) and illegal (e.g. organised crime) non-state actors

⁴ Genschel, Philipp, and Bernhard Zangl, ‘The Rise of Non-State Authority and the Reconfiguration of the State’, in Desmond King, and Patrick Le Galès (eds), *Reconfiguring European States in Crisis* (Oxford, 2017; online edn, Oxford Academic, 23 Mar. 2017), <https://doi.org/10.1093/acprof:oso/9780198793373.003.0003>

2. Definitions

2.1. Civic space

The Office of the High Commissioner for Human Rights defines **civic space** as:

“The environment that enables civil society to play a role in the political, economic and social life of our societies. In particular, civic space allows individuals and groups to contribute to policy-making that affects their lives, including accessing information, engaging in dialogue, expressing dissent or disagreement, and joining together to express their views.

An open and pluralistic civic space that guarantees freedom of expression and opinion, as well as freedom of assembly and association, is a prerequisite for making development and peace sustainable⁵.

This definition identifies key elements that speak to the RDHR: the right to participation, to assembly and association, and to freedom of expression. The degree to which these and other freedoms are ensured in a certain environment determines the degree to which civic space is open or closed: the more freely individuals can exercise civil rights and fundamental freedoms, the more open the civic space is.

One key element of the notion of (shrinking, shifting) “civic space”⁶ is that it is dynamic. It is shaped by the action (or lack thereof) of governments and other state authorities, by the influence and activities of legal and illegal non-state actors and by the efforts of civil society organisations (CSOs) and movements. These actions may develop and/or vary in short amounts of time and do not have a fixed or standardised impact in every setting.

2.2. Enabling environment

The term “enabling environment” is used to describe an environment that is favourable and conducive to the exercise or enjoyment of a certain right or activity. It is considered an essential element to the free and unrestricted exercise of the RDHR:

“An enabling environment is central to promoting the ability of CSOs (civil society organisations) to operate in a free and autonomous manner and to strengthen the civic fabric of society and its social capital⁷.

⁵ See <https://www.ohchr.org/en/civic-space>

⁶ For further information about the concept of civic space, please consult the following references: OHCHR Guidance Note 2020, *Protection and Promotion of Civic Space*; FRA 2022, *Protecting Civic Space in the EU*; OECD 2022, *The Protection and Promotion of Civic Space. Strengthening Alignment with International Standards and Guidance*; OECD Country Civic Space Scans; CIVICUS Monitor.

⁷ Putnam, R., R. Leonardi and R. Nanetti (1994), *Making democracy work: civic traditions in modern Italy*, Princeton University Press.

An enabling environment for the right to defend human rights entails not only the legal factors, but also different social and political aspects that contribute to the enactment of such an environment in practice. According to the Office of the High Commissioner for Human Rights (OHCHR):

“ A safe and enabling environment must be supported by a robust national legal framework, grounded in international human rights law. Freedoms of opinion and expression, association, peaceful assembly, and the right to participate in public affairs, are rights that enable people to mobilise for positive change. Everyone, individually or in association with others, should enjoy these rights⁸.

The former UN Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, listed in 2013 the following areas as key elements for an enabling environment for human rights defenders:⁹

- Conducive legal, institutional and administrative frameworks
- Access to justice and end of impunity of violations against HRDs
- Strong and independent national human rights institutions (NHRIs)
- Adoption of policies supporting women HRDs
- Adoption of protection policies and mechanisms for HRDs at risk
- Non-state actors respect and support HRDs
- Safe access to interact with international bodies
- Fostering a strong, dynamic and diverse community of HRDs

The OECD publication *The Protection and Promotion of Civic Space. Strengthening Alignment with International Standards and Guidance* includes a chapter on *Fostering an enabling environment for civil society to operate, flourish and participate in public life*¹⁰. In this chapter, the OECD analyses existing member states' strategies on an enabling environment for CSOs, as well as main challenges, implementation gaps and good practices. The document focuses on:

- 1) Legal frameworks governing the environment in which CSOs evolve (registration, activities – including political activities – and main challenges for an enabling environment – including Strategic Lawsuits against Public Participation (SLAPPs) and challenges for CSOs working on specific global issues like environmental protection, migrants rights);
- 2) Good practices, including government strategies to promote an enabling environment (and an analysis of their common features, i.e. a definition of civil society, the state of affairs, coherent and feasible objectives and a high-level vision for state engagement with the CSO sector), ensuring enough funding for these strategies and Evaluating the impact of state support for the CSO sector;
- 3) Access to funding as a lifeline for CSOs.

Overall, the concept has evolved over time. Agencies and organisations have focused on different enabling factors, with conducive legal frameworks being a common denominator.¹¹

⁸ UN OHCHR (2014), *Civil Society Space and the United Nations Human Rights System. A practical guide for civil society*. OHCHR, https://www.ohchr.org/sites/default/files/Documents/AboutUs/CivilSociety/CS_space_UNHRSsystem_Guide.pdf

⁹ UNGA Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya. A/HRC/25/55, (2013, 23 December), <https://undocs.org/A/HRC/25/55>.

¹⁰ OECD (2022), *The Protection and Promotion of Civic Space: Strengthening Alignment with International Standards and Guidance*. OECD Publishing, <https://doi.org/10.1787/d234e975-en>

¹¹ Further references about the concept of enabling environment: OECD 2022, *The Protection and Promotion of Civic Space. Strengthening Alignment with International Standards and Guidance*, Chapter 5; OECD 2021, "DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance", OECD Legal Instruments, OECD/LEGAL/5021; ICNL/OGP Companion Paper, 2018. *The Guide to Opening Government: An Enabling Environment for Civil Society Organizations*

2.3. States as duty-bearers regarding protection

States authorities have the primary duty and responsibility to promote and protect human rights and fundamental freedoms. It is their obligation to create the political and legal conditions to ensure that everyone can enjoy all rights and freedoms¹², including the right to promote and protect human rights¹³. In addition, states bear the duty to protect HRDs at risk¹⁴. According to the United Nations Special Rapporteur on the Situation of HRDs:

The State, as the main duty-bearer, holds the main responsibility for ensuring that defenders can enjoy a safe and enabling environment. Other actors, however, also play an important role in supporting States, independently and in partnership, to achieve this goal.¹⁵

The role other actors play in ensuring a safe an enabling environment for the right to defend human rights resonates with what the OHCHR calls the *paradigm shift* brought by the UN Declaration on HRDs in 1998:

[The declaration] represents a paradigm shift: it is addressed not just to States and to human rights defenders, but to everyone. It emphasises that there is a global human rights movement that involves us all and that we all have a role to fulfil in making human rights a reality for all.

¹² United Nations Charter of the United Nations (1945, October 24) <https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>

¹³ UN General Assembly (1999, March 8), *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. Resolution / adopted by the General Assembly, 8 March 1999, A/RES/53/144, <https://undocs.org/A/RES/53/144>

¹⁴ Idem

¹⁵ Report of the United Nations Special Representative on the situation of HRDs. Human Rights Council 31st session, A/HRC/31/55 (February 1, 2016). The recommendations by the UNSR and other bodies in relation to safe and enabling environments have been incorporated into this position paper.

3. Protection International's position on an enabling environment for the right to defend human rights (RDHR)

As a part of Protection International's strategy, we advocate for the recognition, protection and promotion of the RDHR, for which a safe and enabling environment is a key precondition as it allows HRDs to safely exercise their RDHR. In such an environment, policies and mechanisms in place prevent and eliminate specific threats against HRDs such as stigmatisation, criminalisation or attacks, while more structural barriers are also effectively addressed.

Protection International underlines that the primary responsibility to create an enabling environment for the RDHR lies with the state. That said, an enabling environment cannot be created and preserved without the active participation of civil society as a whole.

Thus, a safe and enabling environment for HRDs:

- Can be built through the combination of effective legislations, policies, institutional structures, mechanisms and policies that protect and promote the defence of rights and address the direct and indirect barriers obstructing such defence; and
- Is shaped by social and cultural norms and practices, economic factors and values promoted both by state and non-state actors, including civil society organisations.

The expressions "civic space" and "environment for civil society" are often used interchangeably. At Protection International, we privilege the use of an "enabling environment for the right to defend human rights (RDHR)" rather than an "open civic space" for the reason that it is more action- and results-oriented, and encompasses actions by different state and government authorities (as duty-bearers) and non-state actors, including HRDs and CSOs themselves. An enabling environment is composed of *enabling factors*, which facilitate the defence of rights, as opposed to *disabling factors*, both direct and indirect, which – by action or omission – hinder the enjoyment of the RDHR.

It is worth noting, in any case, that PI focuses exclusively on civil society actions aimed at defending rights, while overall civil society action is broader. In this sense, referring to an "enabling environment for the RDHR" helps us build a bridge between 'HRDs protection policies' and 'civic space policies'. Indeed, at PI, we consider the preventative and collective approach to HRD protection to be very similar to the approach seeking an enabling environment for civil society to defend human rights – which is PI's focus. Civil society organisations certainly carry out different sorts of activities, not exclusively rights defence activities. However, except for countries where the space is completely closed for civil society to exist, the main threats and barriers civil society face are related to their work defending human rights. It is usually the clashing of their rights activism with the interests of other – often powerful – actors (state but also non-state); both legal (like corporations and business) and illegal (like organised crime or militias); local, national and transnational – which motivates the setup of barriers to the RDHR.

4. Towards building a safe and enabling environment for the right to defend human rights (RDHR)

The objective of this paper is to define the characteristics of an enabling environment for the RDHR, based on our experience in the accompaniment and protection of HRDs. Our starting point is that in most countries of the world, including those that are signatories of the International Covenant on Civil and Political Rights (ICCPR)¹⁶ and have committed to upholding human rights standards, HRDs face multiple direct and indirect barriers and are exposed to threats. In other words, HRDs usually carry out their activism in disabling environments for the defence of human rights. On that basis, we would like to first assess and understand the factors that characterise such disabling environments in practice, before discussing how an enabling environment can be built.

We will address this guiding question in four steps:

- The characteristics of a disabling environment for the RDHR;
- The complexity of building an enabling environment;
- Main conditions and factors for a safe and enabling environment for the RDHR: policy recommendations;
- Possible strategic approaches to building safe and enabling environments.

4.1 The characteristics of a *disabling* environment for the RDHR

Before discussing what measures are needed to build an enabling environment for the RDHR, we should more precisely define what a *disabling*,¹⁷ hostile or unfavourable environment for the RDHR is, by examining what factors and conditions currently hinder the exercise of this right.

Disabling factors are the barriers that hinder the exercise of the RDHR. Throughout our experience working closely with HRDs, Protection International has found that these factors are context-specific and usually related to actors who have an interest in hindering the work of HRDs. There are “direct barriers”, set with the clear aim of obstructing HRDs’ work, and “indirect barriers” which are linked to the broader context and, while not aimed specifically at hindering human rights defence, facilitate the *operationalisation* of the direct barriers. For example, the criminalisation of the defence of rights or physical attacks against HRDs are direct barriers, which are facilitated by contextual dynamics that enable corruption and impunity (indirect barriers).

¹⁶ United Nations (1967). *International Covenant on Civil and Political Rights*. https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf

¹⁷ The concept of *disabling environments or situations* refers to the concept developed by the Disability Creation Process Model and it is largely used by the disability rights movement. A *disabling* environment is the obvious antonym of *enabling* environment, however we refer here to an environment with barriers, an environment that is unfavourable or even hostile, but not affecting the *ability* of HRDs themselves.

In some cases, and due to the specific context that HRDs are operating in, disabling elements only affect some groups of defenders that deal with certain rights (such as women's rights or LGBTQIA+ rights). An example of a direct barrier is the forced closure of NGOs working on LGBTQIA+ rights, while a more indirect disabling factor is widespread physical violence against the LGBTQIA+ community.

In Annex 1, we list concrete examples of enabling and disabling factors that are frequently found to improve or limit the development of an enabling environment for the RDHR. We divide those in the following categories of analysis:

- Enjoyment of fundamental freedoms (freedoms of expression, assembly and association) and freedom to access to national and international human rights bodies;
- Right to access to justice in equality, prevention of criminalisation;
- Actions towards a conducive political and institutional environment: protecting, supporting and resourcing HRDs and their collectives (CSOs and movements working to defend rights);
- Actions to address indirect barriers.

4.2 The complexity of building an enabling environment

There are different factors and conditions that contribute to a safe and enabling environment for the RDHR, assuming that:

- Duty-bearing authorities are the ones that must bring about the main outcomes for a safe and enabling environment. The primary duty-bearer for the RDHR is the State.
- CSOs, HRDs themselves and other stakeholders (at national and international levels) play a key role in pushing for and supporting duty-bearer stakeholders to bring about those outcomes.

Achieving a fully enabling environment for the RDHR exemplifies, in many contexts, a good example of a “wicked policy problem”. This concept essentially acknowledges the insufficiency and invalidity of straightforward and uncomplicated solutions, arguing for a more comprehensive, complex and nuanced approach. This “wickedness” stems from the complex nature of governments, state institutions, and other pivotal actors, as well as their interactions. All these actors engage in internal and external interactions and frequently harbour divergent and conflicting objectives, while lacking a comprehensive view of the overarching picture. Their interactions resemble those of a complex system, characterised by various mobile elements and conflicting interests. However, due to their individualised aspirations and intentions, their collaboration often lacks smoothness and coherence (if there is collaboration at all). Other examples of wicked policy problems are, for instance, climate change or gender inequality.

Within such a complex system, power is distributed across multiple components, and no single actor or group possesses comprehensive solutions. When it comes to an enabling environment for the RDHR, this means that none of these actors have the capacity to address the full spectrum of *disabling* factors or barriers impeding its integral enjoyment.

There are, however, possible actions that can be taken to move towards a more enabling environment. The dynamic nature of such an environment allows for shifts in the different enabling or disabling factors. For this, we believe that governmental bodies and state authorities should focus their efforts on the most critical obstacles and challenges to an enabling environment in their local context: addressing, for instance, restrictive legislation, criminalisation and/or impunity when attacks occur. Simultaneously, HRDs, CSOs and institutions, both domestic and foreign, should continue to implement their wide range of human rights activities. It is the combination of these actions, forming a complex, non-linear series of steps that, when implemented over a relatively extended period of time, will contribute positively to the creation – or further improvement – of an enabling environment for the RDHR.

It is important to note that, like overall civic space, an enabling environment for the RDHR is not a static or unchanging space. Rather, it shifts, evolves and adapts over time due to the complex interactions and initiatives of the various actors involved. Because there is no single entity with all-encompassing solutions, achieving the required level of protection of the RDHR requires the combined efforts of numerous stakeholders working together over an extended period. This rarely happens in a coordinated manner, however. Government bodies and state institutions, through their legal responsibility and obligation to ensure protection, should be at the forefront of creating and coordinating these efforts. In most cases, they have the capacity to act on key points within the system and the network to create partnerships for coordinated efforts.

In summary, creating an enabling environment for the RDHR is a complex process that should involve simultaneous efforts by both duty bearers and key stakeholders. These efforts should target various critical points within a multifaceted protection system.

The next section of this document will enter more into detail on possible strategies and actions towards an enabling environment for the RDHR.

5. Possible strategic approaches to building a safe and enabling environment for the RDHR

As explained above, policymaking regarding wicked social problems like the protection of HRDs and their RDHR will not follow a fixed or straightforward path. A protection policy may not yield good results by itself, because it is part of a complex system and because it might be interpreted and implemented by officials with different – or even diverging – points of view. Disabling factors against the RDHR are not static and do not occur in a vacuum. Instead, such barriers stem from the diverse interests and connections among different actors, amounting to the structural exclusion of HRDs. This means that a strategy towards a safe and enabling environment should consider contextual complexity challenges and apply a historical, power-informed, gender-sensitive and intersectional approach.

Based on our extensive experience supporting HRDs over the past years, we suggest the following list of possible strategic approaches to work towards an enabling environment for the RDHR:

- **Take a broader perspective into account and engage in joint discussions on defining problems and possible ways to tackle them:**

Disabling factors or barriers to the RDHR are usually embedded in broader social problems (or *indirect barriers*) that should be taken into account and jointly defined and analysed, before seeking ways to tackle them. For example, in some countries, impunity related to aggressions against HRDs could be one more manifestation of a widespread problem of impunity towards crime in general. The existence of such general impunity should inform any specific ways of tackling impunity of aggressions against HRDs. Isolated analyses and unilateral approaches limit the way an actor perceives a situation, guiding them away from comprehensive solutions. For example, a local government might see a social conflict through a security lens, providing armed escorts to protect community activists from landowners' hit men, while the community activists might want the authorities to focus on protracted land issues, historical discrimination and poverty, all of which contribute to their being targeted by the same local landowners. Placing the direct barriers against the RDHR in a wider context that takes into account the broader, indirect barriers, is essential to developing an accurate analysis and coming to relevant paths for action.

- **Find leverage and actionable points by applying a systemic, complexity-informed approach:**

Leverage and action points can be found by applying a systemic and complexity-informed approach, instead of simple, ill-informed approaches that aim to fix only a small part of a more structural, complex problem. Such a systemic approach would require, for example, to map all the actors involved in the protection of HRDs or those involved in the system needed for HRDs to access justice; analyse their interests and interactions; define who are the key actors in relation to the protection or justice system; and involve them in an open-ended, solution-seeking process.

- **Build political will, technical capacities, and a multi-sector, multi-scale approach**

Political will about the key enabling factors can, and should, be built along with the required technical capacities and scaled approaches to deal with the wicked problems of disabling environments. Training; involvement of relevant government and state sectors (usually several ministries and state-control and legal bodies, as well as CSOs); and a multi-scale approach (involving state actors at central level – capital city – but also at regional and local levels) are all key elements for building accountability and political will to enable the environment for the RDHR.

- **Ensure a thorough analysis of sub-national / local barriers and drivers and plan for effective local implementation**

Integration of policy actions at different governance levels should be ensured. Disabling environments at the local level may need to be closely analysed since there may be constraints related to specific local interests and local struggles of power (especially in countries with weak institutions or with areas of “limited statehood”¹⁸). These constraints often have historical roots and are strongly determined by social institutions and norms, including gender, race, ethnicity, class and religion. Understanding these constraints is essential to understand why certain actors behave the way they do, and to reasonably predict how they will behave in response to national and sub-national interventions to enable the RDHR.

- **Ensure the effective participation of HRDs across all sectors, especially when designing and implementing any actions regarding their protection**

Individual HRDs, but also groups, collectives and communities must be systematically included in decision-making processes regarding their protection and the removal of barriers that obstruct their work. This especially includes HRDs from marginalised groups, such as LGBTQIA+ defenders, HRDs with disabilities and HRDs belonging to ethnic minorities.

- **Make the best use of opening policy windows and adopt an incremental, small-gains approach**

A small-gains approach in policy-building for an enabling environment for the RDHR involves implementing improvements in policies in a progressive way, rather than pursuing comprehensive changes all at once. This strategy aims to build support, make steady progress, and accumulate positive outcomes over time. Policy windows for strategic opportunities should be actively sought and promoted.

- **Apply a history-, culture- and power-informed, gendered and intersectional approach to every intervention**

Power elites (often historically rooted), and structural discrimination do affect the way any policy approach is conceived and implemented.

- **Ensure sufficient budget and thorough monitoring, evaluation, accountability and learning processes for all policy actions.**

Go one step beyond and promote comparative analysis between different environments and protection systems and mechanisms at regional and global level, as well as the systematisation of lessons learned and the exchange of experiences across countries and regions, in order to enrich the processes.

¹⁸ Areas of limited statehood refer to situations where, i) parts of the territory or political areas in which the central government lacks the capacity to implement decisions; and/or ii) its monopoly over the means of violence is challenged. See Risse, Thomas (2011). Governance in Areas of Limited Statehood. In Risse, T. (Ed.), Governance without a State? Policies and Politics in Areas of Limited Statehood (pp. 1-35). New York: Columbia University Press.

ANNEX 1

Non-exhaustive lists of disabling factors and conditions, how they affect the RDHR, and possible actions to tackle them.

Enjoyment of fundamental freedoms and access to national and international human rights bodies

Disabling factors and conditions	How the disabling factors and conditions affect the RDHR and HRD's work	Possible actions towards enabling factors
<p>Restrictive or ambiguous legislation and norms against the right to peaceful assembly and association, and more broadly against the RDHR</p>	<ul style="list-style-type: none"> • Administrative obstacles against the functioning of HRDs .organisations (disproportionate restrictions on their registration, establishment, financing, and operations). • Barriers against peaceful assembly, including excessive or unjust legal and administrative barriers, disproportionate sanctions or excessive use of force (including brutality against protestors) . • Restrictions to access (foreign) funding. • Passing of or abusing ambiguous legislation against HRDs' organisations. • Unjust, disproportionate sentences against HRDs. 	<ul style="list-style-type: none"> • Repeal restrictive laws (or at least their more restrictive aspects) to ensure respect for the rights to freedom of peaceful assembly and association, expression, political participation and to the scrutiny of government actions; free and unhindered access to national and international human rights institutions; access to receiving funds, etc. Be particularly aware of restrictive laws against marginalised groups in society. • Adopt minimal legal and administrative provisions for registration of independent media and HRD's organisations, with no compulsory registration requirement for basic operations¹⁹. Eliminate administrative barriers and simplify administrative procedures for the registration and operations of CSOs as much as possible.
<p>Restrictive or ambiguous legislation and norms against the right to freedom of opinion and expression (offline and online)</p>	<ul style="list-style-type: none"> • Administrative obstacles against the functioning of independent media (disproportionate restrictions related to their registration, establishment, financing, and operations; excessive or random requirements for obtaining licenses, exorbitant fees, etc.). • Prohibition or censorship (and self-censorship due to fear of reprisals). • Restricted access to information and to the use of internet, social media, restrictions to formal and informal journalists and communicators, bloggers, etc. • Legislation aiming at addressing defamation, which restricts freedom of expression. 	<ul style="list-style-type: none"> • Tackle and avoid ambiguous formulation of laws and criminalising the exercise of fundamental freedoms. • Ensure that legal reforms take into account diversity and marginalised groups of HRDs.



¹⁹ [A/HRC/32/20](#) (2016), paragraph 16

Enjoyment of fundamental freedoms and access to national and international human rights bodies

Disabling factors and conditions	How the disabling factors and conditions affect the RDHR and HRD's work	Possible actions towards enabling factors
<p>Restricted or unmeaningful access to national and international human rights bodies</p>	<ul style="list-style-type: none"> • National Human Rights Institutions (NHRIs) do not fulfil Paris Principles²⁰. • Barriers to access the NHRI, or reprisals when contacting it. • Formal prohibition to contact international HR bodies. • Reprisals when providing information to, or meeting with representatives of international human rights bodies. • Reprisals after participating in international meetings with international human rights bodies. 	<ul style="list-style-type: none"> • Ensure that NHRIs fulfil Paris Principles. • Ensure unhindered access of HRDs, and no reprisals when accessing to NHRI and to regional and international human rights mechanisms²¹.

²⁰ For further information on the Paris Principles for NHRI see <https://ganhri.org/paris-principles/>

²¹ [A/HRC/32/20](#) (2016), paragraph 21

Access to justice and prevention of criminalisation

Disabling factors and conditions	How the disabling factors and conditions affect the RDHR and HRD's work	Possible actions
<p>Dysfunctional, corrupt or biased judiciary system</p> <p>Legal intimidation or harassment / SLAPP</p> <p>Criminalisation</p>	<ul style="list-style-type: none"> • Attacks against HRDs remain unpunished. • Access to justice is hindered for HRDs. • Inability (lack of funds, knowledge, etc.) or unwillingness (corruption, lack of independence, etc.) of the judiciary system to provide a fair treatment to HRDs. • Legal intimidation or harassment, for example by mean of disproportionate penalties for non-compliance with laws. • Criminalisation of defenders involved in specific cases, by pressing false or fabricated charges against them. • Criminalisation of HRDs' activities. • Strategic litigation against public participation (SLAPP). 	<ul style="list-style-type: none"> • Tackle the criminalisation of HRDs by framing it as a specific, complex problem, involving not only legal but also (psycho)social, economic, business and human rights aspects²². • Ensure HRDs can access justice through an independent and effective judiciary. • Enact ad hoc mechanisms to ensure effective access to justice for HRDs (a Prosecutor protocol to investigate HRDs' homicides, for example). • Tackle the violations of the rights of HRDs (including threats²³ and online attacks), through diligent and exhaustive investigations, prosecution and sanctioning of material and intellectual authors of the crimes (examples are setting up a dedicated prosecutor office; protocols to investigate attacks against HRDs, etc.). • Penalties for non-compliance with laws should be proportional • Courts must be able to review sanctions by State authorities against CSOs to assess whether such measures are legitimate, necessary and proportionate.²⁴



²² It is not effective to frame the criminalisation of HRDs just as a legal problem, because there are many more related factors to be considered when fighting criminalisation. See, for example, the following PI publications: “Criminalisation of HRDs: Categorisation of the Problem and Measures in response” (<https://www.protectioninternational.org/wp-content/uploads/2022/12/Criminalisation-of-Human-Rights-Defenders-Criminalisation-Series-1-2.pdf>); and “Criminalisation of rural-based human rights defenders in Kenya: Impact and counterstrategies” (<https://www.protectioninternational.org/wp-content/uploads/2022/12/Criminalisation-of-rural-based-human-rights-defenders-impact-and-counterstrategies-kenya-1.pdf>)

²³ The “La Esperanza” protocol is a good example of this (<https://esperanzaprotocol.net/>)

²⁴ For further information on SLAPP see, for example <https://anti-slapp.org/what-is-a-slapp/> and <https://www.ohchr.org/en/press-releases/2022/12/un-experts-concerned-systematic-use-slapp-cases-against-human-rights>

Access to justice and prevention of criminalisation

Disabling factors and conditions	How the disabling factors and conditions affect the RDHR and HRD's work	Possible actions
		<ul style="list-style-type: none"> • Constitutional provisions must guarantee “the right of individuals and associations to have recourse to international and regional bodies, mechanisms and courts. Moreover, they may provide for the implementation of decisions of international bodies”²⁵ • Develop specific legislation and policies against strategic litigation against public participation (SLAPP).²⁶ • Provide public resources towards the legal defence of criminalised HRD. Provide support to HRDs in prison (and their families). • Enact legal and policy measures for the reparation, rehabilitation and guarantees of non-repetition for affected HRDs.

²⁵ A/HRC/32/20 (2016), paragraph 22

²⁶ For further information about policies and laws to fight Strategic Lawsuits against Public Participation see <https://anti-slapp.org/our-work>

Actions towards a conducive political and institutional environment: protecting, supporting and resourcing HRDs and their collectives

Disabling factors and conditions	How the disabling factors and conditions affect the RDHR and HRD's work	Possible actions
Barriers to public and political participation	<ul style="list-style-type: none"> • HRDs have no say in matters that concern them. • Public discrimination against specific social or ethnic HRDs organisations. • Protection mechanisms discriminate groups of HRDs. 	<ul style="list-style-type: none"> • Regulate and ensure that people can effectively exercise the right to participate in public affairs, carry out citizen oversight of State institutions and government actions.²⁷ • Regulate and ensure effective access to public information (the Escazú Agreement in Latin America and the Caribbean is a good example of how to regulate access to information).
Lack of open access to public information	<ul style="list-style-type: none"> • HRDs have no access to information around key issues. • Information concerning attacks against HRDs is not publicly registered. • Lack of information is a factor that contributes to impunity. 	<ul style="list-style-type: none"> • Set up structures that allow regular, inclusive and meaningful participation of HRDs and other actors regarding the RDHR (examples: a HRDs consultation council to be part of the governance of a protection mechanism, or a dialogue table to address specific issues, like discrimination of a social minority in a given region). • Implement an effective protection and prevention mechanism in case of direct attacks against HRDs.
Lack of overall support to HRD CSOs	<ul style="list-style-type: none"> • Lack of supporting policies or public resources for HRDs' organisations. • Creation of fake CSOs (also referred to in some contexts as "Governmental NGOs - GONGOs", providing them with privileged access to resources, as well as to national and international decision-making arenas (as long as they maintain and back up government's lines and agendas). 	<ul style="list-style-type: none"> • Create a national register (e.g. database) of attacks against HRDs for reporting and monitoring purposes. • Ensure the participation of HRDs in the policy adoption, governance follow-up and assessment of policies and regulations that involve HRDs and the RDHR. • Facilitate and support the work of independent national human rights institutions (NHRIs) that function according to the Paris Principles. • Regulate and ensure the accountability of all officials regarding the RDHR (including the accountability of security forces, including police brutality, the proportionate use of force, illegal surveillance of CSO and HRD activities, etc.).

²⁷ [A/HRC/32/20](#) (2016), paragraph 20



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Disabling factors and conditions	How the disabling factors and conditions affect the RDHR and HRD's work	Possible actions
Practices and attacks against HRD CSOs	<ul style="list-style-type: none"> • Infiltration and surveillance of HRDs organisations; deliberate spreading of rumours and misinformation against HRDs. Smear campaigns. • Physical and digital attacks against HRDs, individual and collective. 	<ul style="list-style-type: none"> • Address, in a proactive and preventive way, social conflicts that systematically or frequently cause violations of the RDHR and attacks against HRDs. • Assign properly trained officials and allocate sufficient financial resources to implement all of the above.

Actions to address indirect barriers

Disabling factors and conditions	How the disabling factors and conditions affect the RDHR and HRD's work	Possible actions
Corruption at different levels	<ul style="list-style-type: none"> • Authorities and others act against HRDs out of financial interest. • HRDs are asked to pay officials to be assisted in cases of emergency. • Authorities arbitrarily target HRDs for financial gain. • Whistle-blower HRDs are punished. 	<ul style="list-style-type: none"> • Tackle general corruption (bringing in best practices from the anti-corruption field of knowledge). • Tackle specific aspects of corruption directly affecting the work of specific groups of HRDs. • Ensure due diligence and results in investigations (including state officials, national and transnational corporations and business enterprises when relevant). • Incorporate the UN Guiding Principles on Business and Human Rights into national legislation. • Enact specific legislation to protect whistle-blowers exposing the corruption of state officials in any area of the political and administrative life of a country.
Protracted social conflicts around land and water rights, environmental conflicts, extractive industries, etc.	Perpetrators often collude with government and judiciary officials to target HRDs linked to protracted social conflicts around resources.	<ul style="list-style-type: none"> • Early/preventive involvement in social conflict situations (land and water rights, environmental conflicts, extractive activities, etc., including early warning/action systems²⁸). • Enforce administrative and criminal sanctions against officials harassing HRDs. • Improve control by state authorities of criminal actions, high rates of homicides, and other related phenomena. • Tactical/partial discussions and agreements may be considered by HRDs and other actors (like religious actors, for example) with organised crime and non-state armed groups regarding the respect for the work of HRDs. • Limit the circulation of the weapons commonly used by criminal organisations. • Set in place effective protection and preventive mechanisms for HRDs at risk.

²⁸ An early warning system (EWS) regarding aggressions against HRDs is a proactive mechanism designed to identify and anticipate potential threats, risks, or attacks against defenders. The primary goal of an EWS is to provide timely and actionable information that allows relevant authorities, organisations and networks to take preventive measures and support HRDs at risk. This may involve monitoring and analysing different sources of information, such as social media, local news, community reports, and testimonies from HRDs themselves. By collecting and analysing data from these sources, the system can identify patterns, trends, and indicators that may suggest an increased risk to HRDs' safety and well-being.

Actions to address indirect barriers

Disabling factors and conditions	How the disabling factors and conditions affect the RDHR and HRD's work	Possible actions
<p>Armed conflicts (internal or international ones).</p> <p>High rates of homicides</p> <p>Uncontrolled circulation and use of small weapons</p> <p>Organised crime</p>	<ul style="list-style-type: none"> • HRDs are targeted because they are perceived as supporters to one side to the conflict. • Instrumentalisation of the conflict against HRDs (e.g. attacks against HRDs are disguised as armed conflict casualties or HRDs are portrayed as conflict actors). • Instrumentalisation of armed groups against HRDs. • Perpetrators often recur to small weapons with a result of death, when attacking HRDs. • Organised crime target defenders when denounced, and the state may have limited capacity to take action. 	<ul style="list-style-type: none"> • Consider tactical/partial negotiations and agreements with non-state actors, organised crime and illegal armed groups regarding the RDHR. • Improve control by state authorities of criminal actions, high rates of homicides, and other related phenomena.

