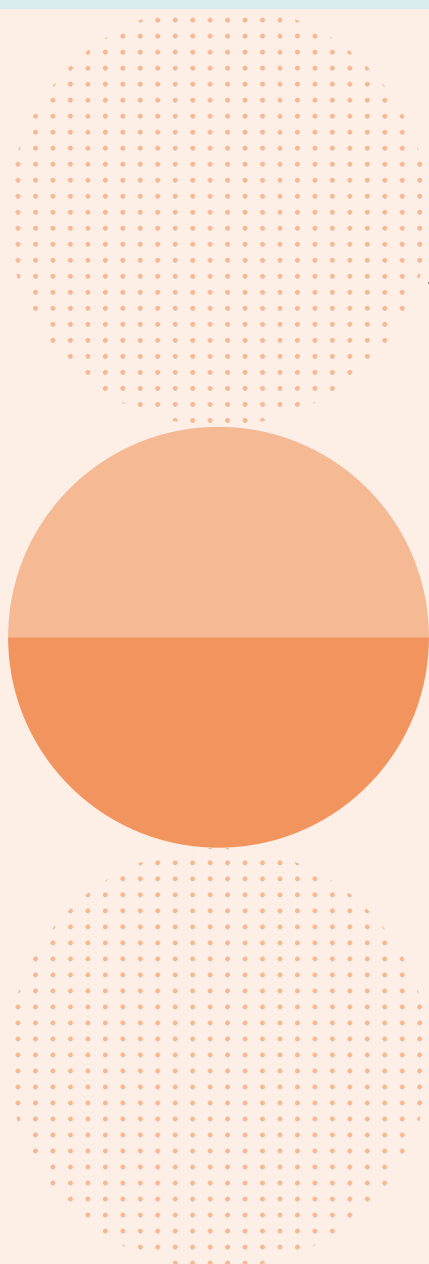


Executive Summary

Protocol for an Effective Response to Threats Against Human Rights Defenders and Human Rights

The Esperanza Protocol



The Esperanza Protocol



Threats against human rights defenders (HRDs) have been used to inhibit their work or to silence the abuses they report. Threats contribute to numerous human rights violations, but often do not receive an adequate response.

- ▶ **The Esperanza Protocol (PLE, per its Spanish initials) provides guidelines based on international human rights law to promote an effective response to threats against HRDs and, in particular, to support the investigation, prosecution and punishment of threats.**

The Protocol articulates the international legal obligations that exist when threats occur. The Esperanza Protocol seeks to improve State responses to threats against HRDs, and contribute to ensuring HRDs' integrity and ability to carry out their work. Ultimately, it promotes an enabling environment for the defense of human rights worldwide.

●▶▶ Who are HRDs?

An HRD is a person who, individually or in association with others, promotes or protects the realization of human rights and fundamental freedoms at the national or international level. This follows the definition reflected in the United Nations Declaration on Human Rights Defenders.

“They promote or protect the realization of human rights and fundamental freedoms”

●▶▶ What are threats?

For the purposes of the Protocol, ‘threat’ refers to intentional conduct that indicates future harm or intimidation to an HRD, their family, or community. This definition includes individual and collective, direct and indirect, explicit and symbolic threats, whether they take place online or offline. Threats often indicate future harm to physical integrity, life or other rights. Context may be essential in determining whether certain conduct qualifies as a threat.

“Intentional conduct that indicates future harm or intimidates an HRD, their family, or their community”

●▶▶ Human rights affected by threats

Threats interfere with the right to defend rights, and may also affect the rights to life, security, integrity, dignity and privacy; the right not to be tortured or subjected to cruel, inhuman, and degrading treatment; the freedoms of opinion, expression, information, assembly, and association; the right of access to justice at the national and international level; and the freedoms of movement and residence, among others.

“The right to defend rights, which can also affect the rights to life, security, integrity, dignity, and privacy”

Chapters

I. General obligations of States in relation to human rights defenders

States must refrain from interfering with the exercise of the rights of human rights defenders. In addition, States must take measures to guarantee rights. This entails adopting laws, institutional frameworks, and policies to ensure the enjoyment of rights by human rights defenders. In addition, States must exercise due diligence to prevent, investigate, prosecute, and punish violations, including threats, to prevent harm and stop the cycle of repeated risks.

1. **Specific due diligence obligations** exist when a State knows or should have known of a particular risk to an identifiable person or group. States have specific due diligence obligations in relation to HRDs. In fulfilling these obligations, they must assess (i) the indications of a real and immediate risk, (ii) whether the State knew or should have known of such risks, and (iii) the measures that should reasonably have been taken by the State authorities to prevent and protect.

2. In addition, there are **heightened due diligence obligations** in relation to groups that are often subject to particular risks based on their identity, status, or role in society. States have enhanced due diligence obligations in relation to HRDs because of the vital role they play in promoting the rule of law and safeguarding democracy and fundamental rights and freedoms.

Women HRDs often face different and additional risks that are gendered, intersectional and shaped by entrenched gender stereotypes. This requires that States take specific measures to protect HRDs against threats that hinder their work within a given context.

3



The obligation to ensure equality and non-discrimination. States must ensure that the measures taken are effective, given the different forms of discrimination and violence faced by certain groups of HRDs, which carry specific risks. Multiple factors of discrimination, such as gender identity, age, race and ethnicity, socioeconomic status, religion and occupation, can converge in an HRD. Indirect, multiple, and structural discrimination affects not only the ways in which different HRDs are threatened, but also the ways in which States must respond.

4



The obligation to make reparations for threats against human rights defenders. States must make reparations for human rights violated by threats. For HRDs whose rights have been violated due to threats, reparations should take into account the link between the violations, their work, and the resulting harm. Reparations should be proportional to the harm caused and the gravity of the violation. They should also take into account the patterns of violence and discrimination, as well as the State policies and practices that enabled the violations.

Under international law, reparations include restitution, rehabilitation, satisfaction, guarantees of non-repetition, and compensation; various measures may be appropriate to address the harm caused and the gravity of the violations. These measures are often interrelated and complementary.

Victim participation is fundamental in the design, implementation, monitoring, and evaluation of reparations.

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Responsibility of corporations and other business enterprises. States are responsible for regulating and responding to human rights violations attributable to corporations and other business enterprises, including threats to HRDs.

Businesses can also play a key role as allies in preventing threats to HRDs. Companies have a responsibility to identify, prevent, mitigate, and account for threats to HRDs that may result from their activities. In addition, they have specific due diligence obligations that require them to develop policies to respect the rights of HRDs and consider the detrimental impact of their activities.

Technology companies play a vital role for the right to freedom of expression and information. They must take steps to prevent their platforms from being used to attack, harass, and intimidate HRDs. Any exceptions to the exercise of freedom of expression must strictly adhere to applicable human rights standards.

To guarantee the rights of HRDs, companies can be required to refrain from designing, developing, producing, and selling technology that can be weaponized to inhibit the defense of human rights, both to private and governmental actors.

II. Public Policies

A The general obligation of due diligence and the obligation to create a safe and enabling environment for the defense of rights free from threats and other forms of violence.

States have a duty to ensure a safe and enabling environment that allows HRDs to promote and protect rights freely, in safe and dignified conditions. These obligations require the development and implementation of a comprehensive public policy that addresses all obstacles to the right to defend rights. This includes the proactive mitigation and elimination of factors that create risks for HRDs. The development, implementation, and evaluation of policies aimed at ensuring an enabling environment for the defense of human rights must be comprehensive and coherent, and guided by the principles of transparency, participation, precaution, protection, and non-discrimination, among others.

The existence of standards and institutions alone is insufficient; they must also have the necessary resources to be effective.

B Key public policy principles to ensure the right to defend rights free from threats and other forms of violence

1. ▶ Participation of human rights defenders and other stakeholders.
2. ▶ Transparency in the design, implementation, and evaluation of public policies, as well as the timely and accessible dissemination of relevant information of interest to the public.



Key components of public policies to guarantee the right to defend rights free from threats and other forms of violence

1. ▶ **Public support for the work of human rights defenders.** States should proactively demonstrate their support for the important and legitimate role of HRDs. Condemnation of attacks against HRDs by high-ranking officials is a clear manifestation of such support. Non-state actors play an important role in ensuring public support for defenders.
2. ▶ States must have a **legal and institutional framework** that complies with international obligations to respect and guarantee the right to defend rights. A safe and enabling environment for the defense of human rights requires the absence of laws and policies that criminalize or disproportionately restrict the work of HRDs.
3. ▶ **Protection policies and mechanisms** must be in place to protect defenders at risk. These must be capable of detecting threats and the risks associated with them at an early stage, taking into account the particular contexts of the defenders.
4. ▶ States are bound by a number of obligations related to **privacy and data protection**, such as the protection of personal data, the right to informational self-determination and the inviolability of communications.
5. ▶ Efforts to design and implement policies to address threats to HRDs should have **evaluation mechanisms** that allow all stakeholders to assess their effectiveness and make or propose necessary improvements.



Criminal Policy

An enabling environment for HRDs also requires the development and implementation of criminal policy that complements broader public policy. Such policy should require all relevant public officials in the justice system to prevent and investigate threats.

States should take steps to ensure that they have criminal codes that respond to the reality of criminal behavior in a given context; establish policies to guide prevention and enforcement efforts, including investigation and prosecution strategies; and support the institutions that implement these obligations.

Guidelines applicable to criminal policy in relation to threats against HRDs include:

A

A critical component of a proactive approach to addressing trends of threats against HRDs is the **diligent collection and analysis of data** to understand criminal phenomena and design responses that accurately address those phenomena. Due consideration should be given to the protection of privacy and other relevant rights. State institutions should ensure that methods of data collection, retention, use, publication, and exchange comply with human rights standards.

B

States must conduct **proactive analysis of ongoing and emerging criminal phenomena** to ensure adequate responses. Specialized criminal analysis should be proactive and focus on prevention, strategic investigation, and prosecution.

C

States must put in place **victim protection services and mechanisms**, which means guaranteeing the safety and well-being of victims and witnesses and ensuring that they can make informed decisions regarding available protection measures and other services. This includes legal assistance, medical and psychological treatment, and financial assistance, among others.

D

Public policies should include **training programs for State agents** to ensure that those who interact with HRDs receive adequate training.

E

States must ensure that **material and human resources** are adequately allocated to enable the investigation and prosecution of threats.

IV. Criminal Investigation

A Purpose of criminal investigation of threats

The general objective of an investigation is to establish the facts related to threats against HRDs to attribute criminal responsibility to the perpetrators and provide reparations to the victims. This requires diligent action on the part of State authorities to collect, transport, preserve, and analyze evidence, as well as an effort to determine the sequence of events, the existence of a context of threats, and the commission of associated crimes.

B Principles of criminal investigation of threats

1. ▶ Once alerted to a threat or related criminal act against an HRD, the State has the obligation to initiate an **investigation ex officio**, using all available means and examining all possible lines of inquiry and various theories of responsibility.
2. ▶ Threats against HRDs should be **timely and promptly** investigated. This can help prevent further harm. Conversely, unwarranted delay contributes to impunity and further violence.
3. ▶ All alleged victims should be treated with dignity and without discrimination by all those involved in the investigation process. The investigation should consider the potential impact of all forms of discrimination, including, but not limited to, stereotyping, racism, xenophobia, and misogyny.
4. ▶ All cases of attacks against human rights defenders should be investigated by **independent and impartial bodies**. Independence also requires that investigators be free from any intimidation, harassment, threat of criminal prosecution, or reprisals.
5. ▶ Threat investigations should be carried out by **properly trained authorities** who are knowledgeable about the vital role of HRDs,

the importance of investigating threats against them, and how to ensure diligent investigations.

6. ▶ Information regarding investigations of threats against HRDs and their results should be **transparent** and open to public scrutiny, as threats constitute human rights violations and society has an interest in this information. Some circumstances may justify permissible limitations on the information that is disclosed.
7. ▶ The investigation should be **thorough and explore different lines of inquiry**. In addition, when investigating a threat against an HRD, a line of inquiry should always be included based on the hypothesis that the threats are related to the victim's role as an HRD.
8. ▶ Victims and their families have **the right to actively participate** in the investigation if they so wish.

V. Criminal Investigation Guidelines

First, it must be **determined whether the Esperanza Protocol applies**. To do so, it is necessary to determine whether the victim is an HRD and whether the conduct qualifies as a threat. The Protocol should be applied to investigate threats, as well as threats in conjunction with other crimes. Investigators must:

1. ▶ Adopt **urgent measures to guarantee the integrity of the victim and other persons affected or at risk**.
2. ▶ Take **urgent measures to preserve, identify, collect, and transport evidence**:
 - Preserve the crime scene.
 - Identify and secure evidence.
 - Collect evidence.
 - Transfer evidence.
 - Evaluate potential arrest of implicated individuals in accordance with national and international law.

3. ▶ Design the **investigation strategy**, which must be thorough and exhaust different lines of inquiry, depending on the evidence, the facts, and the applicable legal framework:
 - The process of investigating threats against HRDs requires developing a theory of the case and periodically evaluating it considering collected evidence. From the beginning, the investigation should operate with the theory that the threat may relate to the HRD's work or associations.
 - The investigation must also consider the relevant criminal trends that surround threats against HRDs and all possible perpetrators.
4. ▶ **The investigation plan, methodology, or roadmap** establishes the necessary steps to develop the identification, analysis, and organization of evidence in a way that allows the subsequent criminal process to legally establish all the crimes included in the facts and all the individuals responsible.
 - The investigation should take into account specific considerations about the lines of inquiry that link the threat to the role of the HRD.
 - The investigating authorities should request documentary evidence from all public or private offices that may have information relevant to the investigation of the facts, including records of state agencies and institutions, as well as records of non-state actors.
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 - Where relevant, it is important to collect digital evidence, ensuring this is done according to law, as well as necessity and proportionality in the collection of digital evidence.
 - Where appropriate, investigators may seek financial evidence from suspects.

5. ▶ The collection, management, and analysis of evidence often requires different types of expertise and access to specific human and material resources, so it may be necessary to consult with **experts**, including analytical units.
6. ▶ In accordance with national law, prosecutors may offer benefits to defendants or participants who **cooperate** in the investigation.
7. ▶ All possible classifications and aggravating circumstances of the analyzed conduct must be assessed in order to **appropriately select the charges to present** based on the facts of the case.
8. ▶ As part of the investigation of the threats, their modality, the type of victim, or the characteristics of the perpetrator, the investigation may require additional considerations to those mentioned above, like these:
 - **Based on threat modality**
 - Threats in person.
 - Threats by telephone, including messaging services and social networks.
 - Symbolic threats.
 - **Based on victim identity**
 - In the case of **women HRDs**, the investigation must be conducted with care to avoid biases and stereotypes and should take into account intersectionality considerations.
 - Investigations involving **children and adolescents** must be adapted to their specific needs, including access to information and ensuring safe spaces for reporting.
 - In cases where HRDs are members of **indigenous or tribal communities**, specific human rights standards and guarantees applicable to these groups must be upheld.
 - **Based on perpetrator identity**
 - If **state agents** are among the possible perpetrators, all appropriate measures should be taken to guarantee the independence of the investigation.
 - If a **business** is among the possible perpetrators, the scope of the company and the interests involved must be understood, as well as its links with other entities involved.
 - Similarly, if there are facts that suggest that the threat was made by **criminal groups**, investigators must take specific investigative actions.

9. ▶ Line of investigation

- Justice actors should consider the connections between an individual incident and the context in which it occurred and avoid examining incidents in isolation.
- By analyzing threats as part of a broader context, justice actors can better understand the nature, purpose, and impact of the threat.

10. ▶ In judicial proceedings:

- Victims have **the right to the truth and to a reasoned legal decision** that elaborates how the threats constitute crimes or violations of human rights, and how they impede the defense of human rights.
- When the law allows for a **plea agreement to be reached**, the fundamental rights of the parties and intervenors must be guaranteed and the imperative of objectively establishing the truth and ensuring justice must be met.
- Justice operators must adapt their actions to the needs of the victim so that the **judicial process is restorative**.

11. ▶ Other possible measures to ensure accountability

- When necessary, seek **international assistance**, whether legal or technical, in the investigation.
- Consider the possibility of establishing **extraordinary mechanisms or measures** to facilitate progress in clarifying truth and promoting accountability, such as **commissions of inquiry**.
- Through a variety of legal, communication, and advocacy strategies, **civil society organizations** contribute to the search for truth, accountability, and reparations for victims of threats.

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