



ESPERANZA

PROTOCOL

Hope for defenders

**THE
INTERNATIONAL
LEGAL
FRAMEWORK
APPLICABLE TO
THREATS AGAINST
HUMAN RIGHTS
DEFENDERS:**

A REVIEW OF THE RELEVANT
JURISPRUDENCE IN
INTERNATIONAL LAW

Advanced edited version: not for distribution or publication

INTERNATIONAL LEGAL FRAMEWORK COMMITTEE

JULY 2019

defending rights is always
winning

30
years
CEJIL

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LIST OF ABBREVIATIONS

ACHPR: African Charter on Human and Peoples' Rights

ACHR: American Convention on Human Rights

Afr. Comm'n H.P.R.: African Commission on Human and Peoples' Rights

CAT: Convention against Torture

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women

CEESC: Committee on Economic, Social, and Cultural Rights

ECHR: European Convention on Human Rights

Eur. Ct. H.R.: European Court of Human Rights

HRD(s) or defender: human rights defender(s)

Hum. Rts. Comm.: U.N. Human Rights Committee

ICCPR: International Covenant on Civil and Political Rights

ICERD: International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR: International Covenant on Economic, Social, and Cultural Rights

Inter-Am. Comm'n H.R.: Inter-American Commission of Human Rights

Inter-Am. Ct. H.R.: Inter-American Court of Human Rights

U.N. Declaration on HRDs: U.N. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

UDHR: Universal Declaration of Human Rights

I. PROLOGUE

On March 2, 2016, prominent indigenous leader, and environmental activist Berta Cáceres was murdered in La Esperanza, Honduras. Her death sent shockwaves across the world. However, prior to her death, she had received 33 threats. None were ever investigated, even after the Inter-American Commission on Human Rights granted precautionary measures in her favor.

Sadly, threats, attacks, and killings of human rights defenders are all too common across the globe. Impunity for threats and violence against them has contributed to entrenching high rates of violence against a group that is vital to the development of our democracies.

The Esperanza Protocol project was developed to provide a timely and effective solution in addressing threats faced by human rights defenders, journalists, and others tasked with preserving democracies and the full enjoyment of human rights across the world, with a special focus on the investigation of threats. Esperanza means hope in Spanish and expresses the possibility of inspiring change and illuminating the possibilities of social transformation and justice that human rights defenders pursue. In this spirit, we propose a path forward.

This initiative is led by the Center for Justice and International Law (CEJIL) with support from several organizations, human rights defenders, and experts. As part of this process, six committees examined distinct areas of focus of the Esperanza Protocol, including the relevant international law framework, public policy standards and best practices, criminal policy and investigation, and the need for transformative reparations and guarantees of non-repetition. Members included HRDs, experts from local civil society organizations, international human rights groups, academic and thematic experts, and representatives from regional or international human rights bodies.

It is with great pleasure that I present to you the following report, developed by the International Legal Framework Committee. The Committee sets out the applicable international legal standards regarding human rights defenders,

threats, and corresponding State obligations. Their work has been crucial in the development and drafting of the Protocol.

I am grateful to the committee experts, who worked tirelessly on this report. I also want to highlight the invaluable contribution of the International Human Rights Law Clinic of the University of California, School of Law (IHRLC), which provided background research and hosted a meeting of experts. As the project moves forward, we hope that this report will provide a significant contribution to a Protocol that seeks to promote the development of national, regional, and international policies by including standards to fight against impunity, guaranteeing that there is #Hope4Defenders across the globe.

Sincerely

A handwritten signature in black ink, appearing to read "Viviana Krsticevic", with a horizontal line underneath.

Viviana Krsticevic

II. INTRODUCTION

In drafting this memorandum, the International Legal Framework Committee greatly benefited from a first draft prepared by the International Human Rights Law Clinic of the University of California, School of Law (IHRLC). That document was submitted as a first contribution to the initiative to draft the Esperanza Protocol, a soft law document that will establish guidelines based in international and regional legal norms, on investigation of threats against human rights defenders (HRDs). That first draft was then discussed and reviewed by the International Legal Framework Committee.

The aim of this memorandum is to provide an overview of the international legal framework applicable to threats against human rights defenders and the relevant jurisprudence in international law that undergirds it.

This memorandum draws from various sources of international human rights law, including conventions, treaties, jurisprudence of treaty monitoring bodies, jurisprudence of regional mechanisms like the Inter-American Court and Commission of Human Rights, the European Court of Human Rights, and the African Commission of Human Rights, and a variety of soft law sources. There is widespread acknowledgement in the body of law under analysis that threats violate the human rights of HRDs and give rise to a diversity of obligations on the State. While there is minimal divergence among jurisdictions, some areas of jurisprudence are better developed in certain jurisdictions as compared with others. However, taken collectively, they present a comprehensive framework of international and regional legal norms that set out the State's obligation to prevent and protect HRDs against threats.

The present document seeks to locate the obligation to investigate threats within the larger framework of the State's obligations to protect persons within its jurisdiction and prevent violations of their rights. In the process, complementary State obligations like the obligation to implement measures of protection in anticipation of violations that may follow threats, to punish perpetrators of threats, and to provide reparations to victims of threats, are discussed. The discussion proceeds in nine sections, including the present one. Part II provides the definitions of HRDs and

threats, as considered by the International Legal Framework Committee to draft this memorandum. Part III sets out the State’s obligation to prevent and protect against threats that violate rights across two dimensions—the State’s positive and negative obligations, and general and specific due diligence obligations—and discusses the role of intersectionality in the analysis of the international legal framework addressing threats against HRDs. The section also addresses definitional challenges presented by variations in the terms used to explain the nature of State obligations. Part IV deepens the discussion of the general due diligence obligations of the State to prevent and protect against violations, moving from the overarching requirement to establish a safe and enabling environment and adequate legal framework for enjoyment of rights, to general measures of protection in the context of threats and the State’s duty to combat impunity arising from the failure to address threats. Part V reviews the specific due diligence obligations of the State in the context of threats against HRDs, including the threshold at which the State’s due diligence duties are triggered and the contours of the duty to investigate, punish, and repair. Part VI set outs the reinforced and/or heightened nature of State obligations in cases concerning threats against HRDs and discusses the rationale for and dimensions of this duty. Part VII examines the obligations by non-State actors and, in particular, the duties of businesses and corporations to respect human rights. Part VIII identifies the specific human rights that may be violated when threats are made against HRDs and discusses the key elements of such an analysis. Part IX concludes the document by providing some observations on how the framework and jurisprudence discussed might be understood.

II. RELEVANT DEFINITIONS

For the purpose of this memorandum, the International Legal Framework Committee has considered the definition of HRDs contained in the preamble of the **U.N. Declaration on HRDs**, according to which HRDs are individuals, groups and associations that “contribute to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.”

It is widely recognized that the criterion to determine whether a person is a human rights defender or not rests upon the activity undertaken by the person, regardless of

whether the individual acts as a private individual or as a public servant.¹ Defenders can be of any gender and background and their activities can vary from monitoring, reporting, disseminating, educating, advocating, or defending rights before the justice system.² HRDs can be individuals, groups and organs of society that promote the rights of other individuals or the rights of members of groups such as indigenous communities.³ In the definition of groups, there should be an understanding that this includes not only those acting and defending fundamental rights on behalf of others (e.g. CSOs, media, academia), but also affected individuals defending the communities to which they belong⁴ and collectively, communities fighting for their rights.⁵

Likewise, threats are broadly defined to have physical, psychological, economic, and social dimensions,⁶ and include various forms of harassment,⁷ intimidation,⁸ moral and psychological injury,⁹ delivered directly or indirectly,¹⁰ through various means, including different media.¹¹

¹ Article 1 of the U.N. Declaration on HRDs; Inter-Am. Comm'n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶¶ 19, 46 (2006); Luna Lopez v. Honduras, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. ¶¶117-118 (Oct. 10, 2013);

² Inter-Am. Comm'n H.R., Towards Effective Integral Protection Policies for Human Rights Defenders, OEA/Ser.L/V/II, doc. 207 rev. ¶ 21 (2017); Report on Criminalization of the Work of Human Rights Defenders, OEA/Ser.L/V/II, doc. 49/15 rev. ¶ 21 (2015).

³ European Union Guidelines on Human Rights Defenders (2008), ¶ 3.

⁴ The OHCHR includes "*individuals working within their local communities*" in its discussion of who can be a human rights defender. <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx> (last visited Jul. 26, 2019).

⁵ Protection International has an ongoing global campaign, #CommunitiesareHRDs that works on the assumption that human rights defenders seldom act individually and that a collective approach to human rights work, among other things, must be advocated. <https://www.protectioninternational.org/en/communities-are-hrds-pi-global-campaign> (last visited Jul. 26, 2019).

⁶ U.N. G.A. Res. 70/217, ¶ 36 (Dec. 22, 2015).

⁷ Inter-Am. Comm'n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 46 (2006).

⁸ Id.

⁹ Id. ¶ 158.

¹⁰ Id. ¶ 159.

¹¹ G.A. Res. 70/217, ¶ 46 ("Threats received through digital communications, which often expose defenders to a large number of threats due to the open nature of the internet.").

III. THE STATE'S OBLIGATION REGARDING HUMAN RIGHTS

A. Negative and Positive Obligations of the State to Protect Human Rights

States have both negative and positive obligations to guarantee the human rights and fundamental freedoms enumerated in various international human rights instruments.¹² Generally, negative obligations require States to refrain from interference in the exercise of rights while positive obligations require States to take affirmative steps in order to ensure the protection and promotion of rights.¹³ International Law has developed both positive and negative obligations recognizing their interrelated character as applicable to civil and political rights and economic, social, and cultural rights.¹⁴ While the universal and the regional systems use differing language to distinguish between these obligations, all systems require States to undertake both negative and positive obligations to protect against and prevent human rights violations. This section provides a general overview of the language used in each system while subsequent sections detail specific examples of the State's positive obligations.

Under international human rights law, the State must *respect, protect, and fulfill* its obligations to protect human rights.¹⁵ Respect entails the negative obligation of States to refrain from the interference with the human rights.¹⁶ Protect entails the positive obligation to protect persons against human rights abuses.¹⁷ Fulfill entails the positive obligation that requires States “to take positive action to facilitate the

¹² Dinah Shelton & Ariel Gould, POSITIVE AND NEGATIVE OBLIGATIONS, *The Oxford Handbook of International Human Rights Law*, § 1 (2013).

¹³ *Id.*

¹⁴ *Id.* § 2.

¹⁵ ICCPR, art. 2; Hum. Rts. Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 6, U.N. Doc. CCPR/C/21/Rev.1/Add. 1326 (Mar. 29, 2004); U.N. High Commissioner on Human Rights, *International Human Rights Law*, <http://www.ohchr.org/en/professionalinterest/Pages/InternationalLaw.aspx> (last visited Mar. 11, 2018).

¹⁶ Shelton & Gould, *supra* note 12, § 2.1; *International Human Rights Law*, *supra* note 15.

¹⁷ Shelton & Gould, *supra* note 12, § 2.1; *International Human Rights Law*, *supra* note 15.

enjoyment of basic human rights.”¹⁸ Further, to discharge its positive obligations, the State must protect against violations of rights by non-State actors by taking appropriate measures and exercising due diligence to prevent, punish, investigate, or redress such harms.¹⁹ State responsibility for the actions of non-state actors are likewise described in the UN Human Rights Committee’s interpretation of Article 2(1) of the ICCPR, through General Comment No. 3. It states that *“the positive obligations on State Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights insofar as they are amenable to application between private persons or entities.”*

Under the European system, States must secure for everyone the rights and freedoms enumerated in the European Convention on Human Rights (ECHR), which encompasses both negative and positive duties.²⁰ Jurisprudence in the European system has also created positive procedural obligations by reading substantive rights, including the right to life and the prohibition on torture and ill-treatment, in conjunction with ECHR, art. 1, meaning the State has a “positive procedural obligation to investigate any alleged violation that occurs and sanction those responsible.”²¹ The European system however recognizes that because of

¹⁸ Shelton & Gould, *supra* note 12, § 2.1; *International Human Rights Law*, *supra* note 15.

¹⁹ Shelton & Gould, *supra* note 12, § 2.1.

²⁰ ECHR, art. 1; Shelton & Gould, *supra* note 12, § 2.2. See OSCE, Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR 2014, at ¶ 68, (2014) (“The obligations of participating States to respect, protect and fulfil human rights requires that they refrain from any threats or acts of violence against human rights defenders, protect them from such acts by non-state actors and take proactive measures to ensure their safety.”).

²¹ Shelton & Gould, *supra* note 12, § 2.2; *Mahmut Kaya v. Turkey*, App. No. 22535/93, Eur. Ct. H.R., ¶¶ 85–86 (Mar. 28, 2000) (stating that under ECHR, art. 2, States have negative obligations, to refrain from the intentional and unlawful taking of life and States have positive obligations, “to take appropriate steps to safeguard the lives of those within its jurisdiction” which includes effective criminal-law provisions that secure the right to life by deterring the commission of offenses against the person and “backed up by law-enforcement machinery for the prevention, suppression, and punishment of breaches” as well as provisional measures to protect those whose life is at risk). See Jean-François Akandji-Kombe, POSITIVE OBLIGATIONS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS: A GUIDE TO THE IMPLEMENTATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS, Human Rights Handbook No. 7, at 5 (2007) (“These general obligations

the “difficulties of modern societies, the unpredictability of human conduct and the operational choices” to be made, positive obligations must not impose an impossible or disproportionate burden on authorities.²²

In the Inter-American system, States have a fundamental obligation to *respect* and *ensure* the rights and freedoms recognized within the American Convention on Human Rights (ACHR).²³ *Respect* entails negative obligations that restrict State actions to prevent violations of the ACHR,²⁴ whereas *ensure* entails the organization of governmental institutions and structures to exercise “public power . . . so that they are capable of juridically ensuring the free and full enjoyment of human rights.”²⁵ The obligation to ensure, or the obligation to *guarantee*,²⁶ also includes the duties to prevent, investigate, and repair.²⁷ The nature and scope of positive obligations

may be described as quasi-autonomous. They are autonomous in so far as they arise solely by virtue of Article 1 of the Convention. But they are not wholly so, because their observance can be tested only on the occasion of an application alleging violation of one of the substantive rights secured by the European Convention.”)

²² *Mahmut Kaya v. Turkey*, App. No. 22535/93, Eur. Ct. H.R., ¶¶ 85–86 (Mar. 28, 2000).

²³ ACHR, art. 1; *Velásquez Rodríguez v. Honduras*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 164–66 (July 29, 1988).

²⁴ *Velásquez Rodríguez v. Honduras*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 165.

²⁵ *Velásquez Rodríguez v. Honduras*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 166.

²⁶ *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 13, 17 (Nov. 16, 2009) (Diego Garcia Sayan, J. concurring).

²⁷ *Velásquez Rodríguez v. Honduras*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 166; *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 140 (28 Aug. 2014) (noting that where the State had neither effectively investigated threats to a Guatemalan HRD’s family by the military nor provided adequate measures to prevent and protect them, there were violations of the ACHR [arts. 1, 5, 19]); *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 13 (Nov. 16, 2009) (Diego Garcia Sayan, J. concurring) (defining the duty to prevent as an obligation to “guarantee”); *Kavas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 75 (Apr. 3, 2009).

may vary based on the specific right guaranteed and the needs of persons requiring protection.²⁸ Further, the obligations to respect and ensure are interrelated and, together, require the State to “abstain[] from violating guaranteed human rights; prevent[] violations by State and non-State actors; and investigate[] and punish[] both State and private human rights infringements.”²⁹

Under the African system, States have a four-fold obligation to *respect*, *protect*, *promote*, and *fulfill* its human rights guarantees encompassed in the African Charter on Human and Peoples’ Rights (ACHPR).³⁰ Respect entails the negative obligation to refrain from interfering with all fundamental rights and should “respect right-holders, their freedoms, autonomy, resources, and liberty of their action.”³¹ Protect entails the obligation of the State to protect persons against third parties and non-State actors by taking measures through a legislative and regulatory framework that allows persons to realize their rights and includes the provision of effective remedies when rights are violated.³² Promote entails further positive obligations of the State to “promot[e] tolerance, rais[e] awareness, and even build[] infrastructures” to allow persons to realize their rights.³³ Finally, fulfil creates a positive obligation on the State to “fulfil the rights it freely undertook under various human rights regimes” by developing mechanisms and moving its infrastructure towards the actual realization of those rights.³⁴

²⁸ *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 243; *Kanas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 75.

²⁹ Shelton & Gould, *supra* note 12, § 2.3. See *Velásquez Rodríguez v. Honduras*, Reparations and Costs, Judgment, Inter Am. Ct. H.R. (ser. C) No. 4, ¶¶ 164, 173–77.

³⁰ ACHPR, art. 1; *Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria (“Ogoniland Case”)*, Comm. No. 155/96, Afr. Comm’n H.P.R., ¶ 44 (Oct. 27, 2001).

³¹ *Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria (“Ogoniland Case”)*, Comm. No. 155/96, Afr. Comm’n H.P.R., ¶ 45.

³² *Id.* ¶ 46..

³³ *Id.*

³⁴ *Id.* ¶ 47 (including, for example, direct provision of food or resources to be used for food, like food aid or social security, as part of its obligation under the right to life).

Examples of specific steps States must take to fulfill these negative and positive obligations are discussed below.

B. General, Specific, and Reinforced Standards of Due Diligence

While a State's negative obligations require it to refrain from acting in any way that would infringe on the enjoyment of rights protected under human rights law, the State's execution of its positive obligations carries a due diligence standard: generally understood as "reasonable measures of prevention that a well-administered government could be expected to exercise under similar circumstances."³⁵ Here, prevention refers to all positive obligations, including the obligation to investigate, punish, and repair any violations.³⁶

The due diligence standard was first developed through the Inter-American system, which holds States liable for human rights violations that they could have prevented through the exercise of due diligence when a harmful act is committed by either State or non-State actors and violates the protected rights of persons.³⁷ Even if a human rights violation is not directly imputable to State authorities, the State can nevertheless be held responsible because of the "lack of due diligence to prevent the violation or to respond to it as required by the [ACHR]."³⁸ Due diligence considerations are not fixed but require an assessment of the conduct of State authorities to prevent or respond to a violation in a particular context in which that State is operating as well as the "general state of affairs at the

³⁵ Shelton & Gould, *supra* note 12, § 3.

³⁶ See, e.g., Rashida Manjoo (Special Rapporteur on Violence against Women, its Causes and Consequences), *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, U.N. Doc. A/HRC/23/49 (2013) (outlining positive obligations in the framework of individual and systemic due diligence standards, which require States to ensure various mechanisms and institutions function to prevent, protect, punish, and repair against human rights violations that violate the rights of women).

³⁷ Shelton & Gould, *supra* note 12, § 3.2.

³⁸ *Velásquez Rodríguez v. Honduras*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172.

time.”³⁹ The European system has followed the Inter-American system in its development of the due diligence standard.⁴⁰

While the concept of State acquiescence or complicity as it relates to the State’s due diligence obligation is not entirely consistent across systems, generally, a State has failed in its due diligence obligations to protect and prevent human rights violations when the State supports or acquiesces to the violation of the human right;⁴¹ is complicit if it condones the violation as seen through a pattern of abuse through pervasive inaction;⁴² allows the violation to take place without taking measures to prevent it;⁴³ or fails to investigate or punish

³⁹ *Maria da Penha v. Brazil*, Case 12.051, Inter-Am. Comm’n H.R., Report No. 54/01, OEA/Ser.L/V/II.111, doc. 20 rev. at 704, ¶ 56 (Apr. 16, 2001); *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 258. For example, in the context of violence against women, former U.N. Special Rapporteur on violence against women Rashida Manjoo outlined two due diligence standards: *individual* due diligence (referring to the State’s flexible and individualized obligation to persons “to prevent, protect, punish and provide effective remedies on a specific basis”) and *systemic* due diligence (referring to the State’s “holistic and sustained model of prevention, protection, punishment and reparations” aimed at transforming societal institutions and mechanisms “to address structural and systemic inequality and discrimination). Rashida Manjoo (Special Rapporteur on Violence against Women, its Causes and Consequences), *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, U.N. Doc. A/HRC/23/49, ¶¶ 70–71 (2013).

⁴⁰ Despite not naming it as such in earlier cases, the European Court of Human Rights first developed a due diligence standard in *Osman v. United Kingdom*, App. No. 23452/94, Eur. Ct. H.R., ¶ 117 (Oct. 28, 1998) (stating that in order for States to fulfil their positive obligation to protect the ECHR, art. 2 right to life, States must protect against death threats when “the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual . . . from the criminal acts of a third party”). See *Isayeva and Others v. Russia*, App. Nos. 57947/00, 57948/00 & 57949/00, Eur. Ct. H.R., ¶¶ 208–13 (Feb. 24, 2005) (detailing that the obligations to protect the ECHR, art. 2 right to life includes effective, prompt, and reasonable investigation into the deaths of Petitioners in order to implement domestic laws properly, ensure accountability for the deaths, and prosecute those responsible).

⁴¹ *Velásquez Rodríguez v. Honduras*, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 173. For example, in the Inter-American system, collaboration and acquiescence are considered violations of the right to respect.

⁴² Shelton & Gould, *supra* note 12, § 3.2.

⁴³ *Velásquez Rodríguez v. Honduras*, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 173.

those responsible if the violation occurs.⁴⁴

Part IV of this document discusses the *general due diligence* standard that States owe to all persons through an overarching set of legal duties and standards to protect their human rights.⁴⁵ Part V analyses the *specific due diligence* standard that States owe to all persons when they know or ought to know of a human rights violation against persons.⁴⁶ Part VI explores the *reinforced or heightened due diligence* obligations States owe human rights defenders due to the nature of their work, their particular vulnerabilities, as well as the social impact any threat or attacks against HRDs have on the communities they work for.⁴⁷

C. Non-Discrimination and Intersectionality

Acknowledging existing discrimination, International human rights standards call for an intersectional approach to all measures taken by the State to protect the rights of HRDs and prevent a violation of their rights.⁴⁸ This standard is informed by the recognition that HRDs come from diverse backgrounds, cultures, and belief systems and have different identities and experiences, often resulting in discrimination and compounding and intersecting vulnerability to human rights violations.⁴⁹ For example, this requires awareness on the role that discrimination

⁴⁴ *Id.* ¶ 173.

⁴⁵ See *infra* Part III *General Due Diligence Obligations*, which discusses the States' obligation to create an enabling environment for the full and free enjoyment of human rights by establishing a legal framework, instituting general measures of protection as part of the state's duty to protect and prevent, and implementing policies and practices against impunity.

⁴⁶ See *infra* Part IV *Specific Due Diligence Obligations*, which discusses when such obligations are triggered and the nature and scope of the obligations, including the threefold duty to investigate, punish, and repair.

⁴⁷ See *infra* Part V *Reinforced Obligations for Human Rights Defenders*, which discusses the normative reason for reinforced obligations against HRDs and the effect this has on the State's positive obligations.

⁴⁸ Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 111, U.N. Doc. A/HRC/31/55 (2016).

⁴⁹ *Id.*

plays in the responses to protect and prevent violations against women HRDs. As such, intersectional approaches should be taken to protect at-risk groups of HRDs, including women defenders, indigenous defenders, defenders of the LGBTI, environmental and land defenders, and those who are collectively at risk as a consequence of their affiliation with a disfavored group.

Intersectionality has been most explicitly recognized as it relates to gender where gender-based discrimination intersects with other identities such as ethnicity, religion, class, age, health, or sexual orientation to “produces different vulnerabilities,” which impacts the rights and security of women defenders differently.⁵⁰ For HRDs, the Inter-American system has stated that the dual discrimination suffered “by virtue of being a woman and either indigenous or Afro-descendant is compounded in the case of women who promote and defend women’s rights.”⁵¹ Overall, States should apply an intersectional lens to the assessment of risks of women HRDs and to the design of protection initiatives as to “recognize the significance of gender in the protection of defenders.”⁵² States should ensure that in such situations HRDs “must be treated fairly and equally and obtain fair and adequate compensation, rehabilitation and other reparative measures which respond to their specific needs.”⁵³ Additionally, States should examine proposed legislative or policy reforms for whether such reforms would have a “negative impact on women or contain gender-specific elements or would affect specific sectors of the population.”⁵⁴

⁵⁰ *Id.* ¶ 38.

⁵¹ Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L./V/II doc. 66 rev. ¶ 286.

⁵² Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), Report of the Special Rapporteur on the Situation of Human Rights Defenders, ¶¶ 38, 111, U.N. Doc. A/HRC/31/55.

⁵³ U.N. Comm. against Torture, *General Comment No. 3: Implementation of Article 14 by States Parties*, ¶ 39, U.N. Doc. CAT/C/GC/3 (2012).

⁵⁴ U.N. High Commissioner on Human Rights, *Practical Recommendations for the Creation and Maintenance of a Safe and Enabling Environment for Civil Society, Based on Good Practices and Lessons Learned*, ¶ 87(d), U.N. Doc. A/HRC/32/20 (2016).

IV. GENERAL DUE DILIGENCE OBLIGATIONS OF THE STATE: CREATING A SAFE AND ENABLING ENVIRONMENT

As explained above, State responsibility is generally based on acts or omissions that are wrongful as a matter of international law (i.e., they violate an international obligation of the State) and are committed by State actors or by actors whose actions are attributable to the State, unless there are circumstances that preclude wrongfulness (such as self-defense, error, duress, state of necessity, etc.). Circumstances that preclude wrongfulness are seldom if ever present in human rights violations. States may incur responsibility for acts of State and non-State actors where there is a failure to exercise due diligence to prevent or respond to the latter's acts or omissions.⁵⁵ The due diligence standard is a particularly important tool to examine what constitutes effective fulfillment of a State's obligations, and for analyzing its actions or omissions. States have the obligation to adhere to a standard of due diligence when addressing the issue of violations of rights of HRDs.

As part of the States' general obligations to protect human rights, as well as derived of the specific obligation to prevent harm and the reinforced obligation to protect the work of HRDs and prevent violations against them, States have a duty to ensure a safe and enabling environment that allows HRDs to perform their work.⁵⁶

HRDs should be able to enjoy the rights and freedoms that are necessary for them to be able to effectively undertake their activities of promoting and protecting human rights, e.g. freedom of expression, association, peaceful

⁵⁵ Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 11, UN Doc. A/HRC/23/49 (2013).

⁵⁶ Article 3 of the UN Declaration of HRDs; article 9 of the of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted in Escazú, Costa Rica on 4 March 2018.

assembly, access to information, including access to detention places and police stations, access to remedies, etc.⁵⁷

There is a need for States to clearly recognize that HRDs face differing levels of threats that require nuanced responses. For example, Michel Forst in his 2016 Report noted that *“defenders who challenge social and cultural norms, do not fit stereotypes and prescribed roles, or who challenge power structures in society- such as defenders of sexual orientation and gender identity rights, women defenders, and defenders working on the rights of minorities and indigenous people- are often stigmatized and subjected to threats and attacks from members of society because of who they are or what they do. Defenders in conflict zones and occupied territories are also more vulnerable to continuous insecurity and threats. Protection practices must therefore be gender-sensitive and suited to the specific needs and situations of such defenders at risk.”*⁵⁸

HRDs who operate in an environment where there is “poor governance, absence of the rule of law, an upsurge in religious and political intolerance and fundamentalism, or tension over development issues” often face threats and intimidation. They also face laws and regulations “designed to delegitimize and criminalize the human rights activities of defenders.”⁵⁹

A. Public support for the work of defenders

In an attempt to delegitimize the work of defenders, HRDs are often branded as ‘enemies of the State’ or ‘terrorists’ or ‘immoral’ or ‘enemies of the majorities’ or ‘tools of illegitimate interests’. This stigmatization makes them more vulnerable to attacks, especially by non-State actors.⁶⁰ State officials have an obligation to

⁵⁷ Hina Jilani (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 78, U.N. Doc A/HRC/7/28 (2008).

⁵⁸ Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 27, 38, U.N. Doc. A/HRC/31/55 (2016).

⁵⁹ Id. ¶ 25.

⁶⁰ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 86, U.N. Doc. A/HRC/25/55 (2013).

ensure that their own statements cannot be construed, correctly or incorrectly, as encouraging murder or other violations.⁶¹

Hence, the task of establishing an environment conducive to the work of HRDs begins with the State recognizing the important and legitimate role HRDs play in promoting and protecting human rights, democracy, the rule of law, development, and peace and security.⁶² States must acknowledge this significant role in public statements⁶³ by disseminating widely the U.N. Declaration on HRDs, informing the public about the rights and responsibilities of all individuals to promote and protect human rights,⁶⁴ and adopting effective measures to increase the social understanding of the role of HRDs.⁶⁵ States should demonstrate “high-level political support for the independence and diversity of civic activity through public statements and public information campaigns.”⁶⁶ Such support should be

⁶¹ Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi. A/HRC/41/CRP.1, 19 June 2019, para. 215.

⁶² HRC Resolution recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development. A/HRC/40/L.22/Rev. 1 of 20 March 2019

⁶³ Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), Report of the Special Rapporteur on the Situation of Human Rights Defenders, ¶¶ 41, 78, U.N. Doc. A/HRC/31/55; U.N. Human Rights Council Res. 31/32, U.N. Doc. A/HRC/RES/31/32, ¶ 4 (2016); Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 114(a), U.N. Doc. A/HRC/13/22 (2009).

⁶⁴ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 72, U.N. Doc. A/HRC/25/55.

⁶⁵ Joint Statement by UN Special Rapporteur on the situation of human rights defenders, Michel Forst; the Special Rapporteur on human rights defenders at the African Commission on Human and Peoples’ Rights, Reine Alapini-Gansou; and the Rapporteur on the Rights of Human Rights Defenders at the Inter-American Commission on Human Rights, Jose de Jesus Orozco, December 9, 2015. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2015/147.asp.

⁶⁶ U.N. High Commissioner on Human Rights, Practical Recommendations for the Creation and Maintenance of a Safe and Enabling Environment for Civil Society, Based on Good Practices and Lessons Learned, ¶ 85(a), U.N. Doc. A/HRC/32/20 (2016).

reflected at all levels of government, from the national to the local.⁶⁷

B. Legal, institutional, and administrative framework

A key element of a safe and enabling environment for defenders is the “existence of laws and provisions at all levels, including administrative provisions, that protect, support, and empower defenders.”⁶⁸ States must enact legislation, and modify or abolish those laws and regulations that violate the rights of HRDs, and more generally the right to defend rights. In order to end impunity and ensure justice and accountability, States are required to improve institutional capacity by reviewing and amending “laws, policies, institutions, and mechanisms to create and maintain a safe and enabling environment in which civil society can operate free from hindrance and insecurity.”⁶⁹

In emphasizing the importance of the States’ duty to recognize the role of HRDs, legal frameworks must clearly provide for an encompassing and inclusive definition of human rights defenders.

Under the Inter-American and universal systems (particularly the Hum. Rts. Comm), States must establish an “*appropriate* legal framework for protection that is enforced effectively, and prevention policies and practices that allow effective measures to be taken in response to the complaints regarding violations.”⁷⁰ In

⁶⁷ Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 doc. 5 rev. 1 ¶ 342, Recommendation No. 1 (2006); Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 rev. ¶ 541, Recommendation No. 3 (2011)

⁶⁸ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 62, U.N. Doc A/HRC/25/55.

⁶⁹ *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 497; U.N. Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 9 (2014); Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 113(c), U.N. Doc. A/HRC/31/55.

⁷⁰ *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, (emphasis added); Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 rev. ¶ 482 (2011).

the universal system, a comprehensive legal framework, including legislation, by-laws, and administrative rules and practices, which protects rights and freedoms fundamental for civil society actors, is “a prerequisite to creating and maintaining a safe, enabling environment.”⁷¹ States should repeal or amend legal provisions that “impede the free and independent work of civil society actors” and ensure all legislation complies with international human rights law and standards, including the U.N. Declaration on HRDs.⁷² The State should ensure that legislation, policies, and practices protect the right to defend rights and empower HRDs in the pursuit of human rights activities, even if HRDs espouse minority or dissenting views or beliefs.⁷³

Further, in the Inter-American system, States are required to “organize the government apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”⁷⁴

Given the role of HRDs in facilitating an enabling environment for enjoyment of rights, the State’s obligation is not limited to establishing the requisite legal and formal conditions, but also to ensure real conditions in which human rights defenders can freely carry out their work.⁷⁵ In particular, States should be mindful

⁷¹ U.N. High Commissioner on Human Rights, Practical Recommendations for the Creation and Maintenance of a Safe and Enabling Environment for Civil Society, Based on Good Practices and Lessons Learned, ¶ 13, U.N. Doc. A/HRC/32/20 (2016); Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 113(a), U.N. Doc. A/HRC/31/55 (2016).

⁷² U.N. High Commissioner on Human Rights, Practical Recommendations for the Creation and Maintenance of a Safe and Enabling Environment for Civil Society, Based on Good Practices and Lessons Learned, ¶ 84, U.N. Doc. A/HRC/32/20 (2016).

⁷³ U.N. Human Rights Council Res. 27/31, U.N. Doc. A/HRC/RES/27/31, ¶ 4 (2014).

⁷⁴ *Velásquez Rodríguez v. Honduras*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 166 (29 July 1988); *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 236; *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 190 (Apr. 3, 2009).

⁷⁵ *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 142 (Aug. 28, 2014).

that these obligations bind them at the national, subnational, and local levels.⁷⁶

The ratification of human rights treaties requires States to adjust their domestic law to reflect international human rights principles,⁷⁷ including, potentially, the requirement to “adopt legislative, judicial, administrative, educative and other appropriate measures” to comply with their international human rights obligations.⁷⁸

In the context of protecting against the deprivation of life (including death threats), States must enact protective legal frameworks that provide effective criminal prohibitions⁷⁹ and adopt necessary measures at the legislative, administrative and judicial levels, including: issuing relevant penal norms; establishing a system of justice to prevent, eliminate and punish the relevant criminal acts (including acts by non-State actors); and investigating alleged violations effectively.⁸⁰ Human

⁷⁶ Hum. Rts. Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 4, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (2004); Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, doc. 5 rev. 1 ¶ 342, Recommendation Nos. 1, 2 (2006); Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 rev. ¶¶ 490–92 (2011); OSCE, Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR 2014, at ¶ 4, (2014).

⁷⁷ ACHR, art. 2 (“Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.”); Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 rev. ¶ 473 (2011); *The Last Temptation of Christ* (Olmedo Bustos et al.) v. Chile, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 73, ¶ 87 (Feb. 5, 2001); *La Cantuta v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162, ¶ 171 (Nov. 29, 2006).

⁷⁸ Hum. Rts. Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (2004) (stating that ICCPR, art. 2, “requires that States Parties adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations”).

⁷⁹ Hum. Rts. Comm., *General Comment No. 36: on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, ¶ 24 (advanced unedited version).

⁸⁰ *Pueblo Bello Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 120 (Jan. 31, 2006).

rights principles establish that criminal investigations must be prompt, effective, thorough, impartial, and independent.⁸¹ A number of States have enacted specific legislation that protects defenders and criminalizes the violation of their rights.⁸² Importantly, the requirement to establish a legal system designed to make it possible for States to comply with their obligation to ensure free and full enjoyment of rights must be complemented by effective government conduct.⁸³

As a measure to ensure the right to defend rights, and especially those working on the protection of the environment, it has been recently recognized that States should ensure that information held by public authorities, including that relating to the environment, land and natural resources and development issues, is proactively disclosed.⁸⁴

Additionally, States shall implement the Guiding Principles on Business and Human Rights and shall encourage all businesses to carry out human rights due diligence.⁸⁵

C. Strong, independent, and effective national human rights institutions

Effective and independent national human rights institutions (NHRIs) contribute

⁸¹ See *infra* Section IV.B, *Obligation to Investigate, Punish, and Repair*, which discusses the scope of investigations under human rights mechanisms.

⁸² Brazil, Burkina Faso, Colombia, Côte d'Ivoire, Guatemala, Honduras, Mali, Mexico, the Philippines, and Sierra Leone. The International Service for Human Rights has developed a model law. Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the situation of human rights defenders*, ¶ 91, U.N. Doc. A/HRC/31/55.

⁸³ *Velásquez Rodríguez v. Honduras*, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 167.

⁸⁴ HRC Resolution recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development. A/HRC/40/L.22/Rev. 1 of 20 March 2019. See also article 5 of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted in Escazú, Costa Rica on 4 March 2018.

⁸⁵ HRC Resolution recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development. A/HRC/40/L.22/Rev. 1 of 20 March 2019.

towards the creation of an enabling environment for human rights defenders. NHRIs play a significant role in “advocating in favor of a conducive work environment for defenders, and public support when violations against defenders are perpetrated”.⁸⁶ These institutions should establish a focal point with the specific mandate of addressing concerns of HRDs,⁸⁷ “monitoring their situation, including risks to their security, and legal and other impediments to a safe and conducive environment for defenders”.⁸⁸

NHRIs that comply with the Paris Principles are pivotal in protecting HRDs. For those institutions with the mandate to investigate complaints and provide effective protection, they may play an important role where courts or other domestic mechanisms are unable or unwilling to investigate or adjudicate alleged violations against HRDs.⁸⁹ They may also “play an important role in disseminating information about protection programmes for defenders, where they exist and ensuring that defenders are closely involved in the design, implementation and evaluation thereof.”⁹⁰

D. Effective protection policies and mechanisms

As discussed above, to comply with the U.N. Declaration on HRDs, States are obliged to design and develop broad and comprehensive domestic laws and policies to protect the right to defend rights. This obligation is far-reaching and should not be limited to the creation of protection schemes that focus on direct violence against HRDs.⁹¹ In that regard, protection schemes should be

⁸⁶ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 84, U.N. Doc A/HRC/22/47 (2013), p. 16.

⁸⁷ *Id.*

⁸⁸ *Id.* ¶ 80.

⁸⁹ *Id.* ¶ 79.

⁹⁰ *Id.* ¶ 82.

⁹¹ Protection International and CEJIL, “The Time is Now for Effective Public Policies to Protect the Right to Defend Human Rights”, 2018, available at <https://www.protectioninternational.org/en/news/time-now-english-version-summary-now-available>

complementary to other actions taken by the State to ensure the right to defend rights, and should apply in exceptional circumstances when needed to prevent violations and protect those defending rights.

HRDs, civil society, and experts should participate in the design, implementation, and evaluation of policies and mechanisms to ensure the protection of HRDs and address their specific needs.⁹²

These programs should be defined by law and include an early warning system “in order to anticipate and trigger the launch of protective measures.”⁹³ States must provide the budgetary and logistical resources needed to ensure protection programs are effective.⁹⁴ They should also include measures of coordination among institutions in order for them to most effectively discharge their duty of protecting HRDs.⁹⁵

Protection programs should include comprehensive individual and collective risk analysis that assess the differentiated risks faced by of HRDs, taking into account the specific vulnerability of some groups and identify differentiated responses applying a gender, ethnic, racial, and cultural perspective.⁹⁶ The time-

⁹² Inter-Am. Comm’n H.R., Towards Effective Integral Protection Policies for Human Rights Defenders, OEA/Ser.L/V/II., doc. 207 rev. ¶¶ 118-119 (2017).

⁹³ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 88, U.N. Doc A/HRC/25/55.

⁹⁴ Inter-Am. Comm’n H.R., Towards Effective Integral Protection Policies for Human Rights Defenders, OEA/Ser.L/V/II., doc. 207 rev. ¶¶ 246-248 (2017).

⁹⁵ *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 155 (Aug. 28, 2014) (noting that it is the “State’s responsibility to establish measures of coordination between its institutions and officials” for the purpose of determining particular measures of protection necessary for an individual).

⁹⁶ Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *End of Mission Statement on the situation of human rights defenders on his visit to Honduras*, 29 April to 12 May 2018. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23063&LangID=E>. See Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Visit to Colombia*, 20 November to 3 December 2018 End of mission statement. Available at: https://www.ohchr.org/Documents/Issues/Defenders/StatementVisitColombia3Dec2018_EN.pdf;

Inter-Am. Comm’n H.R., Towards Effective Integral Protection Policies for Human Rights Defenders, OEA/Ser.L/V/II., doc. 207 rev. ¶ 269 (2017).

period between receiving notice of the risk, completing the risk assessment, and implementing the protection measures should be kept at a minimum to prevent greater risk for the HRD.⁹⁷

Protective measures should function as early warning and rapid response mechanisms that enable HRDs, when threatened, to have immediate access to authorities that are competent and adequately resourced to provide effective protection.⁹⁸

Further, protection programs should include a system of assessing the situation of the defenders' family members and relatives. In this regard, the work of WHRDs, especially those working on women's rights and gender issues, often has consequences on their partners, spouses, and family members.⁹⁹ When WHRDs are subjected to arrests, ill-treatment, torture, criminalization, unwarranted judicial proceedings, stigmatization, attacks, threats, sexual violence, and killings, in many cases, their family members are also targeted.¹⁰⁰

In the Inter-American system, the obligation to protect against threats extends not only to the relatives of HRDs, but also to justice operators and witnesses involved in judicial proceedings concerning human rights violations.¹⁰¹ Additionally, this obligation extends to both persons "individually" and "in association with others."¹⁰²

⁹⁷ Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *End of Mission Statement on the situation of human rights defenders on his visit to Honduras*, 29 April to 12 May 2018.

⁹⁸ HRC Resolution recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development. A/HRC/40/L.22/Rev.1 of 20 March 2019.

⁹⁹ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 98, U.N. Doc A/HRC/25/55 (2013).

¹⁰⁰ *Id.* ¶ 99.

¹⁰¹ *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 227 (Aug. 28, 2014); *La Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 163, ¶ 171 (May 11, 2007).

¹⁰² Inter-Am. Comm'n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66 rev. ¶ 497 (2011).

When protection measures are considered, HRDs must be consulted, given an active role in their planning and implementation, and should be kept informed on the progress made in their execution.¹⁰³

States must implement a general, comprehensive policy of public security in its prevention and prosecution mechanisms that is geared towards preventing “risk factors and strengthening institutions that can provide an effective response” in order to ensure free and full exercise of human rights.¹⁰⁴ Good practices for protecting HRDs should contribute to the full respect of their rights and strengthen security, “by mitigating the risks they face, addressing threats, and building support for their work.”¹⁰⁵

The assessment regarding the desirability, continuity, nature, and scope of protection measures are the responsibility of the State and should not be contingent on a petitioner’s application for protection.¹⁰⁶

The obligation to set up effective protection policies and mechanisms is not limited to instances where State agents are the alleged perpetrators, but also extends to threats issued by non-State actors whose conduct is otherwise not

¹⁰³ *Inter-Am. Comm’n H.R., Towards Effective Integral Protection Policies for Human Rights Defenders*, OEA/Ser.L/V/IL., doc. 207 rev. ¶ 285 (2017).

¹⁰⁴ *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 258. See *González et al. (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 13 (Diego Garcia Sayan, J. concurring).

¹⁰⁵ Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 33, U.N. Doc. A/HRC/31/55.

¹⁰⁶ *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 155 (noting that “the assessment of whether or not a person requires protection measures and what those measures should be, is the State’s obligation, and should not be limited to requiring Petitioner to apply to “the competent authorities,” without knowing exactly which authority is best able to address his situation, since it is the State’s “responsibility to establish measures of coordination between its institutions and officials for that purpose”); *Vélez Restrepo and Relatives v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 201 (Sep. 3, 2012).

attributable to the State.¹⁰⁷

Furthermore, the focus of protective measures should be on “holistic security” of defenders to ensure their physical safety, digital security, and psychosocial well-being.¹⁰⁸ For instance, in the context of threats amounting to torture, or cruel, inhuman, and degrading treatment, general measures of protection may include provisional measures to ensure physical, moral, and economic security of persons and their families.¹⁰⁹ Under the ICCPR, States must take necessary measures to respond to death threats received by HRDs in “reprisal for promoting and striving to protect and realize human rights” by providing adequate protection to HRDs.¹¹⁰

E. Policies and Practices against Impunity

The State is obligated to combat a situation of impunity by all available legal

¹⁰⁷ Hum. Rts. Comm., *General Comment No. 36: on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, ¶ 25 (advanced unedited version); Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 35, U.N. Doc. A/65/223 (2010); Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 33, U.N. Doc. A/72/170 (2017) (referencing U.N. Human Rights Council Res. 17/31, “Ruggie Principles,” U.N. Doc. A/HRC/17/31, Guiding Principle 1); *Peace Community of San José de Apartadó v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140, “Considering,” ¶¶ 10–11 (June 18, 2002) (finding that the State was obligated to protect the right to life of members of the Peace Community, who took a principled non-violent and non-aligned stand against all armed actors in the Colombian war and were subjected to threats, harassment and persecution by paramilitary groups).

¹⁰⁸ Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 111, U.N. Doc. A/HRC/31/55.

¹⁰⁹ *BMB v. Tunisia*, U.N. Comm. against Torture (May 5, 1994) (adopting provisional measures to protect Petitioner’s family, the alleged victim’s family, and the witnesses and their families from threats and intimidation to ensure physical, moral, and economic security of those persons in connection with their filing of a CAT petition).

¹¹⁰ Hum. Rts. Comm., *General Comment No. 36: on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, ¶ 57 (advanced unedited version).

means.¹¹¹ The duty to combat impunity arises from the fact that impunity promotes the chronic repetition of the human rights violations and the total defenselessness of the victims and their next of kin.¹¹² Impunity is borne out of a lack of protection from threats,¹¹³ a failure to investigate violations originating from threats,¹¹⁴ and a failure to prosecute perpetrators.¹¹⁵ In that regard, States should investigate threats and acts of intimidation against HRDs,

¹¹¹ *Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 121, ¶ 82 (Mar. 3, 2005); *Maritzá Urrutia v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶ 126 (Nov. 27, 2003); *Ituango Massacres v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 299 (July 1, 2006); *Baldeón-García v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 147, ¶ 168 (Apr. 6, 2006); *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 454; (Nov. 16, 2009); *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 190 (Apr. 3, 2009).

¹¹² *Ituango Massacres v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 299; *Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 121, ¶ 82; *Maritzá Urrutia v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶ 126; *Gómez-Paquiyaauri Brothers v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 110, ¶ 148 (July 8, 2004); *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 190; *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 289, 454; *Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶ 179 (Sept. 22, 2009); *Baldeón-García v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 147, ¶ 168 (Apr. 4, 2006); Afr. Comm'n H.P.R., Resolution on the Protection of Human Rights Defenders, Doc. ACHPR/69(XXXV), *preamble* (2004).

¹¹³ Inter-Am. Comm'n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 124 (2006).

¹¹⁴ *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 78, 214 (Aug. 28, 2014).

¹¹⁵ *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 378–88 (stating that irregularities in investigating violations, handling evidence, fabrication of guilty parties, delays in investigations, absence of proper lines of inquiry, lack of investigation against public officials for alleged serious negligence, and judicial ineffectiveness contribute to impunity).

including acts beyond physical violence.¹¹⁶ Accordingly, impunity in the face of threats and attacks on the life and physical integrity of HRDs is particularly serious in a democratic society,¹¹⁷ where it can become a catalyst that multiplies threats or attacks against HRDs, as other actors wishing to silence or impede the work of a HRD realize that they too are unlikely to be held to account.

States should take measures in their investigations to establish the truth relating to the events leading to the deprivation of life, including the reasons and legal basis for targeting certain individuals (journalists, activists and others) and the procedures employed by the State forces before, during and after the killing.¹¹⁸

Within a reasonable time, States should also comply diligently with their obligation to investigate violations;¹¹⁹ investigate and sanction officials accused of irregularities in conducting investigations;¹²⁰ exercise judicial control to ensure

¹¹⁶ HRC Resolution recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development. A/HRC/40/L.22/Rev. 1 of 20 March 2019; Inter-Am. Comm'n H.R., Towards Effective Integral Protection Policies for Human Rights Defenders, OEA/Ser.L/V/II., doc. 207 rev. ¶ 339 (2017); Case of Caballero Delgado and Santana regarding Colombia. Provisional Measures. Order of the Inter-Am. Ct. H.R. of February 25, 2011, Operative para. 21; Matter of Guerrero-Gallucci regarding Venezuela. Provisional Measures. Order of the Inter-Am. Ct. H.R. of November 21, 2011.

¹¹⁷ *Kavas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 213.

¹¹⁸ Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi. A/HRC/41/CRP.1, 19 June 2019, para. 269.

¹¹⁹ *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 289; *Anzualdo Castro v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶ 179 (Sept. 22, 2009); *Garibaldi v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 203, ¶ 141 (Sept. 23, 2009); Inter-Am. Comm'n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 202 (2006).

¹²⁰ *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 460.

adequate punishment of perpetrators;¹²¹ and provide redress to victims.¹²² Further, States should publicly condemn, investigate, and hold accountable all State and non State actors who threaten HRDs in order to combat impunity.¹²³

V. SPECIFIC DUE DILIGENCE OBLIGATIONS OF THE STATE

A. Triggering the States' Specific Due Diligence Obligations and the Requirement of a Reasonable Response

The States' specific due diligence obligation is triggered when State authorities, knew, were made aware, or when they ought to have known of the existence of a real and immediate risk.¹²⁴ For instance, the due diligence obligation is triggered when a HRD and her family gives notice of acts of intimidation by State agents to police authorities and/or the public prosecutor's office.¹²⁵ By way of another example, the obligation to protect is triggered when officials themselves verify that a group or community is especially vulnerable due to circumstances that have rendered them

¹²¹ *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 497; Inter-Am. Comm'n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 202 (2006).

¹²² *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 497.

¹²³ U.N. Human Rights Council Res. 31/32, U.N. Doc. A/HRC/RES/31/32, ¶ 6 (2016).

¹²⁴ Inter-Am. Comm'n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66 rev. ¶¶ 43, 482 (2011); *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 140 (Aug. 28, 2014); *Xákmok Kásek Indigenous Community v. Paraguay*, Merits, Reparations & Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 188 (Aug. 24, 2010); *Osman v. United Kingdom*, App. No. 23452/94, Eur. Ct. H.R., ¶ 117 (Oct. 28, 1998) (establishing the Eur. Ct. H.R. standard for death threats as a violation of ECHR, art. 2 right to life and finding a violation of the State's positive obligation to protect the right to life when "the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual . . . from the criminal acts of a third party").

¹²⁵ *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 154–55, 160.

landless.¹²⁶ Conversely, the specific duty is not triggered when the State did not or could not have known,¹²⁷ or when the threat is not real or imminent.¹²⁸ For instance, the Inter-Am. Ct. H.R. held that a complaint against threats issued to a HRD and her son did not trigger the State's due diligence obligation with respect to another family member who was not mentioned in the complaint.¹²⁹

Further, as soon as the State becomes aware of real and imminent risks arising from threats to a specific individual or group of individuals and there is a reasonable possibility of preventing or avoiding such risks,¹³⁰ the State should

¹²⁶ *Xákmoké Káseké Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 187–89, 192–93, 217; The jurisprudence reviewed for this memorandum does not provide clarification of what would constitute the “should have known” standard of knowledge.

¹²⁷ *Chinbamo v. Zimbabwe*, App. No. 307/05, Afr. Comm'n H.P.R., ¶ 76 (Nov. 28, 2007) (finding the case inadmissible due to lack of exhaustion of local remedies but noting that it would be inappropriate to hold the State responsible for the lack of investigation or protection against the intimidation and threats received by the Petitioner, an active HRD and employee of Amnesty International in Zimbabwe, because the intimidation and threats were not brought to the attention of the State and the State was not in a position to know about them).

¹²⁸ *Bitiyeva and X v. Russia*, App. Nos. 57953/00 & 37392/03, Eur. Ct. H.R., ¶ 166 (June 21, 2007) (finding that the Petitioner's perception of general fear and intimidation regarding her safety, security, and life any time she made any contact with State authorities after her experience of being threatened and harassed by State authorities does not trigger the State's duty to investigate threats because it “leaves the State authorities without appropriate recourse if they wish to investigate the complaints and to ensure protection from the alleged threats”).

¹²⁹ *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 145–46.

¹³⁰ Inter-Am. Comm'n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 rev. ¶ 44 (2011) (emphasis added); *Osman v. United Kingdom*, Application No. 23452/94, ECtHR, ¶ 117 (28 Oct. 1998); *Mahmut Kaya v. Turkey*, App. No. 22535/93, Eur. Ct. H.R., ¶¶ 85–86 (Mar. 28, 2000) (reiterating the Eur. Ct. H.R. standard for triggering the State's positive obligation to take reasonable steps to protect persons is when the State knew or ought to have known of a “real and imminent risk to life,” so long as there is not an “impossible or disproportionate burden on authorities”); *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 140; *Valle-Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 90 (Nov. 27, 2008); *González et al. (“Cotton Field”) v. Mexico*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 9 (Nov. 16, 2009) (Diego Garcia Sayan, J. concurring); *Ríos et al. v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 194, ¶ 110 (Jan. 28, 2009); *Perazzo et al. v. Venezuela*, Merits, Reparations, and Cost, Inter-Am. Ct. H.R. (ser. C) No. 195, ¶ 121 (Jan. 28, 2009).

take immediate and reasonable measures to ensure the effective protective mechanism.¹³¹ Generally, reasonable State action to prevent violations of human rights due to threats against HRDs requires effective, timely, and comprehensive measures.¹³² For instance, the Inter-Am. Ct. H.R found that failure of the State to provide adequate, timely, and effective measures to an HRD and her son, even after she filed various complaints with the police and public prosecutor regarding constant intimidation, constituted a breach of the State's due diligence obligations.¹³³

Reasonable measures to prevent violations against HRDs also include “the duty of law enforcement to warn intended victims of threats to their safety” when they are aware of real and imminent risk, arising from threats by individuals, companies or other State agents.¹³⁴ Such obligations exist even extraterritorially when a State becomes aware of threats of human rights violations against HRDs in third countries.¹³⁵

¹³¹ Inter-Am. Comm'n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66 rev. ¶ 42 (2011); *Velásquez Rodríguez v. Honduras*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 173–74 (July 29, 1988); *Valle-Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 90 (Nov. 27, 2008); *Godínez Cruz v. Honduras*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 5, ¶ 184 (Jan. 20, 1989); *Osman v. United Kingdom*, App. No. 23452/94, Eur. Ct. H.R., ¶ 117 (Oct. 28, 1998) (establishing the Eur. Ct. H.R. standard for death threats as a violation of ECHR, art. 2 right to life and finding a violation of the State's positive obligation to protect the right to life when “the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge”).

¹³² U.N. Human Rights Council Res. 13/13, A/HRC/RES/13/13, ¶ 6 (2010); OSCE, Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR 2014, ¶ 68 (2014) (quoting *Declaration of the Committee of Ministers on Council of Europe Action to Improve the Protection of Human Rights Defenders and Promote their Activities*, 6 February 2008, para. 2 (iv)).

¹³³ *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 153, 156, 158, 160.

¹³⁴ Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi. A/HRC/41/CRP.1, 19 June 2019, ¶¶ 348-353.

¹³⁵ *Id.* ¶ 364.

The States of countries where HRDs have found residence or exile are under an obligation to respect their human rights, and to protect them against violence by the States from which they escaped.¹³⁶

The reasonableness of State response may also depend on the gravity of risk and identity of those involved.¹³⁷ The State may also have a more rigorous due diligence obligation in certain circumstances which carry associated risks, for example, in cases involving death threats issued in the context of political violence¹³⁸ or insecurity in the face of prison violence.¹³⁹ In a similar vein, the Human Rights Committee held that adequate measures of protection for death threats must be based on an objective standard of seriousness of the threats.¹⁴⁰ Further, the absence of threats for a period of time does not necessarily imply that risk to the victim has ceased and States should investigate the underlying cause(s) before deciding that protection measures are no longer necessary.¹⁴¹

The duty to protect requires States to be aware of the vulnerabilities of some individuals who may be particularly at risk because of their activities or identity,

¹³⁶ *Id.* ¶ 384.

¹³⁷ See *infra* Part V *Reinforced Obligations for Human Rights Defenders*, which discusses human rights defenders.

¹³⁸ *Manuel Cepeda Vargas v. Colombia*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 213, ¶ 101 (May 26, 2010) (holding that the State had a heightened duty of due diligence in context of political violence in Colombia, which required it to promptly investigate death threats that preceded the assassination of the Senator and take necessary measures to prevent it).

¹³⁹ *Capital El Rodeo I and El Rodeo II Judicial Confinement Center regarding Venezuela*, Provisional Measures, Order of the Court, “Considering,” ¶ 11 (Inter-Am. Ct. H.R. Feb. 8, 2008), http://www.corteidh.or.cr/docs/medidas/rodeo_se_01_ing.doc.

¹⁴⁰ *Jiménez Vaca v. Colombia*, Comm. No. 859/1999, Hum. Rts. Comm., CCPR/C/74/D/859/1999, ¶ 7.2 (Apr. 15, 2002) (stating that “Mr. Jiménez Vaca had an objective need for the State to take steps to ensure his safety, given the threats made against him . . .” and finding that the State’s failure to protect Petitioner in light of this constituted a violation of his ICCPR, art. 9(1) right to integrity and security).

¹⁴¹ Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66 rev. ¶ 530 (2011).

including HRDs, those fighting corruption, humanitarian workers, and others.¹⁴²

In summary, the State's obligation to protect and prevent against threats is one of means or conduct,¹⁴³ and its failure to comply with the same is not established merely through proof of violations of rights, but determined on the basis of numerous factors, including but not limited to a) knowledge of risk, b) nature of risk involved, c) reasonable possibility of preventing and protecting against the risk, d) the nature, scope, and proportionality (reasonableness) of the State response, e) assessment of State's capability and capacity to respond, f) identity and specific circumstances surrounding the victim and perpetrator, g) nature of the work undertaken by the victim, and h) the context in which the actions can be perpetrated.

B. Obligation to Investigate, Punish, and Repair

The State's specific due diligence obligations in the context of threats are rooted in the dual principles of protection and guarantee, which entail the positive obligations to investigate, prosecute, and punish perpetrators and to provide remedy and redress for the victims.¹⁴⁴ In the context of the Inter American system's precautionary measures regime, investigations serve the added purpose of clarifying and eliminating the causes for which such measures have been granted while mitigating risks to beneficiaries, in keeping with the State's obligation to protect.¹⁴⁵ Further, the Inter-Am. Ct. H.R. has held that that:

“[while] the effectiveness of the investigations and proceedings into the facts that prompted the measures of protection go to

¹⁴² Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi. A/HRC/41/CRP.1, 19 June 2019, ¶ 347.

¹⁴³ *Pueblo Bello Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 124 (Jan. 31, 2006).

¹⁴⁴ Inter-Am. Comm'n H.R., Report on Situation of Human Rights Defenders in Americas, OEA/Ser.L/V/II.124, doc. 5 rev. 1 ¶ 124 (2006).

¹⁴⁵ Inter-Am. Comm'n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66 rev. ¶ 433 (2011).

the merits of a contentious case, it has also accepted that in some cases it can be shown that the failure to investigate or an ineffective investigation can be a contributing factor to the situation of extreme gravity and urgency, in which case an investigation would be needed to prevent irreparable harm to the specific beneficiary.”¹⁴⁶

Therefore, the obligation to investigate and punish ¹⁴⁷perpetrators of threats serve to prevent harm and curb chronic repetition of risks, danger, and associated violations.¹⁴⁸

Duty to Investigate, Prosecute and Punish. The duty to investigate, prosecute and punish is critical for defusing risks, preventing attacks, ensuring punishment of perpetrators of threats, and in certain cases, providing necessary reparations to victims. In order to fight impunity and fulfill its duty to investigate and punish, States must investigate, prosecute, and punish any acts of intimidation or threat that violate the human rights of victims.¹⁴⁹

¹⁴⁶ Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66 rev. ¶ 433; See *Liliana Ortega et al. regarding Venezuela*, Provisional Measures, Order of the Court, “Considering,” ¶ 17 (Inter-Am. Ct. H.R. Jul. 9, 2009), http://www.corteidh.or.cr/docs/medidas/ortega_se_06_ing.pdf.

¹⁴⁷ See *infra* *Duty to Investigate and Punish*.

¹⁴⁸ Inter-Am. Comm’n H.R., Report on Situation of Human Rights Defenders in Americas, OEA/Ser.L/V/II.124, doc. 5 rev. 1 ¶ 256 (2006).

¹⁴⁹ Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 23, U.N. Doc. CCPR/C/GC/34 (2011); U.N. Human Rights Council Res. 31/32, U.N. Doc. A/HRC/RES/31/32, ¶ 6 (2016); Michel Forst (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 112, U.N. Doc. A/HRC/31/55 (2016); U.N. Human Rights Council Res. 13/13, A/HRC/RES/13/13, ¶ 12 (2010); Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 144(a), U.N. Doc. A/HRC/13/22 (2009); U.N. G.A. Res. 70/161, ¶ 5 (2016); U.N. G.A. Res. 66/164, ¶ 8 (2012); *Minors in Detention v. Honduras*, Case No. 11/491, Report No. 41/99, ¶¶ 153–55 (Inter-Am. Comm’n H.R. Mar. 10, 1999), <http://www.cidh.org/annualrep/98eng/Merits/Honduras%2011491.htm> (noting that during the pendency on the case, Petitioners and their counsel were the target of intimidation, threats and harassment at the behest of high ranking Honduran government officials and that the State was obligated to investigate and punish the same, in a case brought by NGOs on behalf of unlawfully arrested and criminally prosecuted children); *Pueblo Bello Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 140, ¶ 120 (Jan. 31, 2006);

Duty to Remedy and Repair. International human rights law provides for the right to effective remedy and reparations.¹⁵⁰ In order to fulfil this right, the State must provide appropriate forms of redress to victims whose human rights have been violated through threats and intimidation.¹⁵¹ Appropriate forms of redress include access to effective remedies, as well as restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.¹⁵² These remedies and reparations should be “appropriately adapted so as to take account of the special vulnerabilities of certain categories of people.”¹⁵³

In the case of threats, judicial bodies have held that the State is obligated to provide reparations in order to reduce the mental suffering of persons who have

OSCE, Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR 2014, ¶ 68 (2014) (quoting *Declaration of the Committee of Ministers on Council of Europe Action to Improve the Protection of Human Rights Defenders and Promote their Activities*, 6 February 2008, para. 2(iv)). See *infra Part V Reinforced Obligations for Human Rights Defenders*, which discusses reinforced obligation to investigate intimidation, threats, attacks or killings of HRDs.

¹⁵⁰ UDHR, art. 8; ICCPR, arts. 2(3), 9(5); CAT, arts. 13, 14; ICERD, art. 6; ACHPR, art. 7; ACHR, art. 25; ECHR, art. 13; U.N. Declaration on HRDs, art. 9.

¹⁵¹ Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 23, U.N. Doc. CCPR/C/GC/34 (2011) (stating that victims of threats and intimidation should “be in receipt of appropriate forms of redress”); OSCE, Protection of HRDs in the OSCE Region, OSCE/ODIHR 2017, ¶ 2 (2017) (“Targeted abuses and violations against human rights defenders strike at the heart of accountability and the right to effective remedies for victims of human rights violations, who are often from vulnerable groups.”); U.N. Econ. and Soc. Council, U.N. Doc. E/CN.4/Sub.2/1996/17, ¶ 5 (1996) (“The legal system of every State shall provide for prompt and effective disciplinary, administrative, civil and criminal procedures so as to ensure readily accessible and adequate redress, and protection from intimidation and retaliation.”).

¹⁵² Hum. Rts. Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶¶ 16–17, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (2004); U.N. Comm. against Torture, *General Comment No. 3: Implementation of Article 14 by States Parties*, ¶ 2, U.N. Doc. CAT/C/GC/3 (2012); U.N. G.A., *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, ¶¶ 15, 19–22, A/RES/60/147 (2006); OSCE, Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR 2014, ¶ 83 (2014).

¹⁵³ Hum. Rts. Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 16, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (2004).

suffered violations of human rights due to threats.¹⁵⁴ The State's obligation to provide reparations includes providing monetary compensation for threats,¹⁵⁵ issuing guarantees of non-repetition to prevent similar violations arising from threats in the future,¹⁵⁶ taking rehabilitative measures like guaranteeing adequate conditions for the return of persons displaced from their residence due to threats,¹⁵⁷ and enacting "provisional or interim measures to avoid continuing violations

¹⁵⁴ *García-Prieto et al. v. El Salvador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 268, ¶¶ 194, 201 (Nov. 20, 2007) (stating that investigations into the murder of García Prieto, and subsequent threats and harassment of Mr. Prieto's family lacked adequate diligence, caused suffering and violated various rights; and holding that the State was obligated to provide reparations in the form of adequate and indefinite medical, psychological and psychiatric treatment).

¹⁵⁵ *Gutiérrez-Soler v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 69 (Sep. 12, 2005) (noting that the Petitioner was detained by State authorities and tortured. After his release, he and his family were subjected to a campaign of threats and harassment and finding that they were all victims who suffered violation of their ACHR, art. 5(1) right to personal integrity and were entitled to monetary compensation).

¹⁵⁶ *Dias v. Angola*, Comm. No. 711/1996, Hum. Rts. Comm., CCPR/C/68/D/711/1996, ¶ 10 (Mar. 31, 2000) (finding Petitioner was entitled to effective remedy and the State party was under obligation to "take measures to prevent similar violations in the future" in response to a finding of violations of Petitioner's ICCPR, art. 9(1) right to integrity and security and ICCPR, art. 2(3)(a) failure to take adequate measures of protection when Petitioner received threats (including threats from police) during his attempt to investigate the death of his business partner, which caused him to leave Angola to which he has not returned); *Bautista de Arellana v. Colombia*, Comm. No. 563/1993, Hum. Rts. Comm., CCPR/C/55/D/563/1993, ¶ 10 (Oct. 27, 1995) (stating that the "State party is further under an obligation to ensure that similar events do not occur in the future" regarding the family of a torture victim who received death threats and was subjected to intimidation and monitoring because of their insistence in pursuing the case); *Jiménez Vaca v. Colombia*, Comm. No. 859/1999, Hum. Rts. Comm., CCPR/C/74/D/859/1999, ¶ 5.4 (Apr. 15, 2002) ("The State party is also under an obligation to try to prevent similar violations in the future.").

¹⁵⁷ *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 167, 256 (Aug. 28, 2014) (noting that the State had neither effectively investigated threats to HRD's their family members, nor provided adequate measures for their safety, leading to their forcible displacement, and holding that the State had to guarantee their safety and provide for their expenses, if they chose to return to their former place of residence); *Jiménez Vaca v. Colombia*, Comm. No. 859/1999, Hum. Rts. Comm., CCPR/C/74/D/859/1999, ¶ 5.4 (stating that under ICCPR, art. 2(3), "the State party is under an obligation to provide Mr. Luis Asdrúbal Jiménez Vaca with an effective remedy, including compensation, and to take appropriate measures to protect his security of person and his life so as to allow him to return to the country.").

and to endeavor to repair at the earliest possible opportunity any harm that may have been caused by such violations.”¹⁵⁸

Rehabilitative measures may be especially relevant for certain types of threats and associated violations.

VI. REINFORCED OBLIGATIONS FOR HUMAN RIGHTS DEFENDERS

A. Nature of Reinforced Obligations to Human Rights Defenders

Apart from and in addition to the State’s general duty to protect and promote all human rights,¹⁵⁹ States are bound by a reinforced or special obligation to protect HRDs and prevent violations against them.¹⁶⁰ This special or reinforced obligation derives from the vitally important role that HRDs play in fostering the rule of law and “safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.”¹⁶¹ In this way, ensuring protections that

¹⁵⁸ Hum. Rts. Comm., *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 19, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (2004).

¹⁵⁹ OSCE, *Guidelines on the Protection of Human Rights Defenders*, OSCE/ODIHR 2014, ¶ 4 (2014).

¹⁶⁰ Inter-Am. Comm’n H.R., *Report on Situation of Human Rights Defenders in Americas*, OEA/Ser.L/V/II.124 Doc. 5 rev. 1, ¶ 30 (2006); *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 142; *Colombian Commission of Jurists regarding Colombia*, Provisional Measures, Order of the Court, “Considering,” ¶ 24 (Inter-Am. Ct. H.R. Nov. 25, 2010), http://www.corteidh.or.cr/docs/medidas/ccj_se_01_ing.pdf (considering that States have a particular obligation to protect those persons who work in NGOs and HRDs so that they may freely carry out their activities, in a case considering additional provisional measures requested by a Commission of Jurists facing continuous threats and harassment).

¹⁶¹ U.N. Declaration on HRDs, art. 18; OSCE, *Guidelines on the Protection of Human Rights Defenders*, OSCE/ODIHR 2014, ¶ 3 (2014); Inter-Am. Comm’n H.R., *Report on Situation of Human Rights Defenders in Americas*, OEA/Ser.L/V/II.124, doc. 5 rev. 1 ¶¶ 1, 23 (2006); *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 123; *Valle-Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶¶ 87–88 (Nov. 27, 2008); *Castillo González*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 256, ¶ 124 (Nov. 27, 2012).

enable HRDs to pursue human rights work is “fundamental to achieving universal respect for human rights.”¹⁶²

Furthermore, HRDs face structural discrimination and patterns of violence, heightened, or special risk¹⁶³ arising from the context of their work¹⁶⁴ (e.g., combating corruption, fighting for environmental and land protection), the areas in which they operate (e.g., conflict or post-conflict zones, rural settings, urban areas), or their association with marginalized groups (e.g., women, LGBTI persons, members of indigenous peoples, defenders of persons suffering from albinism).¹⁶⁵ States are required to take “special or specific measures” to protect such HRDs, whose lives are placed at particular risk because of threats.¹⁶⁶

Examples of the structural discrimination and patterns and contexts of violence faced by HRDs include:

- **Women HRDs** face special risk in the context of threats and intimidation because of “their status as women and because they strove to defend and promote human rights,” meaning that such violations are often gender-based violations based on patriarchal cultures and deeply-rooted stereotypes.¹⁶⁷ Women HRDs experience

¹⁶² U.N. High Commissioner for Human Rights, Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights, at 18 (2004).

¹⁶³ *Lima Lopez v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 169, ¶ 127 (Oct. 10, 2013); *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 155; *Vélez Restrepo and Relatives v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 201 (Sep. 3, 2012).

¹⁶⁴ U.N. High Commissioner for Human Rights, Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights, at 18 (2004); OSCE, Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR 2014, ¶ 4 (2014).

¹⁶⁵ U.N. G.A. Res. 70/217, ¶ 56 (2015).

¹⁶⁶ Hum. Rts. Comm., *General Comment No. 36: on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, ¶ 27 (advanced unedited version). Included are also ethnic and religious minorities, indigenous peoples, LGBTI persons, and women.

¹⁶⁷ U.N. G.A. Res. 70/217, ¶¶ 61–62 (2015); Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, ¶ 6 (1992); *Egyptian Initiative for Personal Rights & INTERRIGHTS v. Egypt*, Comm. 323/06, Afr. Comm’n H.P.R., ¶¶ 154, 152 (Dec. 16, 2011) (finding gender discrimination for petitioners, four journalist WHRDs who were threatened, harassed, sexually assaulted, and beaten at a political protest in Egypt while the perpetrators and nearby state authorities used words including “slut,” “whore,” and “This is so that you stop coming to the areas belonging to men!” during the assault).

“particularly virulent harassment, defamation and stigmatization campaigns” online that attack their “respectability and credibility as a woman defender, woman, mother, or citizen.”¹⁶⁸

- **Environmental and land HRDs** face increasing threats owing to their work,¹⁶⁹ which is facilitated by weak institutional systems and a lack of effective mechanisms for corporate accountability.¹⁷⁰ Such threats and intimidation violate their right to protest¹⁷¹ as well as other fundamental human rights.¹⁷²

- **Indigenous and afro-descendant leaders and HRDs** are exposed to threats and attacks for their advocacy of, for example, defending their lands or working to achieve autonomy¹⁷³ and are increasingly at risk of threats and attacks that cause forced displacement.¹⁷⁴ This is compounded by the lack of, or failure to, implement legal and institutional framework that recognizes the rights of indigenous communities.¹⁷⁵

- **Trade Union leaders and HRDs** face threats, intimidation, and illegal intelligence activities, which “could be used for harassment, assault and other forms of aggression against union members.”¹⁷⁶

¹⁶⁸ U.N. G.A. Res. 70/217, ¶ 61.

¹⁶⁹ *Kavas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 148 (Apr. 3, 2009) (stating that “[t]he recognition of the work in defense of the environment and its link to human rights is becoming more prominent across the countries of the region, in which an increasing number of incidents have been reported involving threats and acts of violence against and murders of environmentalists owing to their work” in a case considering murder of HRD).

¹⁷⁰ U.N. G.A. Res. 70/217, ¶ 68.

¹⁷¹ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 79 (2011).

¹⁷² There is specific recognition on the role of environmental and land HRDs, their contributions and protection needs. See Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, adopted in Escazú, Costa Rica on 4 March 2018; HRC Resolution recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development. A/HRC/40/L.22/Rev. 1 of 20 March 2019.

¹⁷³ U.N. G.A. Res. 70/217, ¶ 73; Inter-Am. Comm’n H.R., Report on Situation of Human Rights Defenders in Americas, OEA/Ser.L/V/II.124, doc. 5 rev. 1 ¶ 220 (2006).

¹⁷⁴ Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66 rev. ¶¶ 297, 299, 302 (2011).

¹⁷⁵ U.N. G.A. Res. 70/217, ¶ 73.

¹⁷⁶ Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66 rev. ¶ 270.

- **Journalists and HRDs** disseminating information face special risk owing to the exercise of their profession, the type of events they cover, the public interest of the information they disseminate, or the areas they must go to in order to do their work, and States are required to adopt special measures for prevention and protection.¹⁷⁷

- **LGBTI HRDs** often face acts of aggression, harassment, threats and smear campaigns waged by State and non-State actors alike for defending the rights of lesbian, gay, bisexual, transsexual and intersex (LGBTI) persons.¹⁷⁸

B. Effects of the Reinforced Obligations to Human Rights Defenders

In addition to the State's obligation to create a safe and enabling environment and general measures to protect HRDs, the reinforced obligation to protect, prevent, and ensure the rights of HRDs requires States to take special measures to protect these defenders against threats that hinder their human rights work.¹⁷⁹ Broadly,

¹⁷⁷ *Vélez Restrepo and Relatives v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 194 (Sep. 3, 2012) (stating that “[j]ournalism can only be exercised freely” when journalists are “not victims of threats or physical, mental or moral attacks or other acts of harassment”).

¹⁷⁸ Margaret Sekaggya, UN Special Rapporteur on the situation of human rights defenders, A/HRC/13/22, 13th session, December 30, 2009, ¶ 49; Inter-Am. Comm'n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 rev. ¶ 328; and European Parliament, *Resolution on Equal Rights for Gays and Lesbians in the European Community*, Resolution A3-0028/94, June 3, 2008, general considerations 9-11.

¹⁷⁹ *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 141–42, 157, 263 (Aug. 28, 2014) (holding that the State had a heightened obligation under ACHR, art. 1 towards HRDs and laying down various protective measures that States had to implement for HRDs [at ¶ 157] in consultation with the HRD, in a case where the State had failed to adequately and punctually investigate threats and protect HRDs/their family members); *Lysias Fleury et al. v. Haiti*, Merits, Reparations, and Cost, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 236, ¶ 81 (Nov. 23, 2011) (observing that HRDs could defend rights only if they were not victimized by threats and violence and holding that that States are obligated to take special measures to protect them in a case where a HRD was detained without a warrant, beaten and threatened repeatedly); *Lysias Fleury*, Provisional Measures, Order of the Court, “Considering,” ¶ 5 (Inter-Am. Ct. H. R. June 7, 2003), http://www.corteidh.or.cr/docs/medidas/fleury_se_01_ing.pdf (considering that the State had to pay special attention to protect HRDs against actions that limit or hinder their work directly or indirectly in the case of an HRD who had been detained and beaten and, since his release, had been living in hiding due to continuous threats despite previous provisional measures).

such measures include:

- guaranteeing everyone the right to engage in the activities of a defender,¹⁸⁰
- “specific and enhanced protection at local, national and international levels;”¹⁸¹
- “publicly acknowledge[ing] the important and legitimate role of human rights defenders;”¹⁸²
- enacting “relevant legislative and policy frameworks;”¹⁸³
- adopting or fulfilling judicial and administrative measures to protect HRDs,¹⁸⁴ and
- investigating threats and attacks.

Specifically, and depending on individual circumstances, reinforced obligations may require States to take the following special measures aimed at protecting HRDs against threats and preventing violation of their rights: promptly investigating and punishing persons responsible for threats and providing adequate redress to the defender,¹⁸⁵ providing means of reporting threats

¹⁸⁰ OSCE, Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR 2014, ¶ 4 (2014); U.N. Human Rights Council Res. 31/32, U.N. Doc. A/HRC/RES/31/32, ¶ 15 (2016) (stating that States should also take necessary measures to safeguard space for trade union leaders and members).

¹⁸¹ OSCE, Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR 2014, ¶ 4; Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, doc. 5 rev. 1 ¶ 342 *Recommendation No. 2* (2006).

¹⁸² OSCE, Guidelines on the Protection of Human Rights Defenders, OSCE/ODIHR 2014, ¶ 3; Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, doc. 5 rev. 1 ¶ 47 (2006); O.A.S., OEA/Ser.L/V/II CIDH/RELE/INF.2/09, ¶¶ 178, 212 (2009) (journalists).

¹⁸³ U.N. Human Rights Council Res. 31/32, U.N. Doc. A/HRC/RES/31/32, ¶ 8 (2016).

¹⁸⁴ *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 213 (Apr. 3, 2009) (considering that in the context of attacks and threats against Environmental HRDs, States are obligated to fulfil and/or “adopt legislative, administrative and judicial measures, or to fulfill those already in place, guaranteeing the free performance of environmental advocacy activities”).

¹⁸⁵ U.N. Human Rights Council Res. 31/32, U.N. Doc. A/HRC/RES/31/32, ¶ 1; James Anaya (Special Rapporteur on the Rights of Indigenous Peoples), *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, U.N. Doc. A/HRC/24/41, ¶ 21 (2013); Inter-Am. Comm’n H.R.,

and situations of risks,¹⁸⁶ assigning police protection,¹⁸⁷ issuing protection or restraining orders against potential aggressors,¹⁸⁸ and refraining from increasing risks through adverse official speeches.

While assessing the suitability of the aforementioned special measures for HRDs, States are required to take the following principles into account:

- protective measures must be decided in consultation with HRDs in order to “ensure a timely and focused intervention, proportionate to the danger;”¹⁸⁹
- measures must be decided while considering the functions performed by the HRD;¹⁹⁰
- measures must be decided while considering the level of risk faced by the HRD¹⁹¹ and monitor those that are in force;¹⁹²

Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, doc. 5 rev. 1 ¶ 47 (2006); Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66 rev. ¶¶ 270, 320, 506 (2011); *Velásquez Rodríguez v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 120, 131, 161, 173–74 (July 29, 1988) (holding that the State was obligated to take reasonable measures to prevent the threats, assaults and harassment of HRDs, conduct serious investigations, punish those responsible and adequately redress the victim, in a case considering prolonged and continuing disappearance of the victim); *Luna Lopez v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 169, ¶ 137 (Oct. 10, 2013); *Vélez Restrepo and Relatives v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 248, ¶ 194 (Sep. 3, 2012).

¹⁸⁶ *Luna Lopez v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 169, ¶ 123.

¹⁸⁷ Hum. Rts. Comm., *General Comment No. 36: on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, ¶ 27 (advanced unedited version).

¹⁸⁸ *Id.*

¹⁸⁹ *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 157 (Aug. 28, 2014).

¹⁹⁰ *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 141–42, 157, 263; Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, doc. 5 rev. 1 ¶ 134 (2006).

¹⁹¹ *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 157; Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66, rev. ¶ 493 (2011).

¹⁹² *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 157.

- measures must be modifiable “in accordance with changes in the level of danger;”¹⁹³
- States must take a “gender-based approach within the risk-assessment procedure;”¹⁹⁴ and
- States must take into account gender-based violence while implementing specific measures to protect women HRDs, their families, and associates.¹⁹⁵

Once States have decided on the nature of special measures to be implemented for HRDs on the basis of the aforementioned principles, the State must implement these measures in the following manner to be effective:

- measures should be implemented in a timely manner, requiring the State to respond immediately after it becomes aware of the danger,¹⁹⁶
- personnel involved in protection of HRDs should have the necessary training “to perform their functions and understand the importance of their actions,”¹⁹⁷ and
- “measures must be kept in effect for as long as the victims of violence

¹⁹³ *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 157; Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66 rev. ¶ 524 (2011).

¹⁹⁴ *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 157; Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66 rev. ¶ 512 (2011); Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, doc. 5 rev. 1 ¶ 342 Recommendation No. 7 (2006).

¹⁹⁵ *Margaret Sekaggya* (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 27 (2011); U.N. Human Rights Council Res. 31/32, U.N. Doc. A/HRC/RES/31/32, ¶ 9 (2016); U.N. G.A. Res. 68/181, ¶¶ 8–9, 17 (2014); Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, art. 7(d).

¹⁹⁶ *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 157.

¹⁹⁷ James Anaya (Special Rapporteur on the Rights of Indigenous Peoples), *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, U.N. Doc. A/HRC/24/41, ¶ 21 (2013); *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 157; Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II., doc. 66 rev. ¶ 525 (2011).

or threats require them.”¹⁹⁸

VII. OBLIGATIONS BY NON-STATE ACTORS

Although States bear the primary responsibility to protect HRDs from the actions of State and non-States actors, as examined above, the U.N. Declaration on HRDs is addressed not only to States but to all individuals, groups, and organs of society.¹⁹⁹

Some of the non-State actors that most commonly violate the rights of HRDs include armed groups, private corporations, individuals, and the media.²⁰⁰ These non-State actors are obliged to comply with national laws in conformity with international standards and norms and can, therefore, be held accountable for criminal offenses under national law.²⁰¹ Additionally, pursuant to the U.N. Declaration on HRDs, non-State actors should refrain from limiting the enjoyment of human rights by HRDs, including the right to defend rights.²⁰²

Specifically, national and transnational corporations have a responsibility to protect human rights, including those of HRDs.²⁰³ This obligation is also envisaged in the U.N. Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights.²⁰⁴

¹⁹⁸ *Human Rights Defender et al. v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 157; Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, doc. 5 rev. 1 ¶ 134 (2006).

¹⁹⁹ Preamble and Articles 11, 12.3 and 19 of the U.N. Declaration on HRDs.

²⁰⁰ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 35, U.N. Doc. A/65/223 (2010), ¶¶ 4-20.

²⁰¹ *Id.* ¶ 21.

²⁰² *Id.* ¶ 22.

²⁰³ Report submitted by John Ruggie to the Human Rights Council (A/HRC/8/5) in 2008 and HRC resolution 8/7.

²⁰⁴ UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights. U.N. Doc. E/CN.4/Sub.2/2003/12/Rev. 2 (2003).

Businesses must ensure that their activities do not infringe upon the rights of defenders, which means they should identify and prevent human rights violations against HRDs that may result from its activities and operations.²⁰⁵ Further, companies should: include a reference to the U.N. Declaration on HRDs in their corporate social responsibility and human rights policies; systematically consider involving HRDs in their country assessment prior to undertaking investment in a given State; influence their national parent companies to adopt the same approach; and consider developing national human rights policies in cooperation with HRDs.²⁰⁶

Business leaders need to take a strong interest in keeping civic space open wherever they operate, as it is only in an environment where HRDs are able to speak freely that businesses can effectively identify and prevent negative human rights impacts.²⁰⁷

According to the U.N. Guiding Principles on Business and Human Rights, companies are expected to respect human rights and conduct due diligence wherever they operate, and to use their leverage to reduce harm and mitigate human rights risks.²⁰⁸

VIII. SUBSTANTIVE HUMAN RIGHTS VIOLATED BY THREATS

Threats and intimidation can violate substantive human rights in three distinct ways. First, the existence of threats and intimidation can be a direct violation of

²⁰⁵ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 35, U.N. Doc. A/65/223 (2010), ¶ 25.

²⁰⁶ *Id.* ¶¶ 26-27.

²⁰⁷ Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi. A/HRC/41/CRP.1, 19 June 2019, ¶ 446.

²⁰⁸ HRC Resolution recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development. A/HRC/40/L.22/Rev. 1 of 20 March 2019.

the substantive right. Second, the existence of threats and intimidation combined with the failure of the State to fulfil its obligation to protect, prevent, or investigate can constitute a violation of the substantive right. Third, the existence of threats and intimidation combined with the failure of the State to fulfil its obligation to protect, prevent or investigate, followed by an actual attack on the person, can rise to the level of a violation of the substantive right. All rights enumerated below—except for the right to life—include jurisprudence finding violations of the first category and some important rights—such as the right to security and integrity of persons—include jurisprudence of rights violated due to threats in all three categories.

A. The Right to Life

The right to life and the right to the protection of life is guaranteed under international law.²⁰⁹ In its most progressive and evolving expression, the obligation of States to protect the right to life extends to “all threats that can result in loss of life . . . even if such threats have not actually resulted in loss of life.”²¹⁰ States must take appropriate legal measures to protect the right to life from threats originating from both State and non-State actors.²¹¹ The responsibility to respect the right to life applies extraterritorially, at a minimum to those under the effective control of the State.²¹² The duty to investigate violations of the right to life is an integral part of the duty to protect the right to life guaranteed by Article 6.1 of the ICCPR.

²⁰⁹ UDHR, art. 3 (“Everyone has the right to life . . .”); ICCPR, art. 6(1) (“Every human being has the inherent right to life. This right shall be protected by law”); ACHPR, art. 4 (“Every human being shall be entitled to respect for his life . . .”); ACHR, art. 4 (“Every person has the right to have his life respected. This right shall be protected by law . . .”); ECHR, art. 2 (“Everyone’s right to life shall be protected by law.”).

²¹⁰ Hum. Rts. Comm., *General Comment No. 36: on Article 6 of the International Covenant on Civil and Political Rights*, on the Right to Life, ¶ 7 (advanced unedited version).

²¹¹ Hum. Rts. Comm., *General Comment No. 36: on Article 6 of the International Covenant on Civil and Political Rights*, on the Right to Life, ¶ 22 (advanced unedited version).

²¹² Annex to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Investigation into the unlawful death of Mr. Jamal Khashoggi. A/HRC/41/CRP.1, 19 June 2019, ¶ 193.

In the European system, death threats may amount to a violation of the right to the protection of life if the State fails to prevent and protect persons against such threats which then ultimately leads to the death of the person,²¹³ including when failing to investigate those threats.²¹⁴

In the Inter-American system, death threats present an irreparable danger to the right to life, thus giving rise to State obligations to prevent violations of the right

²¹³ *Osman v. United Kingdom*, App. No. 23452/94, Eur. Ct. H.R., ¶ 117 (Oct. 28, 1998) (establishing the Eur. Ct. H.R. standard for death threats as a violation of ECHR, art. 2 right to life and finding a violation of the State's positive obligation to protect the right to life when "the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual . . . from the criminal acts of a third party" and that "the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge"); *Mahmut Kaya v. Turkey*, App. No. 22535/93, Eur. Ct. H.R., ¶¶ 101–02 (Mar. 28, 2000) (finding a violation of ECHR, art. 2 right to life because authorities failed to take reasonable measures to prevent a real and imminent risk to the life of the applicant, a doctor who had been threatened (including death threats) and harassed prior to being disappeared, tortured, and killed for advocating to improve prison conditions and treating demonstrators who had been hurt in demonstrations).

²¹⁴ *Jiménez Vaca v. Colombia*, Comm. No. 859/1999, Hum. Rts. Comm., CCPR/C/74/D/859/1999, ¶ 7.3 (Apr. 15, 2002) (finding that the State's failure to investigate the numerous complaints of the Petitioner (a HRD, lawyer, and legal adviser to trade unions and other people's and peasants' organization as well as advocate on labor and social commissions) regarding threats and harassment, including constant surveillance, death threats, harassment via phone calls, and threatening messages targeting Petitioner and his family, which lead to an attempt on his life is a violation of his ICCPR, art. 6 right to life); *Mahmut Kaya v. Turkey*, App. No. 22535/93, Eur. Ct. H.R., ¶¶ 101–02 (finding a violation of Petitioner's ECHR, art. 2 right to life because authorities failed to take reasonable measures available—including some form of effective official investigation—to prevent a real and imminent risk to the life of the applicant, a doctor who had been threatened (including death threats) and harassed prior to being disappeared, tortured, and killed for advocating to improve prison conditions and treating demonstrators who had been hurt in demonstrations); *Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt*, Comm. 323/06, Afr. Comm'n H.P.R., ¶¶ 230, 233 (Dec. 16, 2011) (holding that the investigation carried out for arguable claims of ill-treatment in breach of the ACHPR must be prompt and impartial to be effective).

²¹⁵ *Kawas Fernandez v. Honduras*, Provisional Measures, Inter-Am. Ct. H.R., "Considering," ¶¶ 6, 8 (Nov. 29, 2008), http://www.corteidh.or.cr/docs/medidas/kawas_se_01_ing.pdf (considering provisional measures for protection of the right to life and physical integrity of a key witness receiving death threats, in the case of *Kawas Fernandez v. Honduras*, an environmental activist who

to life.²¹⁵ However, death threats or threats of other kind,²¹⁶ in themselves do not constitute a violation of the right to life. Instead, threats coupled with the State's failure to respond adequately amount to State failure to fulfil its obligation to guarantee the right to life in relation to its general obligation under ACHR, art. 1.²¹⁷

In the African system, the African Commission has noted that to find a violation of the right to life only when a person has been deprived of it would constitute an excessively narrow interpretation of the right.²¹⁸ Therefore, actions by the State that cause persons to live in hiding due to a constant fear and threat to their life after they had been subjected to arbitrary arrest, detention, and inhuman treatment by State authorities is a violation of the right to life.²¹⁹

B. The Right to Security and Integrity of Persons

was murdered by Honduran State agents); Inter-Am. Comm'n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 151 (2006) ("In general, disappearances and extrajudicial executions are preceded by the lack of adequate protection for human rights defenders who report having been victims of persecution and threats. The Commission notes that the lack of adequate protection for defenders who report having been victims of persecution, surveillance, and threats, entails a lack of protection and total defenselessness that fosters attacks on their lives.").

²¹⁶ However, in the case of survivors of massacres, the Inter-Am. Ct. H.R. held that attempted killing warrants the application of ACHR, art. 4 right to life. See *La Rochela Massacre v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 175, ¶¶ 127–28, "Concurring Opinion," ¶ 5 (Jan. 28, 2008) (holding that a massacre/execution constitutes a threat to life when the victims are not killed or escape, but that threats, in and of themselves, do not amount to a violation of the right to life, which requires an attack on the protected sphere with sufficient gravity).

²¹⁷ Inter-Am. Comm'n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 45 (2006); *Luna Lopez v. Honduras*, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 269, ¶ 137 (Oct. 10, 2013); *Kamas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶ 74 (Apr. 3, 2009); *Giraldo Cardona et. al v. Colombia*, Order of the Court, Inter-Am. Ct. H.R. (ser. E) No. 2, "Resolves," ¶ 4 (June 19, 1998).

²¹⁸ *Kazem Aminu v. Nigeria*, Comm. No. 205/97, Afr. Comm'n H.P.R., ¶ 18 (May 11, 2000).

²¹⁹ *Id.* ¶¶ 17–18.

The right to security and integrity of persons is protected under international law.²²⁰ The right to liberty includes the freedom from confinement of the body; the right to security of persons includes the freedom from injury to the body, mind, or physical and mental integrity of the person.²²¹ The Inter-American system couches the right to physical, mental and moral integrity, and right against deprivation of liberty within the right to humane treatment,²²² which also subsumes the right to be free from torture and ill-treatment.²²³ The U.N. Human Rights Committee notes that the right to security and integrity of persons may be invoked not only in the context of arrests and detentions, but also in terms of threats against persons outside of detention since “an interpretation of [the right] which would allow a State party to ignore threats to the personal security of non-detained persons within its jurisdiction would render ineffective the guarantees of the [ICCPR].”²²⁴ Therefore, the right to security is afforded to detained and non-detained persons equally and protects against the intentional infliction of bodily and psychological injury.²²⁵

In relation to the right to liberty, a detention is arbitrary and unlawful when done outside of the grounds and the formalities prescribed by law, when it is executed without observing the procedures that the law prescribes, and when there has been

²²⁰ UDHR, art. 3 (“Everyone has the right to . . . liberty and security of person.”); ICCPR, art. 9 (“Everyone has the right to liberty and security of person.”); ACHPR, art. 6 (“Every individual shall have the right to liberty and to the security of his person.”); ACHR, arts. 5 (“Every person has the right to have his physical, mental, and moral integrity respected.”), 7 (“Every person has the right to personal liberty and security.”); ECHR, art. 5 (“Everyone has the right to liberty and security of person.”).

²²¹ Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Persons)*, ¶ 3, U.N. Doc. CCPR/C/GC/35 (2014).

²²² ACHR, art. 5.

²²³ See *infra* Section VI.C *The Right to be Free from Torture and Cruel, Inhuman, Degrading, or Ill-Treatment*.

²²⁴ *Bahamonde v. Equatorial Guinea*, Comm. No. 468/1991, Hum. Rts. Comm., CCPR/C/49/D/468/1991, ¶ 9.2 (Oct. 20, 1993); *Delgado Páez v. Colombia*, Comm. No. 195/1985, Hum. Rts. Comm., CCPR/C/39/D/195/1985, ¶ 5.5 (July 12, 1990); *Bwalya v. Zambia*, Comm. No. 314/1988, Hum. Rts. Comm., CCPR/C/48/D/314/1988, ¶ 6.4 (July 27, 1993).

²²⁵ Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Persons)*, ¶ 9, U.N. Doc. CCPR/C/GC/35 (2014).

an abuse of the powers of arrest, that is, when the arrest is made for purposes other than those the law prescribes and requires.²²⁶

The State is obligated to take appropriate measures in response to death threats in the public sphere and to protect persons from foreseeable threats to life or bodily integrity originating from both State and non-State actors.²²⁷ Generally, the right to personal security is broader than the right to life or the right to the protection of life since it encompasses non-life-threatening injuries.²²⁸ While some human rights mechanisms consider the lack of protection or investigation of death threats as a violation of the right to life,²²⁹ others view this as a violation of the right to integrity and security of persons.²³⁰

Threats, including threats aimed at diminishing physical and mental capacity,²³¹ death threats, and harassment constitute violations of the right to security or integrity of persons in the following circumstances. First, threats themselves may constitute a violation of the right to security and integrity,²³² particularly when

²²⁶ Inter-Am. Comm'n H.R. Report No. 35/08, Cae 12.019, Admissibility and Merits, Antonio Ferreira Braga, Brazil, July 18, 2008, ¶ 68. UNWGAD, Opinion No. 62/2018 concerning Wang Quanzhang, Jian Tianyong and Li Yuhan (China), 12 October 2018.

²²⁷ Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Persons)*, ¶ 9, U.N. Doc. CCPR/C/GC/35.

²²⁸ *Id.* ¶ 55.

²²⁹ See *supra* Section IV.A The Right to Life, which discusses the approaches of the Inter-American, European, and African human rights mechanisms.

²³⁰ Notably, U.N. Hum. Rts. Comm. jurisprudence. The draft of the forthcoming General Comment No. 36 on the right to life sheds light on the issue, stating the right to life “goes beyond injury to bodily or mental integrity or threat thereto, which are prohibited by [ICCPR] article 9, paragraph 1” and extends to “deliberate or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission.” Hum. Rts. Comm., *General Comment No. 36: on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, ¶ 6 (advanced unedited version).

²³¹ Inter-Am. Comm'n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 rev. ¶ 41 (2011).

²³² Inter-Am. Comm'n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 rev. ¶ 41; *Dianna Ortiz v. Guatemala*, Case 10.526, Inter-Am. Comm'n H.R., Report No. 31/96, OEA/Ser.L/V/II.95, doc. 7 rev. 332 ¶ 106 (Oct. 16, 1996) (finding that threats by State agents through letters and personal confrontation constituted violation of the Petitioner's physical, moral and mental integrity, in a case concerning threats, kidnapping, torture, and sexual assault in detention).

issued by State authorities,²³³ including threats received from police officers²³⁴ and heads of state.²³⁵ Second, threats may violate the right to security and integrity of persons when coupled with the State's failure to take appropriate or adequate measures of protection.²³⁶ Additionally, the State violates the right to integrity if it fails to adequately respond despite being aware of a campaign of threats,

²³³ *Ghazi Suleiman v. Sudan*, Comm. No. 228/99, Afr. Comm'n H.P.R., ¶ 53 (May 29, 2003) (finding a violation of the ACHPR, art. 6 right to liberty and security of persons when State authorities first threatened to arrest and detain Petitioner, a human rights lawyer, and later arrested and detained him to prevent him from traveling and speaking to a group of human rights defenders in a different part of the country).

²³⁴ *Njaru v. Cameroon*, Comm. No. 1353/2005, Hum. Rts. Comm., CCPR/C/89/D/1353/2005, ¶ 6.3 (Apr. 3, 2007) (finding a violation of Petitioner's ICCPR, art. 9 right to integrity and security because Petitioner, a journalist and human rights advocate, was subjected to threats and harassment by the police, including "threat[s] to detain him for an indefinite time, to parade him naked in front of women and female children, and to kill him" for investigating police corruption).

²³⁵ *Jayawardena v. Sri Lanka*, Comm. No. 916/2000, Hum. Rts. Comm., CCPR/C/75/D/916/2000, ¶ 7.2 (July 26, 2002) (finding a violation of Petitioner's ICCPR, art. 9(1) right to security of person because the President of Sri Lanka threatened Petitioner and, because the accusations were widely publicized through radio, TV, and newspaper, the Petitioner received of hundreds of death threats that caused him to fear for his life and stating that "because the statements in question were made by the Head of State acting under immunity enacted by the State party" the Committee finds a violation); *Babamonde v. Equatorial Guinea*, Comm. No. 468/1991, Hum. Rts. Comm., CCPR/C/49/D/468/1991, ¶ 9.2 (Oct. 20, 1993) (finding a violation of Petitioner's ICCPR, art. 9(1) right to integrity and security because of the State's failure to protect Petitioner from harassment, intimidation, and threats by State officials, including members of the government of President Obiang Nguema).

²³⁶ *Delgado Páez v. Colombia*, Comm. No. 195/1985, Hum. Rts. Comm., CCPR/C/39/D/195/1985, ¶ 5.6 (July 12, 1990) (finding that "States parties are under an obligation to take reasonable and appropriate measures to protect" persons within their jurisdiction from threats and finding a violation of Petitioner's ICCPR, art. 9 right to liberty and security because the state failed to take reasonable and appropriate measures to protect him from death threats he received at his home and teaching residence even after one of his colleagues was shot to death outside of her teaching residence); *Jiménez Vaca v. Colombia*, Comm. No. 859/1999, Hum. Rts. Comm., CCPR/C/74/D/859/1999, ¶ 7.2 (Apr. 15, 2002) (finding a violation of the Petitioner's ICCPR, art. 9(1) right to integrity and security after the State failed to take steps to ensure Petitioner's safety in light of the threats made against him, particularly considering the subsequent attempt on the Petitioner's life); *Días v. Angola*, Comm. No. 711/1996, Hum. Rts. Comm., CCPR/C/68/D/711/1996, ¶ 8.3 (Mar. 31, 2000) (finding a violation of Petitioner's ICCPR, art. 9(1) right to integrity and security and ICCPR, art. 2(3)(a) failure to take adequate measures of protection when Petitioner received threats

harassment, and surveillance that has caused victims distress and fear.²³⁷ Third, threats (including death threats) violate the right to security and integrity of persons if the State fails to investigate such threats. Failure to investigate may manifest as failure to investigate after numerous complaints,²³⁸ failure to conduct investigations in a timely, effective, and complete manner,²³⁹ or failure to investigate which leads to a subsequent attempt on the person's life.²⁴⁰

(including threats from police) during investigation into the death of his business partner, which caused him to leave Angola to which he has not returned); *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶¶ 425–40 (Nov. 16, 2009); *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 160 (Aug. 28, 2014) (noting the State had not provided adequate and effective special measures of protection to a murdered HRD's family who faced threats and harassment).

²³⁷ Inter-Am. Comm'n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 rev. ¶ 44 (2011); *Gutiérrez-Soler v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶¶ 56–57 (Sep. 12, 2005) (holding a violation of their right of personal integrity under ACHR, art. 5(1), in relation to Article 1(1), because the Petitioner was detained by State authorities and tortured to extract a confession and, after his release, Petitioner and his family were subjected to a campaign of threats and harassment, due to which they suffered constant fear, distress, and family separation).

²³⁸ *Jayawardena v. Sri Lanka*, Comm. No. 916/2000, Hum. Rts. Comm., CCPR/C/75/D/916/2000, ¶ 7.3 (July 26, 2002) (finding a violation under ICCPR, art. 9(1) right to liberty and security because of a failure to investigate Petitioner's three separate complaints to the police and three appeals to the government directly through communications and appearances in Parliament regarding the numerous the death threats he had received).

²³⁹ *Chongwe v. Zambia*, Comm. No. 821/1998, Hum. Rts. Comm., CCPR/C/70/D/821/1998, ¶ 5.3 (Oct. 25, 2000) (finding that the author's right to security under ICCPR, art. 9(1) was violated when Petitioner, an advocate and chairman of the opposition alliance was threatened and shot at a political rally to launch a civil disobedience campaign and subsequent independent investigation had been refused by the State, police investigations had not been concluded or made public three years after the shooting, criminal proceedings had not been initiated, and claims for compensation by Petitioner had been rejected); *García-Prieto et al. v. El Salvador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 168, ¶¶ 154–55, 159–60 (Nov. 20, 2007) (finding a violation of the right to physical integrity ACHR [finding State's violation of the right to integrity in conjunction with the its general obligation because of failure to conduct effective investigation(s) into the threats and harassment of García Prieto and his family, resulting in continuation of the same).

²⁴⁰ *Jiménez Vaca v. Colombia*, Comm. No. 859/1999, Hum. Rts. Comm., CCPR/C/74/D/859/1999, ¶ 7.2 (Apr. 15, 2002) (finding a violation of the Petitioner's ICCPR, art. 9(1) right to integrity and security after the State failed to take steps to ensure Petitioner's safety

Additionally, the arbitrary detention of HRDs is often used as a mechanism to keep defenders from doing their work.²⁴¹ As such, the arbitrary arrest of HRDs (e.g., under administrative detention or preventive detention during a state of emergency, social unrest or armed conflict) can constitute a serious threat against HRDs in some situations, which infringes upon the right to liberty. Even in peacetime, an arrest or threat of arrest under false charges would constitute arbitrary arrest and therefore violate the right to liberty.²⁴²

C. The Right to be Free from Torture and Cruel, Inhuman, Degrading or Ill-Treatment

The right to be free from torture and cruel, inhuman, degrading, and ill-treatment is protected under international law.²⁴³ The right includes protection of the “dignity and the physical and mental integrity of the individual” and is protected whether it is “inflicted by people acting in their official capacity, outside their official capacity, or in a private capacity.”²⁴⁴

The right to be free from torture and ill-treatment may be violated due to threats

in light of the threats made against him and failed to investigate the threats, particularly considering the subsequent attempt on the Petitioner’s life).

²⁴¹ Inter-Am. Comm’n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 rev. ¶ 112 (2011).

²⁴² *Valle-Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 69 (Nov. 27, 2008);

²⁴³ UDHR, art. 5 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or 21 punishment.”); ICCPR, art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); CAT, art. 2 (“Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”); ACHPR, art. 5 (“All forms of exploitation and degradation of man particularly . . . torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”); ACHR, art. 5 (“No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.”); ECHR, art. 3 (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”).

²⁴⁴ Hum. Rts. Comm., *General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, ¶ 2, U.N. Doc. CCPR/GC/C/20 (1992).

and intimidation in three distinct ways. First, threats issued to persons in detention may amount to psychological torture or cruel, inhuman, and degrading treatment in violation of the right to be free from torture and ill-treatment. Such cases include threats of torture, threats of severe pain, or threats of physical harm.²⁴⁵ The Inter-American system has concluded that “the threat or real danger of subjecting a person to physical harm produces, under determined circumstances,

²⁴⁵ *Estrella v. Uruguay*, Comm. No. 74/1980, Hum. Rts. Comm., CCPR/C/18/D/74/1980, ¶¶ 8.6, 10 (Mar. 19, 1983) (finding inhuman treatment, torture, prison conditions and repeated threats of physical injury, including mock amputations of arms, during Petitioner’s detention constituted violation of his rights); *Baldeón-García v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 147, ¶ 119 (Apr. 6, 2006) (finding that the Petitioner, an elderly peasant, was tortured due to threats and real dangers of physical harm, which caused “a degree of moral anguish” tantamount to psychological torture when Petitioner was arbitrarily arrested, threatened, tortured, and murdered by the Peruvian armed forces); *Cantoral-Benavides v. Peru*, Merits, Inter-Am. Ct. H.R. (ser. C) No. 69, ¶ 102 (Aug. 18, 2000) (holding that the State had psychologically tortured the Petitioner and violated his rights under ACHR, art. 5 while considering his detention by State authorities without a warrant, beatings, and threats of physical torture); *Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs., Inter-Am. Ct. H.R., Series C No. 114, ¶¶ 147, 149 (Sep. 7, 2004) (noting that the Petitioner was forcibly detained for years by authorities, tortured, and threatened, which, in and of itself, constituted psychological torture); *Loayza Tamayo v. Peru*, Compliance with Judgment, Inter-Am. Ct. H.R. (ser. C) No. 60, ¶ 58 (Sep. 17, 1995) (noting that the Petitioner was detained by the Peruvian counter-terrorism bureau on suspicion of associating with an alleged terrorist group where she was subjected to torture, degrading public treatment, and threats of physical violence, the latter which, by itself, constituted cruel, degrading and inhuman treatment under ACHR, art. 5(2)); *Valle-Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 108 (finding a violation for a HRD who was threatened on multiple occasions and abducted along with two other associates who witnessed his murder and were themselves assaulted and threatened with further physical violence); *Eliç and Others v. Turkey*, App. Nos. 23145/93 & 25091/94, Eur. Ct. H.R., ¶ 649 (Nov. 13, 2003) (finding numerous serious violation of ECHR, art. 3 prohibition of torture and inhuman or degrading treatment regarding sixteen detained Petitioners (all human rights lawyers in Turkey) of which some were insulted, assaulted, stripped naked, and hosed down with freezing cold water while others were “insulted, humiliated, slapped, and terrified into signing any document put before them”); *Gäjgen v. Germany*, App. No. 22978/05, Eur. Ct. H.R., ¶ 108 (June 3, 2010) (finding inhuman treatment in violation of CAT, ECHR, and other international law and noting that fear of physical torture may itself constitute mental torture when a police officer threatened the Petitioner with torture and severe pain while he was in detention if applicant did not disclose the location of his kidnapping victim).

such a degree of moral anguish” that it may be considered psychological torture.²⁴⁶ Notably, mental suffering does not have to leave medically certifiable physical or psychological scars to constitute ill treatment.²⁴⁷ Second, threats including intimidation, surveillance, and harassment may amount to torture or cruel, inhuman, and degrading treatment even in cases not involving detention when there is clear evidence of the participation of State authorities²⁴⁸ or where the violation occurred as a result of the actions of a non-State actor acting under the guidance of State authorities.²⁴⁹ Third, threats violate the right to be free from acts of torture and cruel, inhuman, and degrading treatment where non-State actors are engaged in these acts, if the State fails to protect persons through appropriate steps, which may amount to acquiescence, tolerance, and complicity

²⁴⁶ *Maritza Urrutia v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶¶ 69, 92 (Nov. 27, 2003) (finding that abducting and threatening the life and physical harm of Petitioner was violation of ACHR and the Inter-Am.

Convention to Prevent and Punish Torture, where Petitioner, a member of a revolutionary group, engaged in armed uprising and was detained and threatened with physical violence to extract a confession).

²⁴⁷ *Dikme v. Turkey*, App. No. 20869/92, Eur. Ct. H.R., ¶ 80 (July 11, 2000) (finding the mental suffering of detained Petitioner, who “had been constantly subjected to threats and abuse, had been stripped naked several times and had undergone a mock execution,” may fall within ill-treatment even though it was not medically certifiable).

²⁴⁸ *Egyptian Initiative for Personal Rights & INTERIGHTS v. Egypt*, Comm. 323/06, Afr. Comm’n H.P.R., ¶ 209 (Dec. 16, 2011) (finding a violation of ACHPR, art. 5 inhuman treatment when four journalist WHRDs suffered debasing and humiliating treatment that caused physical and emotional trauma when they were threatened, intimidated, harassed, sexually assaulted, and beaten at a political protest in Egypt and state officials witnessing the assault failed to intervene during the commission of the acts and failed to investigate the women’s complaints after the fact); *Gómez López v. Guatemala*, Case 11.303, Inter-Am. Comm’n H.R., Report No. 29/96, OEA/Ser.L/V/II.95, doc. 7 rev. 425 ¶ 77 (1996) (finding periodic threats and intimidation by State authorities that leave psychological scars or seek to destroy the Petitioner’s personality with the aim of dissuade them from social work constitute cruel, inhuman and degrading treatment in light of the fact that the Petitioner was a HRD and union leader who was periodically threatened, intimidated, and almost killed, resulting in his forcible departure from Guatemala).

²⁴⁹ *La Rochela Massacre v. Colombia*, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 163 (May 11, 2007); *The Mapiriján Massacre v. Colombia*, Merits, Reparations and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 134 (Sept. 15, 2005).

with the violations.²⁵⁰ Finally, severe mental pain inflicted by State authorities through credible threats and sleep deprivation in addition to physical beatings against HRDs in detention and the subsequent failure of the State to investigate, punish, and repair such acts once the allegations of torture were brought to the State's attention constitutes a violation of the right to be free from torture and ill-treatment.²⁵¹

D. The Right to Freedom of Opinion and Expression

The right to freedom of opinion and expression is protected under international law,²⁵² and encompasses the right to hold opinions without interference, the right of access to information, and the right to impart information and ideas of all

²⁵⁰ *Džemajl et al v. Yugoslavia*, Complaint No. 161/2000, U.N. Comm. against Torture, CAT/C/29/D/161/2000, ¶¶ 9.2, 9.6 (Nov. 21, 2002) (holding that the burning down of Roma homes by a mob constituted an act of cruel, inhuman, and degrading treatment and the State's failure to take appropriate steps to protect the Petitioners, Roma community members, against risks and threats amounted to acquiescence to these acts, given that police were informed of the immediate risk and present during the incident).

²⁵¹ *Monim Elgak, Osman Hummeida, and Amir Suliman v. Sudan*, Comm. 379/09, Afr. Comm'n H.P.R., ¶¶ 76, 99–101 (Mar. 14, 2014) (finding a violation of the three Petitioners, prominent HRDS who the State authorities accused of working with the International Criminal Court, ACHPR, art. 5 right to be free from torture when they, in addition to severe and sustained beatings, were subjected to “credible threats and a pervasive climate of fear” that caused severe mental pain and suffering (including threats of execution, rape, torture, having gun pointed at head, threats of putting cigarettes out in eye, being exposed to torture instruments, etc.) with the intentional purpose of extracting information about their alleged crime of colluding with the ICC).

²⁵² UDHR, art 19 (“Everyone has the right to freedom of opinion and expression . . .”); ICCPR, art. 19(1) (“Everyone shall have the right to hold opinions without interference.”), 19(2) (“Everyone shall have the right to freedom of expression . . .”); ICERD, art. 5(d)(viii) (stating that State parties undertake to prohibit discrimination in the enjoyment of the right to freedom of opinion and expression); ACHPR, art. 9 (“Every individual shall have the right to express and disseminate his opinions within the law.”); ACHR, art. 13 (“Everyone has the right to freedom of thought and expression.”); ECHR, art. 10 (“Everyone has the right to freedom of expression.”); U.N. Declaration on HRDs, art. 6 (stating that everyone has the right to “know, seek, obtain, receive and hold information” and to “form and hold opinions” related to human rights and “freely to publish, impart or disseminate” those views to others).

kinds.²⁵³ For HRDs, this right also includes the right to develop and discuss new human rights ideas in order to “guarantee the ongoing development of human rights and to protect those defenders that advocate new visions and ideas of human rights.”²⁵⁴ The right to freedom of opinion and expression is an “indispensable condition” for the development of both persons and society and is considered “the foundation stone for every free and democratic society.”²⁵⁵

Threats and intimidation violate the right to freedom of opinion and expression when they interfere or impede the work of HRDs,²⁵⁶ including those who are investigating human rights abuses, gathering information on human rights violations, attempting to access information, or denouncing the lack of transparency between States and companies.²⁵⁷ Further, threats of criminal prosecution for critical statements concerning matters of public interest²⁵⁸ and threats against those who disseminate news and information violate the right

²⁵³ UDHR, art. 19; ICCPR, art. 19(2); ACHPR, art. 9(1); ACHR, art. 13(1); ECHR, art. 10(1); U.N. Declaration on HRDs, art. 6; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23, ¶ 24 (2010).

²⁵⁴ U.N. Declaration on HRDs, art. 7; Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), Commentary on the U.N. Declaration on HRDs, at 84 (2011).

²⁵⁵ Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 2, U.N. Doc. CCPR/C/GC/34 (2011).

²⁵⁶ *Ghazji Suleiman v. Sudan*, Comm. No. 228/99, Afr. Comm’n H.P.R., ¶ 53 (May 29, 2003) (finding a violation of ACHPR, art. 9 freedom of opinion and expression when State authorities threatened to arrest and detain Petitioner, a human rights lawyer, in relation to his speech regarding the promotion and protection of human rights by preventing him from traveling and speaking to a group of human rights defenders in a different part of the country); *Hari-Laws v. Nigeria*, Comm. No. 225/98, Afr. Comm’n H.P.R., ¶¶ 47–48 (Nov. 6, 2000) (finding a violation of ACHPR, art. 9 freedom of expression when State authorities persecuted employees, detained co-workers, and conducted raids of the offices of the Petitioner, a human rights organization working to promote human rights by organizing programs aimed at enlightening the people of their rights, “in an attempt to undermine its ability to function in this regard”).

²⁵⁷ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 59, 63–64 (2011).

²⁵⁸ Inter-Am. Comm’n H.R., Inter-American Legal Framework of the Right to Freedom of Expression, Report No. 2/09, OEA/Ser.L./V/II CIDH/RELE/INF. rev. ¶ 114 (2009).

to freedom of expression.²⁵⁹ While States may impose some limitations on the freedom of expression in other circumstances,²⁶⁰ States may not invoke limitations to “muzzle” human rights advocacy.²⁶¹ Threats against HRDs issued by State authorities do not serve a legitimate purpose in imposing limitations on the right to freedom of expression and, therefore, violate this right.²⁶²

E. The Right to Freedom of Assembly

The right to freedom of assembly is protected under international law.²⁶³ For HRDs, the right to freedom of peaceful assembly is defined as the right to

²⁵⁹ Inter-Am. Comm’n H.R., Declaration of Principles on Freedom of Expression, Principle 9, Doc. OEA/Ser.L/V/I.4 rev. 8 ¶¶ 188–89 (2001).

²⁶⁰ The State may impose certain limitations on the freedom of expression in accordance with ICCPR, arts. 19(3), 20, which requires that any limitations on the freedom of expression must be in accordance with the rule of law and meet the strict requirements of necessity and proportionality. Freedom of opinion does not allow for any limitations or restrictions. Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶¶ 9, 22, U.N. Doc. CCPR/C/GC/34 (2011).

²⁶¹ Hum. Rts. Comm., *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, ¶ 23, U.N. Doc. CCPR/C/GC/34 (2011).

²⁶² *Njaru v. Cameroon*, Comm. No. 1353/2005, Hum. Rts. Comm., CCPR/C/89/D/1353/2005, ¶ 6.4 (Apr. 3, 2007) (finding a violation of the Petitioner’s ICCPR, art. 19(2) right to freedom of expression because Petitioner, a journalist and human rights advocate, was subjected to arrest, torture, and death threats by State authorities due to his investigations related to police corruption and the Committee found that “there can be no legitimate restriction under [ICCPR, art. 19(3)] which would justify these actions by state officials”); *Tulzhenkova v. Belarus*, Comm. No. 1838/2008, Hum. Rts. Comm., CCPR/C/103/D/1838/2008, ¶ 9.2 (Jan. 17, 2012) (finding a violation of the Petitioner’s ICCPR, art. 19(2) right to freedom of expression because the State was unable to justify its limitation of his right under the ICCPR, art. 19(3) strict necessity and proportionality test when it arrested and fined him for distributing leaflets containing information on an upcoming peaceful gathering for which she did not yet have a permit); *Sudalenko v. Belarus*, Comm. No. 1750/2008, Hum. Rts. Comm., CCPR/C/104/D/1750/2008, ¶ 9.3 (May 3, 2012) (finding a violation of the Petitioner’s ICCPR, art. 19(2) right to freedom of expression because the State was unable to justify its limitation of the Petitioner’s right under ICCPR, art. 19(3) necessity for the protection of national security or public order when it seized and destroyed leaflets of Petitioner, a journalist who disseminated information relating to the State’s refusal to register him as a candidate for the National Assembly election).

²⁶³ UDHR, art. 20 (“Everyone has the right to freedom of peaceful assembly . . .”); ICCPR,

assemble with the aim of promoting and protecting human rights.²⁶⁴ It includes meetings in private residences, meetings and conferences in public places, demonstrations, vigils, marches, picket lines, and other assemblies indoors or outdoors.²⁶⁵ As part of its obligation to protect, States should ensure HRDs can participate in peaceful assemblies free from threats of use of force, arrest or detention, inhuman or degrading treatment, or abuse of criminal and civil proceedings.²⁶⁶

The right to freedom of assembly is violated when HRDs or their relatives receive threats or intimidation prior, during, or after participation in peaceful assemblies or protests.²⁶⁷ Threats violate the right whether they are verbal or non-verbal (e.g., funeral wreaths and condolence cards implying the death of a HRD or a relative of an HRD).²⁶⁸ The right to freedom of assembly can be violated by both State authorities and non-State actors.²⁶⁹

art. 21 (“The right of peaceful assembly shall be recognized.”); ICERD, art. 5(d)(ix) (stating that State parties undertake to prohibit discrimination in the enjoyment of the right to freedom of assembly); ACHPR, art. 11 (“Every individual shall have the right to assemble freely with others.”); ACHR, art. 15 (“The right of peaceful assembly, without arms, is recognized.”); ECHR, art. 11 (“Everyone has the right to freedom of peaceful assembly . . .”).

²⁶⁴ U.N. Declaration on HRDs, arts. 5, 12; Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 25 (2011).

²⁶⁵ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 25 (2011).

²⁶⁶ Special Rapporteur on HRDs, A/HRC/22/6, ¶ 6 (2013); U.N. G.A. Res. 68/181, ¶ 8 (2014) (same language); U.N. G.A. Res. 66/164, ¶ 6 (2012) (same language).

²⁶⁷ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 29; *Ghazī Suleiman v. Sudan*, Comm. No. 228/99, Afr. Comm’n H.P.R., ¶ 56 (29 May 2003) (finding a violation of ACHPR, art. 11 freedom of assembly when State authorities threatened to arrest Petitioner, a human rights lawyer, to prevent him “from gathering with others to discuss human rights and by punishing him for doing so” when he attempted to travel and speak to a group of human rights defenders in a different part of the country).

²⁶⁸ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 29.

²⁶⁹ *Id.*

The right to peaceful protest is included in the right to freedom of assembly²⁷⁰ and may be violated through threats and intimidation. For example, the right to protest is violated when State authorities threaten protestors with arrests, threaten to blacklist NGOs who participate in public protests, or threaten HRDs, human rights monitors, and journalists who are monitoring or covering demonstrations.²⁷¹

F. The Right to Freedom of Association

The right to freedom of association is protected under international law²⁷² and is defined as the right of individuals to “interact and organize among themselves to collectively express, promote, pursue and defend common interests”.²⁷³ It includes the right of HRDs to promote and pursue the protection of human

²⁷⁰ ICESCR, art. 8; American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, art. 8(1)(b) (2988); Inter-American Charter on Social Guarantees, art. 27; European Social Charter, art. 6 (4); ILO, Freedom of Association and Protection of the Right to Organize Convention, No. 87 (1948); U.N. Declaration on HRDs 5 (a). In addition to the right to freedom of association, the right to peaceful protests most commonly consists of the right to freedom of opinion and expression (*see supra* Section VI.D), freedom of peaceful assembly (*see* Section VI.E), and trade union rights.

²⁷¹ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 74, 78, 80.

²⁷² UDHR, art. 20 (“Everyone has the right to freedom of . . . association.”); ICCPR, art. 22 (“Everyone shall have the right to freedom of association with others . . .”); ICERD, art. 5(d)(ix) (stating that State parties undertake to prohibit discrimination in the enjoyment of the right to freedom of association); ICESCR, art. 8 (“The States Parties to the present Covenant undertake to ensure . . . [t]he right of everyone to form trade unions and join the trade union of his choice . . .”); CEDAW, art. 7 (stating that States Parties shall take all appropriate measures to eliminate discrimination against women to ensure the right “[t]o participate in non-governmental organizations and associations concerned with the public and political life of the country”); ACHPR, art. 10 (“Every individual shall have the right to free association provided that he abides by the law.”); ACHR, art. 16 (“Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.”); ECHR, art. 11 (“Everyone has the right . . . to freedom of association with others”).

²⁷³ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 35.

rights,²⁷⁴ subject to minimal lawful restrictions.²⁷⁵

A vital dimension of the right to association is the freedom to seek the common attainment of a lawful purpose, without pressures or meddling that could alter or thwart its aim.²⁷⁶ Thus, the right has an individual and collective dimension, which may be violated through threats, intimidation and harassment. With regard to the individual dimension, threats and moral and psychological aggression that discourage defenders from doing their work violate their individual right to association.²⁷⁷ Likewise, death threats that lead to forcible exile or departure directly violate the right to association.²⁷⁸ Human rights defense is often done in association with others, and threats are often directed to chilling actions by groups of claimants or defenders.

²⁷⁴ U.N. Declaration on HRDs, art. 1.

²⁷⁵ Inter-Am. Comm'n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 77 (2006).

²⁷⁶ *Huilca Teese v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 121, ¶¶ 69–72 (Mar. 3, 2005) (noting that the extrajudicial execution of a union leader in retaliation for his human rights activities had an intimidating effect on the workers of the Peruvian trade union movement and thereby reduced the freedom of a specific group to exercise the right to association); *Huri-Laws v. Nigeria*, Comm. No. 225/98, Afr. Comm'n H.P.R., ¶¶ 47–49 (Nov. 6, 2000) (finding a violation of ACHPR, art. 10 freedom of association when State authorities persecuted employees, detained co-workers, and conducted raids of the offices of the Petitioner, a human rights organization working to promote human rights by organizing programs aimed at enlightening the people of their rights, “in an attempt to undermine its ability to function in this regard”).

²⁷⁷ Inter-Am. Comm'n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 ¶ 46 (2011); *Ghazji Suleiman v. Sudan*, Comm. No. 228/99, Afr. Comm'n H.P.R., ¶ 56 (May 29, 2003) (finding a violation of ACHPR, art. 10 freedom of association when State authorities threatened to arrest Petitioner, a human rights lawyer, to prevent him “from gathering with others to discuss human rights and by punishing him for doing so” when he attempted to travel and speak to a group of human rights defenders in a different part of the country).

²⁷⁸ Inter-Am. Comm'n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 76 (2006); *Gómez López v. Guatemala*, Case 11.303, Inter-Am. Comm'n H.R., Report No. 29/96, OEA/Ser.L/V/II.95, doc. 7 rev. 425 ¶ 94 (Oct. 16, 1996) (finding that the periodic threats and intimidation by State Agents amounted to cruel, inhuman and degrading treatment as well as a violation of the right to association of the Petitioner, a union leader, who was periodically threatened and intimidated before and after almost fatal attempts on his life, resulting in his

With regard to the collective, the right of an organization may be infringed due to the intimidating effect produced by the killing of an associate or defender, which may be exacerbated by the State's failure to investigate.²⁷⁹ Further, harassment in the form of dismissal of union leaders on false charges²⁸⁰ or the illegal monitoring of an association's telephones²⁸¹ may create fear and tension that violates the collective right to freedom of association.

forcible departure from Guatemala); *Dianna Ortiz v. Guatemala*, Case 10.526, Inter-Am. Comm'n H.R., Report No. 31/96, OEA/Ser.L/V/II.95, doc. 7 rev. 332 ¶ 119 (Oct. 16, 1996) (finding a violation of the right to freedom of association where the Petitioner was surveilled by State agents, received death threats and intimidating letters, and was eventually kidnapped, tortured and sexually assaulted in detention before being released, and subsequently left the country and was unable to continue her work).

²⁷⁹ *Cantoral-Huamani and Garcia-Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter Am. Ct. H.R. (ser. C) No. 167, ¶ 148 (July 10, 2007) (noting that the Petitioner, a union worker, was murdered in connection with her trade union activities and the State's failure to investigate had an intimidating effect on the free exercise of union's rights); *Kawas-Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196, ¶¶ 143, 153, 156 (Apr. 3, 2009) (noting that the murder of Kawas Fernández, an HRD, by State agents and the subsequent failure to conduct a proper investigation furthered impunity and enabled an intimidating environment which affected the right to association); *Huileca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 121, ¶ 78 (Mar. 3, 2005) (noting that the extrajudicial execution of a union leader in retaliation for his human rights activities had an intimidating effect on the workers of the Peruvian trade union movement and thereby reduced the freedom of a specific group to exercise the right to association).

²⁸⁰ *Baena-Ricardo et al. v. Panama*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 72, ¶¶ 156, 160, 162, 173 (Feb. 2, 2001) (noting that the arbitrary dismissal of number of government employees/union leaders who organized a demonstration for labor rights and, thereafter, falsely accusing them of participating in a military coup constituted an egregious restriction that violated their right to association).

²⁸¹ Inter-Am. Comm'n H.R., Second Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II, doc. 66 ¶ 160 (2011); *Escher et al. v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 200, ¶ 180 (July 6, 2009) (finding that illegal monitoring of Petitioner's telecommunication by the State and, subsequently, publicizing them by leaking to newspapers was threatening behavior that violated the right to association under the ACHR).

G. The Right to Access and Communicate with International Bodies

The right to access and communicate with international bodies guarantees that individuals or groups who seek to cooperate or have cooperated with the U.N., its representatives and mechanisms in the field of human rights are free from intimidation and reprisals.²⁸² For HRDs, access and communication with international bodies includes a broad range of collaborative activities such as submission of information and complaints regarding human rights violations and abuses.²⁸³ States should prevent all acts of intimidation and reprisals against HRDs, their family members, and “all those who have provided legal or other assistance” to such individuals, who “[a]vail or have availed themselves of procedures established under the auspices of the United Nations for the protection of human rights and fundamental freedoms.”²⁸⁴ Various treaty monitoring bodies also protect the right to access and communicate with international bodies by finding a violation of the right when State parties fail to take all necessary measures to prevent and protect persons who access, cooperate, or communicate with international human rights bodies.²⁸⁵

Threats against HRDs who communicate, cooperate, and interact with international human rights bodies violate the right to access and communicate. For

²⁸² U.N. Declaration on HRDs, arts. 5(c) (“[E]veryone has the right, individually and in association with others, at the national and international levels . . . [t]o communicate with non-governmental or intergovernmental organizations”), 9(4); Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 55 (2011); U.N. Human Rights Council Res. 24/24, U.N. Doc. A/HRC/RES/24/24, ¶ 3 (2013); U.N. Human Rights Council Res. 12/2, U.N. Doc. A/HRC/RES/12/2, ¶ 1 (2009); U.N. G.A. Res. 70/161, ¶ 6 (2016); U.N. G.A. Res. 65/281, ¶ 30 (2011).

²⁸³ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 51 (2011).

²⁸⁴ U.N. Human Rights Council Res. 12/2, U.N. Doc. A/HRC/RES/12/2, ¶ 1 (2009).

²⁸⁵ Hum. Rts. Comm., *General Comment No. 33: The Obligations of State Parties under the Optional Protocol to the International Covenant on Civil and Political Rights*, ¶ 4, U.N. Doc. CCPR/C/GC/33 (2008); Hum. Rts. Comm., *General Comment No. 35: Article 9 (Liberty and Security of Persons)*, ¶ 54, U.N. Doc. CCPR/C/GC/35 (2014); CAT, *Optional Protocol*, U.N. Doc. A/RES/57/199, art. 15 (2002); CEDAW, *Optional Protocol*, U.N. Doc. A/RES/54/4, art. 11 (1999); ICESCR, *Optional Protocol*, U.N. Doc. A/RES/63/117, art. 13 (2008); U.N. Guidelines Against Intimidation or Reprisals (“San José Guidelines”), U.N. Doc. HRI/MC/2015/6, ¶ 19 (2015).

example, the rights of HRDs are violated when they face threats and intimidation for participating in international human rights events, including the denial of permission to leave their country to participate in such an event or harassment and reprisals against HRDs upon their return.²⁸⁶ The right is also violated when HRDs are threatened and targeted after submitting information or complaints to international human rights mechanisms, including to special procedures of the U.N. Human Rights Council.²⁸⁷ When funding originates from U.N. agencies or bodies, the universal system also considers funding restrictions as acts of threats, reprisals, or intimidation that violate the right to access and communicate with international bodies.²⁸⁸

H. The Right to Fair Trial and Judicial Protection

The right to fair trial and judicial protection is protected under international law.²⁸⁹

²⁸⁶ Margaret Sekaggya (Special Rapporteur on the Situation of Human Rights Defenders), *Commentary on the U.N. Declaration on HRDs*, at 52–53 (noting that the right of HRDs to access and communicate with international bodies has been violated when they are threatened, intimidated, and attacked for reporting through human rights mechanisms and their activities are threatened when they are barred from traveling by having their travel documents seized or are detained at airports to “prevent them from reporting about the human rights situation in their country to international forum and bodies).

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 98.

²⁸⁹ UDHR, art. 11 (“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”); ICCPR, arts. 9 (stating that fair trial rights include the right to be informed of the reason of the arrest and charges, the right to be promptly brought before a judge, and the right to be entitled to a trial within a reasonable time), 14 (stating legal principles including the right to equality before the law, the right to be presumed innocent until proven guilty, etc.); ACHPR, art. 7 (stating that fair trial rights include the right to have a person’s cause heard, the right to be presumed innocent until proven guilty, the right to defense, and the right to be tried within a reasonable time); ACHR, arts. 8 (stating the right to a hearing, the right to be presumed innocent until proven guilty, the right to public criminal proceedings, etc.); ECHR, arts. 6–7 (stating that the right to fair trial includes the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by the law,” the right to be presumed innocent until proven guilty, the right to no punishment without law, etc.).

The right to fair trial and judicial protection aims to guarantee simple, prompt, and effective recourse to judicial bodies for the purpose of protecting fundamental human rights and includes within its scope the right to a time-bound and impartial determination of rights and obligations.²⁹⁰

Threats (including death threats) and harassment of victims, along with the State's failure to investigate effectively, thoroughly, and promptly, violates the right to fair trial and judicial protection.²⁹¹ Similarly, the State's failure to protect witnesses, deponents, investigators, and justice operators involved in judicial proceedings from threats, resulting in continued impunity beyond a reasonable time, constitutes a violation of the right to fair trial and judicial protection.²⁹²

I. The Right to Freedom of Movement, Residence, and Protection from Forced Displacement

The right to freedom of movement, residence, and protection from forced displacement guarantees all persons lawfully within the territory of a State to be free to move and choose their residence within the country, as well as to be free to leave any country including their own.²⁹³

²⁹⁰ ACHR, arts. 8.

²⁹¹ *García-Prieto et al. v. El Salvador*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 168, ¶¶ 154–55, 159–60 (Nov. 20, 2007) (finding that the State had violated of the right to fair trial and judicial protection, in conjunction with its general obligation [Art. 1(1)] because of failure to conduct effective investigation(s) into the threats and harassment of García Prieto and his family, resulting in continuation of the same); *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶ 242 (Aug. 28, 2014) (finding that the State's failure to thoroughly and effectively investigate threats to a murdered HRD's family members involved in judicial proceedings, amount to a flagrant violation of the right to fair trial and guarantees of judicial protection).

²⁹² *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 227, 237.

²⁹³ UDHR, art. 13 (stating that everyone has the right to freedom of movement and residence within the borders of each state as well as the right to leave any country, including their own, and to return to their country); ICCPR, art. 12 (stating that everyone lawfully within the country has the right to liberty of movement and freedom to choose their residence as well

Threats, intimidation, and harassment violate the right to freedom of movement and residence if the defender is forced to leave their residence, neighborhood, city, or country²⁹⁴ or prohibited from leaving.²⁹⁵ Further, threats by State or non-State actors, coupled with the State's failure to provide effective domestic remedies, including protection and investigation aimed at ensuring their return, may also amount to a violation of the right.²⁹⁶

as the right to leave any country, including their own, and to return to their country without arbitrary interference); ACHPR, art. 12 (“Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. Every individual shall have the right to leave any country including his own, and to return to his country.”); ACHR, art. 22 (“Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law. Every person has the right to leave any country freely, including his own.”); ECHR, Protocol No. 4, art. 2 (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own.”).

²⁹⁴ Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 102 (2006); *Gómez López v. Guatemala*, Case 11.303, Inter-Am. Comm’n H.R., Report No. 29/96, OEA/Ser.L/V/II.95, doc. 7 rev. 425 ¶ 97 (1996) (finding a violation of the freedom of movement for the Petitioner, a HRD and union leader, who was periodically threatened, intimidated and almost killed, resulting in his forcible departure from Guatemala).

²⁹⁵ *Gómez López v. Guatemala*, Case 11.303, Inter-Am. Comm’n H.R., Report No. 29/96, OEA/Ser.L/V/II.95 Doc. 7 rev. at 425, ¶ 98 (finding a violation of the freedom of movement for the Petitioner, a HRD and union leader, who was intimidated by State agents while trying to leave Guatemala for medical treatment); *Ghazj Suleiman v. Sudan*, Comm. No. 228/99, Afr. Comm’n H.P.R., ¶ 64 (May 29, 2003) (finding a violation of ACHPR, art. 12 freedom of movement when State authorities threatened to arrest Petitioner, a human rights lawyer, from traveling and speaking to a group of human rights defenders in a different part of the country).

²⁹⁶ *Jiménez Vaca v. Colombia*, Comm. No. 859/1999, Hum. Rts. Comm., CCPR/C/74/D/859/1999, ¶ 7.4 (Apr. 15, 2002) (finding a violation of ICCPR, art. 12 right to liberty of movement for Petitioner (a HRD, lawyer, and legal adviser to trade unions and other people’s and peasants’ organization as well as advocate on labor and social commissions) because his right to security of person was violated due to death threats leading to involuntary exile and the State has failed to provide effective domestic remedy ensuring his right to “remain in, return to, and reside in his own country”); Inter-Am. Comm’n H.R., Second Report on Situation of Human Rights Defenders in Americas, ¶ 47 (2011); *Peace Community of San José de Apartadó regarding Colombia*, Provisional Measures, Inter-Am. Ct. H.R., “Considering,” ¶ 8 (Nov. 24, 2000), “Deciding,” ¶ 5 (June 18, 2002), <http://hrlibrary.umn.edu/iachr/E/apartado11-24->

J. The Right to Privacy, Honor, and Dignity

The right to privacy is protected under international law.²⁹⁷ The right to privacy, honor, and dignity protects against arbitrary and unlawful interference with personal, informational, and spatial aspects of the privacy of individuals and provides protection against unlawful attacks on their honor and reputation.²⁹⁸ The Inter-Am. Ct. H.R. has stated that “the sphere of privacy is characterized by

00.html; *Peace Community of San José de Apartadó regarding Colombia*, Provisional Measures, Inter-Am. Ct. H.R., “Having Seen,” ¶ 5, “Deciding,” ¶ 4, (June 18, 2002), <http://hrlibrary.umn.edu/iachr/E/apartado6-18-02.html> (holding that the State must guarantee Petitioners that they will not be threatened or persecuted and will continue to live in their usual place of residence as community members were at risk of displacement due to repeated threats and attacks on their life and integrity); *Valle-Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶¶ 139, 141 (Nov. 27, 2008) (finding a violation of the freedom of movement because the murdered Petitioner’s family had to forcibly leave their country and residence due to threats and harassment and a failure of the State to offer them guarantees in this regard); *Lysias Fleury et al. v. Haiti*, Merits and Reparations, Inter-Am. Ct. H.R. (ser. C) No. 236, ¶¶ 93–94 (Nov. 23, 2011) (holding that continuing threats to the Petitioner and the State’s failure to protect, investigate and punish the perpetrators had violated his right to freedom of movement and residence of the Petitioner, a HRD who had been detained without a warrant, beaten and threatened repeatedly); *Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 283, ¶¶ 166–167, 177–78 (finding that State’s failure to adequately and punctually investigate presumed threats to HRDs and the family members of victims involved in judicial proceedings and to provide adequate protection to ensure their safety led to their forcible displacement).

²⁹⁷ UDHR, art. 12 (“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”); ICCPR, art. 17 (“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”); ACHR, art. 11 (“Everyone has the right to have his honor respected and his dignity recognized. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. Everyone has the right to the protection of the law against such interference or attacks.”); ECHR, art. 8 (“Everyone has the right to respect for his private and family life, his home and his correspondence”).

²⁹⁸ ACHR, art. 11.

being exempt and immune from abusive and arbitrary invasion by third parties or public authorities.”²⁹⁹

In the Inter-American system, death threats, intimidation, and harassment constitute a violation of the right to privacy when, for example, State authorities illegally surveil and threaten a private citizen.³⁰⁰ The Inter-Am. Ct. H.R. has found a violation of the right to privacy, honor, and dignity when, for example, State authorities relentlessly threaten, harass, intimidate, and blame a private citizen for judicially unproven deeds³⁰¹ or monitor and then publicly disseminate telephone records of a private citizen.³⁰²

K. The Right to Defend Rights

The State has the primary duty to promote and protect human rights, which includes guaranteeing “[e]veryone the right, individually and in association with others, to promote and to strive for protection and realization of human rights

²⁹⁹ *Escué Zapata v. Colombia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 165, ¶ 95 (July 4, 1995).

³⁰⁰ *Dianna Ortiz v. Guatemala*, Case 10.526, Inter-Am. Comm’n H.R., Report No. 31/96, OEA/Ser.L/V/II.95, doc. 7 rev. 332 ¶ 116 (Oct. 16, 1996) (noting that the Petitioner was surveilled by State agents, received threats, and was eventually kidnapped, tortured and sexually assaulted in detention before being released and finding that threatening persons and placing them under surveillance rendered them objects of arbitrary and abusive interference and constituted violations of their right to privacy).

³⁰¹ *Gallardo Rodríguez v. Mexico*, Case 11.430, Inter-Am. Comm’n H.R., Report No. 43/96, OEA/Ser.L/V/II.95, doc. 7 rev. 485 ¶¶ 76, 119 (Oct. 15, 1996) (noting that Petitioner was a Brigadier in the Mexican Army who had been subjected to relentless threats, harassment, intimidation, unjust judicial procedures and imprisonment, public statements by the State blaming him for unproven deeds and attacking his honor, dignity and good name and holding that public accusations made by the State without judicial verification amount to violation of the right to honor, and requiring that those responsible should be investigated and punished).

³⁰² *Escher et al. v. Brazil*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 200, ¶¶ 158–59 (July 6, 2009) (finding that illegal monitoring of Petitioner’s telecommunication by the State and, subsequently, publicizing them by leaking to newspapers was threatening behavior that violated the right to privacy, honor, and reputation under the ACHR).

and fundamental freedoms at the national and international levels.”³⁰³ The right to defend rights is not limited to the enumerated rights in the U.N. Declaration on HRDs³⁰⁴ but is further protected by international human rights treaties, conventions, and declarations that protect and promote the human rights and fundamental freedoms of every person in the world.³⁰⁵

³⁰³ U.N. Declaration on HRDs, art. 1. See U.N. G.A. Res. 64/226, ¶ 57 (2009) (stating “the promotion and protection of human rights is a legitimate purpose for an association to pursue” as guaranteed by article 1 of the U.N. Declaration on HRDs).

³⁰⁴ The U.N. Declaration on HRDs does not create new rights but articulates existing rights in the context of the work of human rights defenders. Enumerated rights and protections include: seeking the protection and realization of human rights; conducting human rights work individually or in association with others; forming associations or non-governmental organizations; peaceful assembly; seeking, obtaining, receiving, holding information related to human rights; developing and discussing new human rights ideas; making complaints about official policies and acts and having such complaints reviewed; providing legal assistance or advice in the defense of human rights; attending public hearings, proceedings, and trials; having unhindered access to NGOs; benefiting from effective remedy; receiving, soliciting, and utilizing resources for the purpose of protecting human rights. For a full list of rights and State obligations see U.N. High Commissioner on Human Rights, *Declaration on Human Rights Defenders*, <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx> (last visited Mar. 11, 2018).

³⁰⁵ U.N. Econ. and Soc. Council, U.N. Doc. E/CN.4/2001/94, ¶ 13 (2001) (stating that the U.N. Declaration on HRDs strives to serve “the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of people and individuals” and, in that context, is guided by the U.N. Charter and UDHR and should be considered against the legal background of all international human rights instruments including the ICCPR (particularly the obligations of States to protect the rights to movement and residence; privacy, family, home, and correspondence; opinion and expression; assembly; and association), the ICESCR; CAT (particularly those guarantees to promptly and impartially examine all complaints of torture and to protect Petitioners and witnesses against ill-treatment or intimidation as a consequence of their complaint); ICERD; CEDAW; Convention on the Rights of the Child; ILO, Freedom of Association and Protection to the Right to Organize Convention, No. 87); U.N. Declaration on HRDs, *preamble* (2011) (reaffirming the importance of the purpose and principles of the U.N. Charter “for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world” as well as importance of international and regional human rights instruments that further promote universal respect for human rights). See also Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124 Doc. 5 rev. 1, ¶ 35 (2006) (stating that the “inter-American system has established components of many rights whose guarantee makes possible the work of human rights defenders”).

The right to defend rights is vitally important because human rights defenders who implement international human rights standards within their countries are often the first line of defense for guarding against human rights abuses and violations, making them the target of human rights violations themselves.³⁰⁶ Recognizing the right of human rights defenders to defend rights is therefore “fundamental to achieving universal respect for human rights.”³⁰⁷ Because of its universal scope, the right to defend rights may not be subject to geographical restrictions.³⁰⁸

States should take all necessary measures to protect the rights and safety of HRDs who, in doing their work, “exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly, and association, to participate in public affairs, and to seek an effective remedy.”³⁰⁹ A violation of any of the substantive human rights discussed in Part VIII that is based on threats made against human rights defenders who are exercising their right to defend rights may, therefore, constitute a violation of the defender’s right to defend rights.

IX. CONCLUSION

A review of universal and regional norms suggests that States can be liable for human rights violations when threats are issued by State or non-State actors against HRDs. States may be liable either by way of omission or commission of certain acts that fail to prevent and protect against violations, foster impunity, or lack accountability for perpetrators. The States’ obligations to respond to threats range from long-term systemic commitments, which create conducive socio-legal environments for the enjoyment of rights, the prevention of

³⁰⁶ U.N. High Commissioner for Human Rights, Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights, at 18 (2004).

³⁰⁷ U.N. High Commissioner for Human Rights, Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights, at 18 (2004).

³⁰⁸ Inter-Am. Comm’n H.R., Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II/124, doc. 5 rev. 1 ¶ 36 (2006) (“The observance of human rights is a matter of universal concern, accordingly, the right to defend those rights may not be subject to geographical restrictions.”).

³⁰⁹ U.N. Human Rights Council Res. 31/32, U.N. Doc. A/HRC/RES/31/32, ¶ 2 (2016).

violations, and the curtailment of impunity, to specific obligations, which are tailored to respond to individual and particular circumstances. The State's obligation is fulfilled only when the threshold of applicable due diligence standards is met and includes the investigation of threats, the punishment of perpetrators, the implementation of measures to protect victims, the prevention of further violations, and the provision of redress for violations incurred. Because of the devastating impact threats have on the enjoyment of human rights and the work of HRDs, the State's obligations are heightened in such contexts and are further differentiated on the basis of intersectional identities of victims, most notably pertaining to the defenders' gender, sexual orientation, and social role.

While no single international legal instrument comprehensively captures the States' due diligence obligations in relation to threats, the framework can be derived from a synthesis of existing legal instruments and jurisprudence. A systematic analysis of international and regional legal systems not only demonstrates the existence of a common baseline for the States' due diligence obligations across jurisdictions, but also signals a gradual convergence of legal norms facilitated by cross-pollination of jurisprudence.

Variations among the legal norms of regional systems are not so much the result of substantial divergence in the jurisprudence of each system, but a function of differing priorities that correspond to unique problems germane to each jurisdiction. In fact, all regional systems and the overarching international legal framework display an acute awareness of threats against HRDs and often address the spectrum of concerns with a degree of nuance. While some regional systems, such as the Inter-American system, deal with threats against HRDs in comparatively greater detail, the European and African human rights systems have often followed suit to adopt principles and standards to ensure the protection and prevention of threats against HRDs. This is not meant to imply that the Inter-American system is more robust or expresses greater concern for HRDs than other system; more appropriately, it reflects a proportional institutional response to the adverse socio-political realities that HRDs must contend with in specific jurisdictions. Over the past few decades, all regional legal mechanisms have rigorously extrapolated from international

human rights commitments, leading to a very limited scope of discord between the jurisprudential frameworks of each legal system. It is apt, therefore, that jurisprudence of the universal and regional systems is synthesized to draw out best practices that can inform and standardize the international legal framework concerning the States' due diligence obligations for threats against HRDs.

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