

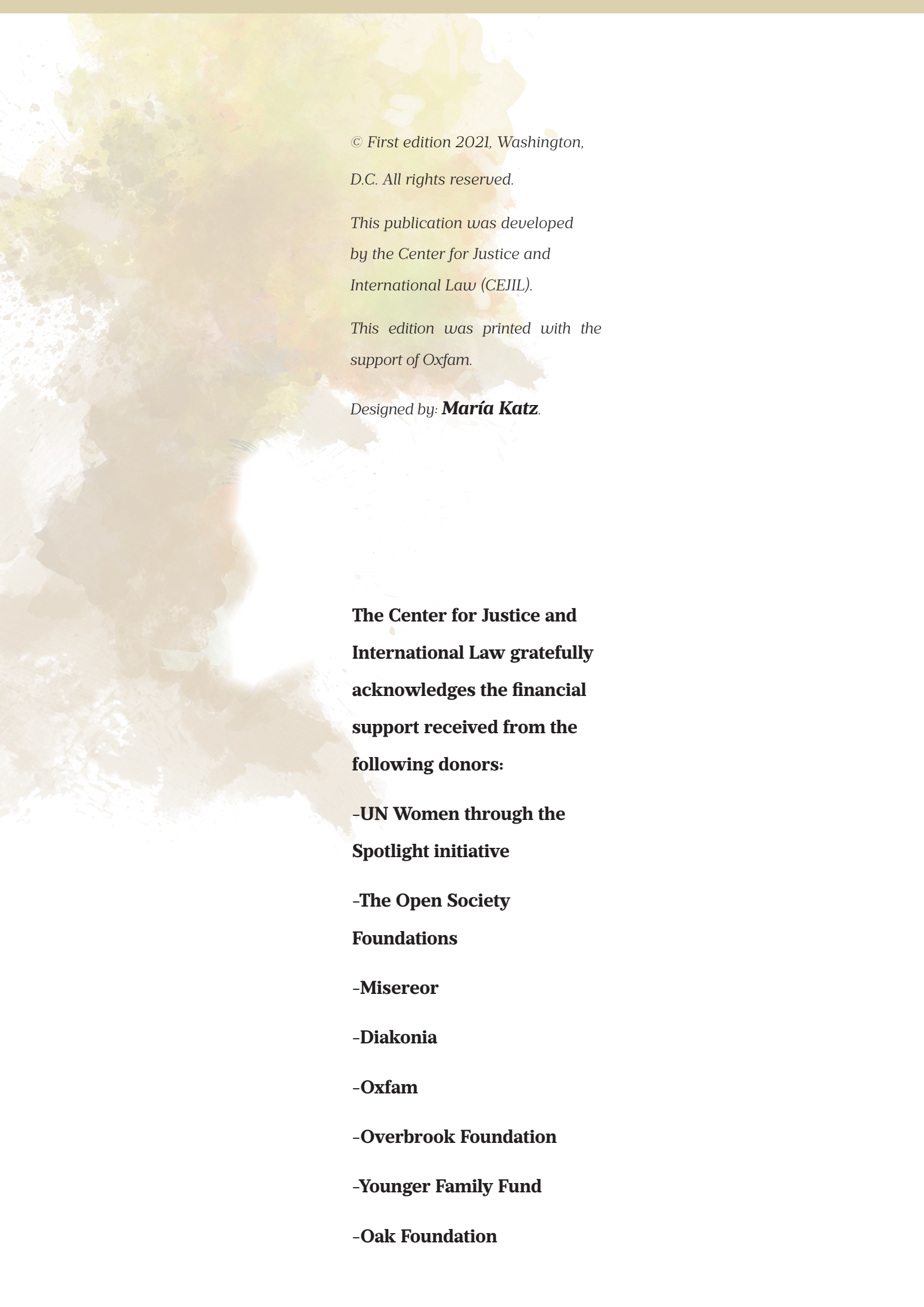


# THE ESPERANZA PROTOCOL



AN EFFECTIVE  
RESPONSE TO  
THREATS AGAINST  
HUMAN RIGHTS  
DEFENDERS





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*This publication was developed  
by the Center for Justice and  
International Law (CEJIL).*

*This edition was printed with the  
support of Oxfam.*

Designed by: **María Katz.**

**The Center for Justice and  
International Law gratefully  
acknowledges the financial  
support received from the  
following donors:**

**-UN Women through the  
Spotlight initiative**

**-The Open Society  
Foundations**

**-Misereor**

**-Diakonia**

**-Oxfam**

**-Overbrook Foundation**

**-Younger Family Fund**

**-Oak Foundation**



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# Foreword



Threats against human rights defenders (HRDs) have been used to inhibit their work or to silence the abuses they expose, as has been widely documented by international bodies <sup>1</sup> and civil society <sup>2</sup> organizations. Threats contribute to a myriad of human rights violations against HRDs, their families, communities and organizations, and to the shrinking of civic space. Thus, they are a pressing human rights issue. However, threats against HRDs often do not receive an adequate response from those with the responsibility to prevent harm and protect the rights of all, as exemplified by the impunity that generally surrounds them.

The Esperanza Protocol is the result of an initiative led by the Center for Justice and International Law (CEJIL) to fill this gap. The Protocol provides guidelines based on international human rights law directed primarily to governments and justice officials to promote an adequate response to threats against

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<sup>1</sup> Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor. Final warning: death threats and killings of human rights defenders*, A/HRC/46/35, 24 December 2020; Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst: Situation of Human Rights Defenders*, A/74/159, 15 July 2019; Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, Investigation of accountability for and prevention of intentional State killings of human rights defenders, journalists and prominent dissidents*, A/HRC/41/36, 4 October 2019; Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst*, A/HRC/28/63, 29 December 2014; Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, 31 December 2011.

<sup>2</sup> Protection International, *Understanding Death Threats Against Human Rights Defenders: Reflection Paper*, June 2021. Available at: <https://www.protectioninternational.org/en/publications/reflection-paper-understanding-death-threats-against-human-rights-defenders>; Front Line Defenders, *Stop the Killings*, 2018. Available at: [https://www.frontlinedefenders.org/sites/default/files/stk\\_-\\_full\\_report.pdf](https://www.frontlinedefenders.org/sites/default/files/stk_-_full_report.pdf); Front Line Defenders, *Global Analysis 2020*. Available at: [https://www.frontlinedefenders.org/sites/default/files/fl\\_d\\_global\\_analysis\\_2020.pdf](https://www.frontlinedefenders.org/sites/default/files/fl_d_global_analysis_2020.pdf).



human rights defenders, and in particular, support the effective investigation, prosecution, and punishment of threats.

The Protocol comes after five years of research and drafting undertaken with the active participation of over 50 experts in human rights, international law, public policy, and criminal policy and practice, as well as online and in-person consultations with stakeholders to develop key aspects of these guidelines. The process began in 2016 to honor the memory of Berta Cáceres, a renowned indigenous HRD who was killed that year following years of uninvestigated threats; and it has been inspired by the selfless work of HRDs –including journalists, activists, lawyers, judges, and social leaders– worldwide.


Six committees examined distinct areas of focus of the Esperanza Protocol, including the relevant international legal framework, public policy standards and good practices, criminal policy and investigation, and the need for transformative reparations and guarantees of non-repetition. Committee members included HRDs, experts from local civil society organizations, international human rights groups, academic and thematic experts, and former and current officials from regional or international human rights bodies<sup>3</sup>. Some of the research produced by these committees is available for further study and reference<sup>4</sup>.

Based on these contributions, a draft of the protocol was developed and subjected to extensive consultation. Individual

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<sup>3</sup> For a list of the members of the Committees, see page 67

<sup>4</sup> <https://esperanzaprotocol.net/>



experts, practitioners, and human rights defenders from across the globe were involved to ensure a thoughtful, useful tool, relevant for different contexts. More than 70 human rights organizations from around the world have actively contributed to the process, and over 500 practitioners and experts participated in consultations. We are grateful for the invaluable work of everyone involved, and the generous support of the funders that backed our work in this project including UN Women through the Spotlight initiative, the Open Society Foundations, Misereor, Diakonia, Oxfam, the Overbrook Foundation, the Younger Family Fund, and the Oak Foundation.

The result is a thoughtful global tool that includes international human rights law considerations that should be taken into account when responding to threats against human rights defenders, including key aspects of the legal analysis of threats, public and criminal policy considerations, and the evaluation of due diligence in the investigation, prosecution, and punishment of threats against HRDs. The Esperanza Protocol is inspired by similar international instruments such as the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and the Latin America Model Protocol for the Investigation of Deaths of Women from Gender Based Violence (Femicide/Feminicide); and when appropriate, it is designed to be used in conjunction with these complementary international tools. We invite jurists, policy makers, and HRDs to evaluate national policies, norms, and practices on the response to threats against HRDs taking into account the Esperanza Protocol as a specialized tool.

The meaning of this Protocol's name is twofold. La Esperanza is the name of the town where HRD Berta Cáceres was born and died. "Esperanza" also means "hope" in Spanish and expresses the desire to inspire change and illuminate the possibilities of social transformation and justice that human rights defenders pursue. In this spirit, we propose a path forward.



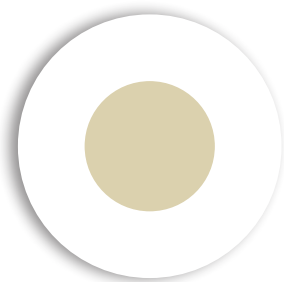
**Viviana Krsticevic**  
*Executive Director / CEJIL*



# Executive summary

The Esperanza Protocol (PLE) is an initiative to improve the response to threats against human rights defenders (HRDs).

**Historically and globally, threats have been used to intimidate HRDs, their families, communities, or allies, and are directed to inhibiting individual and collective action.** Threats not only hinder the important work carried out by HRDs, but also disrupt their daily lives and those of their families, communities, and allies, endanger them and have a chilling effect on other HRDs. Threats not only indicate an intention to cause harm to the HRD but can themselves violate rights: the right to defend rights; the rights to life, security, integrity, dignity, and privacy; the right to be free from torture and cruel, inhuman and degrading treatment; freedom of opinion, expression, information, assembly and association; the right to access to justice at the national and international level; and freedom of movement and residence, among others. Threats against HRDs are thus a pressing human rights issue. Despite the seriousness of threats, most of these crimes remain unpunished and perpetrators unidentified. Impunity enables additional harm, fuels cycles of violence, further inhibits HRDs' work, and erodes civic engagement.



The Esperanza Protocol promotes an adequate response to threats against human rights defenders, including through public policy guidelines and guidelines for a diligent criminal investigation.

The Protocol **establishes a functional definition of threat** as “an intentional conduct that indicates a future harm or that intimidates an HRD, their family or community”, including “individual, collective, direct and indirect, explicit and symbolic threats, whether they take place in offline or online spaces”. In recognition that States criminalize threats under a

variety of headings (e.g., intimidation, obstruction of justice, blackmail) and the Protocol may be relevant to multiple crimes codified in a domestic jurisdiction, rather than proposing model legislation.

The international legal framework for protection of HRDs identifies State obligations to respect rights, comply with reinforced and specific due diligence obligations toward HRDs, ensure non-discrimination, and ensure adequate reparation to threats against HRDs.

***The Protocol includes considerations of State obligations to develop and implement public policies to ensure an enabling environment for the defense of human rights***, as well as specific criminal policies regarding threats against HRDs, deriving from general State obligations to respect and guarantee human rights. State public policies toward HRDs should ensure an enabling environment for the defense of human rights by including, at minimum, ensuring public support for the defense of human rights; an adequate domestic legal framework; policies and mechanisms to protect individual HRDs; evaluation mechanisms; and ensuring privacy and data protection. Criminal policies should include considerations on data collection, protection, and analysis, and the need to ensure proactive analysis of criminal threats; victims' services and protection mechanisms; training; and ensuring adequate human and financial resources to implement the policy.

Finally, ***the Protocol establishes principles and extensive guidelines for criminal investigation of threats against HRDs***, from gathering of evidence, to investigation, to trial, as well as considering principles of adequate reparations in accordance with international law. In particular, it develops the importance of ensuring that investigations take into consideration the HRD's work as a possible line of inquiry and be directed toward identifying both physical perpetrators and indirect perpetrators; that investigations consider the context in which threats against HRDs are made, relevant patterns or trends in criminality, and characteristics of alleged perpetrators; and that States ensure victim services and the participation

of victims in proceedings. It also develops specific considerations based on particular characteristics of victim identity, perpetrators (e.g., State, criminal group, or business actors), and modalities of threats (e.g., online, offline).

## I. Introduction

Human rights defenders (HRDs) play a critical role across the globe in the defense of human rights, democracy, development, and peace, as recognized by the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the “Declaration on Human Rights Defenders”). International human rights law has advanced in recognizing that HRDs have the right to raise awareness, organize, mobilize, and litigate in favor of human rights at the local, national, regional, and international levels. These efforts may be individual, but are often collective, in processes involving communities, organizations, networks, and movements. This has been recognized as the “right to defend rights.”

***Historically and globally, threats have been used to intimidate HRDs, their families, communities, or allies, and are directed to inhibiting individual and collective action.*** Threats to HRDs can cause them to limit, change, or cease their activities, disrupt their daily lives and those of their families, communities, and allies; stigmatize them, endanger them, have ***a chilling effect on other HRDs***, and have long-lasting, even lifelong impacts on HRDs. Moreover, threats to HRDs most often do not occur in isolation and may happen concurrent with, or lead to, other violations of domestic and international criminal law including assault, torture, kidnapping, enforced disappearances, forced displacement, and killings, committed by State or non-State actors. In this respect, threats may presage violence or harm, but the threat itself also constitutes serious human rights violations.

Threats almost always have serious collective repercussions, impacting families, communities, organizations, and social processes. Their immediate and long-term effects are highly dependent on the type and duration of the threat, as well as the situation of each HRD and their context. Differential impacts may be based on an HRD's identity, situation or condition, type of rights they defend, history, and relationship to a community or organization, among other factors. For example, some HRDs including women HRDs and LGBTI HRDs often receive gendered threats such as threats of sexual violence.

Without the active work of people who stand for their rights and the rights of others, a society would lose a critical force for the effective guarantee of rights, democracy, and the rule of law. Consequently, by inhibiting the work of HRDs and the social organization processes they comprise, threats erode a cornerstone of the protection of rights around the world and contribute to shrinking civic space.

Threats thus interfere with the right to defend rights, and also may affect the rights to life, security, integrity, dignity and privacy; the right to be free from torture and cruel, inhuman and degrading treatment; the freedoms of opinion, expression, information, assembly and association; the right to access to justice at the national and international level; and freedoms of movement and residence, among others.

***Therefore, threats against HRDs are a pressing human rights issue, yet they are often minimized by authorities.*** There is little attempt to investigate, resulting in impunity; this in turn enables additional harm, fuels cycles of violence, further inhibits HRDs' work, and erodes civic engagement. Countless HRDs are assassinated following uninvestigated threats.

Oftentimes State action is primarily or exclusively focused on physical security protection measures, such as bodyguards or emergency mobile phones. While this is important, they do not address the factors that generate risk; the emotional, psychological, social, and financial impacts on HRDs and their families and communities; the collective dimensions of these risks and their impacts; and the need for adequate measures of



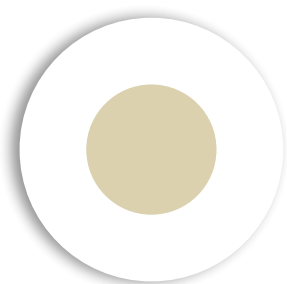
prevention and rehabilitation that address diverse individual and collective needs. Accountability for perpetrators and rehabilitation for victims is rarely prioritized.

Given the serious and multidimensional harms threats pose to HRDs, and the need to fight impunity, a robust and innovative strategy is required to improve State responses. Such an approach should form part of a comprehensive public policy that guarantees an enabling environment for human rights defenders. At the same time, it should address the sources of risk and impacts for specific HRDs, employing an intersectional and gender perspective.

The Esperanza Protocol aims to form part of such a comprehensive strategy via guidelines for effectively responding to threats against HRDs, with a special focus on the criminal investigation of these threats. The Protocol raises awareness about the severity of threats, their impact, and calls attention to the necessary State responses that are too often underdeveloped and poorly applied. This Protocol is primarily designed to be used by States, particularly policy makers and justice actors as well as HRDs and those working with them. Some sections are more pertinent for specific stakeholders but addressing threats against HRDs requires a coordinated and comprehensive response from all those involved.

## II. **Definitions**

For the purposes of this Protocol,

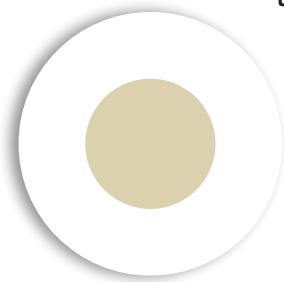


“human rights defender” (“HRD”) refers to anyone who individually or in association with others, promotes or protects the realization of human rights and fundamental freedoms at either the national or international levels.

This follows the definition reflected in the “Declaration on Human Rights Defenders.” This is a functional definition, not based on the profession or identity of an individual or collective, but on their actions. An HRD may work to promote diverse rights, including women’s rights, children’s rights, indigenous rights, civil and political rights, and social, economic, and environmental rights, among others.

Behind every threat against an HRD there is an actor that seeks to achieve an objective that is negatively impacted by the work of the HRD. Threats are produced with an intention and a purpose.

The Esperanza Protocol also relies on an operational definition of threats designed to be applicable in diverse legal contexts. For the purposes of this Protocol,



“threat” refers to an intentional conduct that indicates a future harm or that intimidates an HRD, their family or community. This definition includes individual and collective, direct and indirect, explicit and symbolic threats, whether they take place in offline or online spaces.

Threats often indicate a future harm to physical integrity, life or other rights. It is not necessary to prove the impact of causing fear or terror to establish the existence of a threat. In order to determine that a threat has occurred, it is crucial that the statement or action would reasonably have been understood as a threat. Moreover, context may be essential to understanding whether certain conducts qualify as threats.

The Protocol does not recommend model legislation or any single legal definition of threat to be codified within a given legal framework. Instead, it

recognizes that diverse jurisdictions codify acts and omissions that correspond with this functional definition of “threat” differently, including codifications such as threats, blackmail, obstruction of justice, intimidation, and coercion. Some jurisdictions require the threatened outcome to be a crime, such as threatening with unlawful violence. Other jurisdictions provide for aggravating circumstances in their codification of threats based on victims or perpetrator’s identity, intent or the means by which the threat is carried out, such as anonymity, use of prohibited weapons, the purpose of influencing elections or other public processes, and the specific identity of the person making or receiving the threat (e.g., public officials, witnesses or parties to legal proceedings, HRDs). Many of these codifications proscribe conduct that coincides with this Protocol’s definition. Thus, the functional definition of threat that this Protocol uses may be applied to guide investigation and State responses using different crimes across different jurisdictions and legal systems. It is recommended that States revise their norms and practices to identify potential improvements, taking into consideration the guidance provided by this protocol.

### III. **Scope of the protocol of the protocol**

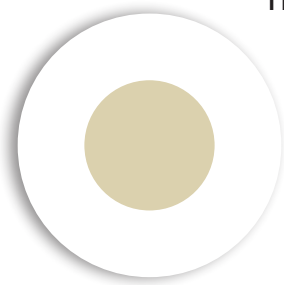
The Esperanza Protocol aims to protect the right to defend rights through guidelines for States to respond to threats against HRDs, with a special focus on the criminal investigation of these threats.

By raising awareness regarding the impact of threats and impunity on HRDs, their families, organizations, and society, and highlighting relevant international law obligations, ***the Esperanza Protocol seeks to improve State response to threats against HRDs and contribute to the guarantee of HRDs’ integrity and ability to work***. Ultimately, it promotes an enabling environment for the defense of human rights worldwide.

The Protocol articulates the international legal obligations that exist when threats are made. These obligations have been recognized in international and regional treaties, including the International Covenant on Civil and Political

Rights, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights, the European Convention on Human Rights, and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and have also been reaffirmed by international monitoring bodies and international jurisprudence.

These obligations require the investigation of threats, the punishment of perpetrators, the implementation of measures to protect victims, the prevention of further violations, the availability of adequate and appropriate rehabilitation services, and redress for violations committed.



The Protocol encompasses States' international legal obligations to guarantee the right to defend human rights, with a focus on guidelines for public policies, policies to enable an effective criminal investigation, and guidelines for the criminal investigation of threats against human rights defenders.

Many kinds of attacks and crimes committed against HRDs are not the direct focus of this Protocol. HRDs may also be victims of other crimes that are committed in the same criminal act as threats or that are related to threats they receive: for example, HRDs who experience forced displacement after receiving threats. Such crimes must be investigated; however, this Protocol's specific contribution is in outlining State obligations in the investigation of threats (including threats to commit further crimes). Furthermore, surveillance, criminalization, and judicial harassment are included in the Protocol to the extent that they meet the definition of threats provided and pose serious risks to HRDs.

This Protocol also references and complements other initiatives to respond to threats against HRDs developed by State actors, international organizations, and civil society organizations, among others, such as existing protocols regarding other crimes and attacks against HRDs.

Thus, the guidelines provided by this Protocol rely on and should be used in a complementary manner with related standards that address the investigation of human rights violations against HRDs. These include the Code of Conduct for Law Enforcement Officials, the United Nations Guidelines on the Role of Prosecutors, the Organization for Security and Cooperation in Europe's Guidelines on the Protection of Human Rights Defenders, and other specialized regional instruments. Should the facts also involve other human rights violations, those specific guidelines, such as the revised Minnesota Protocol on the Investigation of Potentially Unlawful Death, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), and the Latin America Model Protocol for the Investigation of Deaths of Women from Gender Based Violence (Femicide/Feminicide), should also be followed.

#### **IV. International legal obligations to guarantee the right to defend rights: a focus on threats against HRDs**

##### **A. Human Rights Affected by Threats against Defenders**

Threats may not only constitute crimes under national or international law, but also may violate multiple fundamental human rights of HRDs. This includes the right to defend human rights, the right to life, the right to security and integrity; the right to be free from torture and cruel, inhuman, and degrading treatment; the right to freedom of opinion and expression, the right to freedom of assembly, the right to freedom of association, the right to access and communicate with international bodies, the right to a fair trial and judicial protection; the right to freedom of movement, residence, and protection from forced displacement; the right to privacy, and the right to the protection of honor and dignity. In this respect, ***threats may presage violence or harm, but the threat itself may cause serious human rights violations*** with individual and collective impact.

Threats often affect the psychological and physical integrity of HRDs. Due to the serious moral and psychological impact threats have on those who receive them, they may also qualify as ***torture or cruel, inhuman, or degrading treatment*** under international law.

When threats interfere with HRDs' ability to access international human rights bodies; or discourage, retaliate, or punish the participation or cooperation with such bodies, they may constitute ***reprisals***.

Further, if threats occur, indicating risk to an HRD, and States do not respond in accordance with their due diligence obligations, the State may be responsible for all subsequent violations of human rights resulting from the uninvestigated threats.

Ultimately, a violation of any of the substantive rights enumerated above that is based on threats and intimidation against HRDs results in the violation of the defender's right to defend rights, which has universal scope and is fundamental to achieving universal respect for human rights.

## **B. International Obligation to Respect and Guarantee Rights**

States have recognized a robust set of rights critical to enabling HRDs work; these rights exist both online and offline. ***International treaties establish negative and positive obligations to respect and guarantee these rights***. Moreover, these obligations have been further developed by treaty body commentary, regional and international jurisprudence, and national doctrine, jurisprudence, and practice.

To comply with their negative obligations, States must refrain from interfering in the exercise of HRDs' rights: in particular, they must refrain from undue restrictions that limit their work, harassment, killings, and criminalization.

In addition, positive obligations require States to take affirmative steps to ensure the protection and promotion of rights. To fulfill these positive obligations, ***States must adopt the legislation, institutional frameworks***, and policies necessary for the effective enjoyment of these rights ***in the context***

***of HRDs' work***. Positive obligations also include taking appropriate measures and exercising due diligence to ***prevent, investigate, prosecute, and punish violations***, and ***providing redress, including rehabilitation***, where there is State responsibility for violations.

States may be liable for human rights violations committed by either State or non-State actors. Direct responsibility may be incurred by a State when a violation is committed by a State actor or with the State's support, collaboration, acquiescence, or tolerance, including deliberate or pervasive inaction. Indirect responsibility may be incurred when the violation is committed by a non-State actor and the State fails to act with due diligence to prevent the violation; or fails to investigate and punish those responsible. The obligations to prevent, investigate, prosecute, and punish violations and provide reparations to victims are applicable to acts committed by both State and non-State actors. Individuals and business corporations may be liable for violations of national and international law relating to the commission of threats. Where the State is responsible for a human rights violation, directly or indirectly, it is obligated to provide redress.

### ***1. General, specific, and reinforced standards of due diligence***

International human rights law requires States to take general, specific, and reinforced due diligence measures to respond to threats against HRDs.

General due diligence obligations exist in relation to all persons through an overarching set of legal duties and standards that States have committed themselves to abide by to protect human rights. States have the general due diligence obligation to ensure that State entities are designed and operated to guarantee the rights of all, including HRDs. Specific due diligence obligations exist when a State knows or should have known of a particular risk of harm to a person or identifiable group. States have specific due diligence obligations in relation to HRDs, including groups of defenders that they know or should know are at risk.

Additionally, reinforced due diligence obligations exist in relation to groups often subject to particular risks based on their identity, situation, or role in society. These obligations may be established via international instrument, as is the case with treaties determining specific obligations to protect women from gender-based violence or ensure the best interest of the child, for example, or through State knowledge of heightened risk for a specific group. State obligations also arise through case law and specific interpretation of existing international instruments.

## **2. Specific due diligence obligations**

There is consensus in international human rights law that the State's fulfillment of specific due diligence obligations to prevent and protect must be assessed according to the following criteria: i) indications of a real and immediate risk; ii) whether the State knew or should have known of such risks; and iii) measures that were reasonably expected from State authorities in order to prevent and protect. In case of failure to comply with due diligence obligations, the State is responsible for the violations resulting from its failure to act and must investigate and provide redress.

**Threats are an indicator of real and immediate risk against an HRD or group of HRDs. This risk may also include HRDs' families, organizations, communities, or other groups to which they belong, or groups or individuals with which they interact. States have an obligation to act when they have actual knowledge of a threat or have identified a pattern of threats towards a specific group or community of the HRD.** The knowledge of the threat is not limited to a formal criminal complaint. In this regard, States should consider other indicators of risk that make violence foreseeable, including, for example, specific contexts of violence, systematic threats against particular types of HRDs, the presence of armed actors, organized crime, or high levels of impunity related to past threats and violence.

Additionally, States have a reinforced duty when there is a foreseeable and avoidable danger against individual HRDs or at-risk groups. States must



immediately take effective, timely and comprehensive measures. Therefore, State agents should take reasonable action to prevent or avoid such risks when they are aware of a situation of real and imminent danger against targeted individuals or groups of HRDs. The reasonableness of State response will depend on numerous factors, including context, patterns or trends of criminality, macro criminality, the identity and vulnerability of those involved, the nature of risk involved, the characteristics of the threat, specific circumstances surrounding the victim and perpetrator, the nature of the work undertaken by the HRD, and the possible interests affected by their work. Both specific measures and general measures may be required to prevent further harm.

These measures may include, inter alia, the duty of State agents to warn HRDs of threats to their safety when they are aware of real and imminent risk arising from State or non-State actors, and the duty to provide protective measures. Additionally, States must investigate, prosecute, and punish threats against HRDs to prevent harm and curb chronic repetition of risks, danger, and associated violations.

### ***3. Reinforced Obligations in relation to Human Rights Defenders***

***States have reinforced due diligence obligations in relation to HRDs. Reinforced obligations recognize the vital role that HRDs play in fostering the rule of law and safeguarding democracy and fundamental rights and freedoms.*** They also derive from the structural discrimination, patterns of violence and ongoing risks faced by HRDs due to the nature of their work and the marginalized groups they belong to or with which they work closely. Women HRDs often face different and additional risks that are gendered, intersectional and shaped by entrenched stereotypes. Examples of overlapping and intersectional identities and areas of focus include environmental and land HRDs, indigenous and Afro-descendant HRDs, trade union members and leaders, HRDs working in conflict zones or in transitional justice frameworks; journalists, lawyers and justice actors; child HRDs, and LGBTQI+ HRDs.

The reinforced obligations to protect HRDs and prevent violations against them have implications for State responses to threats. They require that States take specific measures to protect HRDs against threats that hinder their work within a given context. These reinforced and differential obligations are detailed throughout the Protocol as they apply to all areas of policy and investigation.

#### ***4. The obligation to ensure equality and non-discrimination***

The obligation to ensure equality and non-discrimination is critical to guaranteeing that HRDs can exercise their right to defend rights. States should ensure that any measures taken will be effective given the different forms of discrimination and violence that certain groups of HRDs face, entailing specific risks. This obligation requires that States be mindful of indirect discrimination and take positive measures as necessary.

HRDs with intersectional identities, including race or ethnicity, age, gender, gender identity, sexual orientation, religion, and migratory status, and those who accompany their work often face specific risks and challenges in obtaining an adequate State response. Additionally, women HRDs face specific forms of discrimination based on gender. Multiple factors of discrimination may converge, based on factors including gender and gender identity, age, race and ethnicity, socio-economic status, religion, and occupation. Indirect, multiple, and structural discrimination not only affects how different HRDs receive threats, but how States must respond. In this respect, an intersectional approach is required, in recognition that certain HRDs require differentiated measures to guarantee their right to defend rights.

#### ***5. The obligation to provide redress for threats against HRDs***

States must provide reparations for the human rights violated by threats. Under international law, reparations for human rights violations are intended to fully restore rights to the extent possible, repair the harm caused, and avoid repetition. For HRDs whose rights have been violated due to threats, reparations must consider the link between the violations,

their work, and the resulting harm. In the event of ongoing violations, the immediate obligation is cessation.

Reparations must be given for harm suffered as a result of the human rights violations that have taken place. They should be proportional to the damage caused and the gravity of the violation. They should also take into account patterns of violence and discrimination as well as State policies and practices that enabled the violation against HRDs in order to provide an adequate remedy.

Reparations may be individual or collective, depending on the situation. Accordingly, they may be ordered in favor of the HRDs, their families, communities, or other relevant parties.

Under international law, reparations shall include restitution, rehabilitation, satisfaction, guarantees of non-repetition and compensation, where diverse measures might be adequate to address the harm caused and the gravity of the violations. These measures are often interrelated and complementary.

In order to make reparations effective, victim participation is central in the design, implementation, monitoring and evaluation of reparations.

The objective of **restitution** is to restore the enjoyment of the rights that were violated. Its suitability depends on the nature of the violation and the extent to which it is possible to restore the victim's prior situation. In relation to threats, restitution may take many forms, for example measures to enable a defender displaced due to threats to return to their residence safely and voluntarily.

Measures of **rehabilitation** seek to redress harm to victims' physical, mental, and psychosocial integrity, as well as to restore a victim's dignity or employment, address his or her legal situation, or redress social repercussions of violations. These require an integral and interdisciplinary approach. The State may be required to provide services directly or cover the costs for outside providers, in either instance through qualified professionals that are mindful of the impact of trauma. Given that measures of rehabilitation may relate to individual, family, local community and societal harm, all victims must be consulted at every stage to ensure their needs and wishes are respected.

**Satisfaction** seeks to repair harm by establishing and sharing the truth about the violations, restoring the dignity of those affected, and pursuing accountability for the perpetrators. It is inextricably linked to the obligation to clarify past violations. Some of these measures involve the development of symbolic reparations that make the role of HRDs in a democratic society more visible, with a collective impact that contributes to the structural transformations necessary to guarantee non-repetition. The preservation of memory in the public sphere, in full consultation with the beneficiaries, can be a powerful measure of social reconstruction, contributing to repair the relationship between HRDs and the State.

In cases of threats against HRDs, the State always has the duty to **investigate, prosecute, and, where appropriate, punish** those responsible. It is also a corollary of the victims' right to justice.

The objective of **guarantees of non-repetition** is to avoid recurrence of the violations that took place. In this regard, States are required to adopt those legal and policy reforms necessary to prevent the repetition of the violations. Guarantees of non-repetition may require States to strengthen the independence of the bodies charged with investigation and prosecution, as well as access to such bodies and due process guarantees for HRDs under threat. For example, human rights bodies have required States to strengthen access to and the efficacy of measures of protection for HRDs, or to create protocols to improve the protection of HRDs. States should tackle the root causes of the violations: this may include working with affected communities, educational institutions, civil society organizations, and businesses.

Reparation may also require transformative measures to avoid reinforcing a situation of vulnerability, and it may require steps to transform underlying patterns, practices, norms, and policies. Monetary compensation seeks to economically redress physical or mental harm, moral and material damage, expenses incurred in response to the violations, and lost earnings and opportunities of the victims. Monetary compensation must be given to HRD victims of threats to repair the harm suffered effectively and to the fullest extent possible. Monetary compensation should also include legal fees and costs at the national and international level.

## ***6. Responsibility of corporations and other business enterprises***

Corporations and other business enterprises play an important role as allies but can also be sources of risk for HRDs worldwide. Although this Protocol is targeted at improving State response to threats against HRDs, it highlights some key aspects regarding business enterprises' responsibility to respect the human rights of HRDs under international law and their role in ensuring an enabling environment for the exercise of human rights.

Threats to HRDs motivated by businesses' operations are of great concern globally. HRDs can be victims of threats because they expose harmful business conduct, often in collaboration with States, that adversely impact the rights of communities, including environmental rights. Corporations most commonly involved in threats and attacks against HRDs include extractive industries, protection services and surveillance technology companies, but threats and attacks on HRDs happen in relation to all business sectors. HRDs can also be affected by the business activity itself, i.e., surveillance.

***States are responsible for regulating and responding to human rights violations attributable to corporations and other business enterprises.***

Business enterprises can also play a critical role as allies to prevent threats against HRDs from happening. For example, they can raise awareness on the important role that HRDs play in societies as well as build capacity around corporate responsibility to respect HRDs' rights.

Non-State actors are bound by specific international legal norms, including customary international legal norms such as the prohibition of genocide, torture, and other crimes against humanity. As organs of society performing specialized functions, they are also required to comply with all applicable laws, including national laws, and to respect human rights. Thus, they may be held accountable for criminal and civil offenses under national and international law. Individuals may incur criminal or civil liability for making threats against HRDs.

While in the context of business and human rights, States have an obligation to protect and guarantee rights, national, transnational corporations, and other business enterprises have a responsibility to respect human rights, including those of HRDs. Under the United Nations Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights and the United Nations Guiding Principles on Business and Human Rights, business enterprises have a responsibility to identify, prevent, mitigate, and account for human rights violations against HRDs that may result from their activities and operations, or as a result of their business relationships.

Corporations and other business enterprises have specific due diligence obligations that require them to develop human rights policies to respect HRDs' rights and take into account the detrimental impact of their activities on HRDs.

Business enterprises have a responsibility to refrain from infringing the human rights of HRDs; this includes refraining from threats and attacks against them. Corporations must ensure that their activities, actions, and omissions do not lead to threats against HRDs or amplify the impact of threats. Furthermore, they must address the adverse impacts that their own activities or those that result from their business relationships have on HRDs. This may require adapting procedures to mitigate risks and threats against HRDs.

Technology companies, including social media companies, play a vital role in enabling the right to freedom of expression and information, essential elements for democracy. However, many threats against HRDs are enabled or amplified by using the products of technology companies. In order to guarantee HRDs' rights, companies may be required to refrain from designing, developing, producing, and selling technology to both private and governmental actors that is weaponized to inhibit the defense of human rights. Companies should adhere to their human rights responsibilities by disclosing their transfers, conducting rigorous human rights impact assessments, and avoiding transfers to States that are unable to guarantee compliance with their human rights obligations. To do this, companies should take into consideration the human rights record of the buyer of the

technology and the existence of necessary safeguards to prevent hindering the defense of human rights.

Social media platforms can help amplify the voices of HRDs and promote a plural public debate. Social media platforms should take measures to prevent their platforms from being used to target, harass, and intimidate HRDs. Additionally, they should engage in context-specific moderation globally, taking into account different languages, usage, and contexts. Any exceptions to the exercise of freedom of expression must strictly adhere to applicable human rights standards. If threats are carried out on social media platforms and reported through the designated means, social media companies should take measures to ensure that, even if the content is removed from the platform, the reported content is stored on the servers and available for prosecutors for later use in legal proceedings. Other specific actions may be required from media companies to guarantee the rights of HRDs at risk due to content spread through their media. The creation of specific departments of human rights and public policy within social media companies that seek solutions to problems such as digital violence, in collaboration with the people affected, represents a good practice.

## **V. General due diligence and the obligation to create a safe and enabling environment to defend rights free from threats and other forms of violence**



As part of their international obligations to respect and guarantee human rights, 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 barriers to the right to defend rights.

This includes the proactive mitigation and elimination of factors that create risks for HRDs. A comprehensive public policy should take into account underlying causes of conflict, inequality, and violence; protect those at risk; and enable investigation, prosecution, and punishment, as well as the provision of reparations. Such policy must involve the development of an adequate normative and institutional framework, training programs for State officials, a public discourse that recognizes the contributions of HRDs, protection mechanisms where necessary, and an adequate criminal policy.

The following section details international obligations regarding the positive obligation to guarantee a safe and enabling environment. Most international human rights law instruments include provisions that recognize the right to civic space, encompassing the rights to freedom of expression, association, and peaceful assembly. The right to civic space enables HRDs to mobilize, demand their rights, and seek to influence the political and social structures around them. This section also includes examples that demonstrate how States have complied or may comply with these obligations.

Some States face unique challenges in addressing the underlying violence against HRDs, which may include a lack of political will, State capture or participation in crime, shrinking civic spaces, impunity for threats and attacks on defenders, and overemphasis on protection mechanisms for HRDs or hard security measures. These obstacles should not be interpreted to relieve the State from full compliance with its obligations under international law but are critical to policy design, implementation, and evaluation. Additionally, securing an enabling environment for the defense of human rights may require transformative measures that address structural inequalities or differentiated needs, as in the case of indigenous peoples, children, rural communities, or women HRDs, among others.

The development, execution and evaluation of policies designed to ensure an enabling environment for the defense of human rights should be comprehensive and coherent, and guided by the principles of transparency, participation, precaution, protection, and non-discrimination, among others. The institutional design and implementation should also provide for sufficient



resources, training, evaluation, and coordination among different institutions to ensure their effectiveness.

States must allocate an adequate budget to fund public policies aimed at guaranteeing a safe and enabling environment. The existence of norms and institutions alone is insufficient; they must also have the necessary resources to be effective.

Keeping in mind the nature of threats against HRDs and specific State obligations, the following guidelines for the design and implementation of public policies should be considered, with the aim to contribute to the guarantee of a safe and enabling environment.

This list is not exhaustive but includes several of the most relevant principles. Some general principles, such as the obligation of non-discrimination, are not repeated in this list but are fully applicable. Public policy should foster equality in its design, implementation, and evaluation. This means that public policy regarding HRDs should be informed by the diversity of HRDs and provide for differential focuses and approaches with respect to the specific risks that different HRDs face.

**A. Key principles for public policies to guarantee the right to defend rights free from threats and other forms of violence**

***1. Participation of HRDs and other stakeholders***

The design, implementation, and evaluation of public policies to guarantee the right to defend rights should ensure the effective participation of all relevant stakeholders.

Consultation and participation should be guaranteed during the design, implementation, and evaluation process of public policies to guarantee a safe and enabling environment. HRDs must be consulted and prioritized. International law includes specific provisions regarding the consultation and participation of certain groups of HRDs, such as indigenous and tribal peoples.

Other stakeholders include, civil society organizations, academics, experts on risk assessments and data analysis, justice actors, State protection mechanisms, and national human rights institutions where applicable.

A good practice to ensure effective policy and stakeholder engagement is the establishment of effective and independent human rights institutions, with a focal point dedicated to addressing concerns of HRDs. National human rights institutions may contribute to the creation of an enabling environment for HRDs through advocacy, monitoring barriers such as security risks and legal measures, and reiterating the importance of HRDs' work when they are threatened.

Civil society initiatives that promote an enabling environment should also be recognized and encouraged. For example, efforts to implement self-protection measures and other non-State protection initiatives for those at risk, such as protection houses, evaluation missions, investigation groups, civil society and academic databases or reports on attacks and threats, solidarity initiatives, and psychosocial, psychological, and education assistance, are valuable contributions to keeping HRDs safe. These measures should be acknowledged by States in public policy design, but not be considered a substitute for the norms and policies States must implement under international law to create a safe and enabling environment and to respond to threats to HRDs.

## **2. Transparency**

The principle of transparency should guide the design, implementation, and evaluation of public policies to ensure pertinence, effective public participation, and accountability. This principle requires the timely and accessible dissemination of relevant information on areas of public interest, and the collection and analysis of information necessary for the protection of human rights, such as information about threats and attacks against HRDs. Moreover, international standards require that publication be guided by the principle of maximum disclosure with limited exceptions, such as the protection of the right to privacy, the development of ongoing criminal investigations, and other substantive and procedural protections as developed below in the section on data collection.

Consequently, there is a presumption of public access that is particularly strong when addressing human rights violations or the infringement of the right to defend rights. To guarantee this principle, institutions involved in the development or execution of public policies relevant to HRDs should have mechanisms that allow for transparency and accountability in the performance of their mandate.

The principle of transparency, combined with the right to truth, also entitles at-risk HRDs to know what information security, intelligence and other agencies have concerning threats against them or any group to which they belong, and to know what actions public agencies are taking to respond to reported threats against them.

## **B. 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 defenders***

Public support for the important work of HRDs is critical to creating a culture of respect for their valuable contributions to society.

Stigmatization and delegitimization of HRDs' work makes them more vulnerable to attacks. State actors must not contribute to their stigmatization, directly or indirectly. States should also proactively demonstrate support for the important and legitimate role of HRDs at all levels, from national to local. The condemnation of attacks against HRDs by high-ranking officials is a clear manifestation of such support.

When States violate the rights of HRDs, they should recognize responsibility publicly. Public acknowledgment may also involve the dedication of public spaces, such as memorials and museums. Such initiatives can form a part of policies devoted to transforming perceptions of an issue, dignify the memory of an individual or collective process, and remember the lessons of the past.

State actors should refrain from contributing to a rhetoric that vilifies or stigmatizes HRDs.

Non-state actors have a critical role in the public support of HRDs. The solidarity of civil society organizations has been critical in advocating for HRDs and their safety. Philanthropic and academic institutions, media outlets, and businesses can be an important counterbalance to rhetoric that criminalizes or stigmatizes HRDs. Business enterprises can also play an important role in mitigating threats against HRDs by publicly raising awareness of HRDs' important roles.

## ***2. Legal and institutional framework***

States must have a legal and institutional framework that complies with international obligations to respect and guarantee the right to defend rights. Consequently, States should remove legal obstacles that erode the right, as well as ensure that laws, policies, and practices clearly determine any permissible limitations and derogations. It should also provide for institutional design that enables compliance with its obligations to protect fundamental rights. States must ensure effective coordination between different State entities and levels of government.

Hence, a safe and enabling environment for the defense of human rights requires the absence of laws and policies, including those that impact civil society organizations, which disproportionately restrict or criminalize the work of HRDs. Therefore, States must review and modify any existing laws, policies, and regulations that violate the rights of HRDs, such as the rights to privacy, freedom of expression, and association, and adopt any necessary legislation, including administrative and judicial measures, to ensure compliance with international standards. States should also review legal mechanisms that allow for the criminalization of HRDs, including ambiguous or discriminatory criminal provisions.

Legal and institutional frameworks should provide for the effective implementation of international obligations related to HRDs, and particularly threats against them. This must include the penal codification of threats against HRDs.

These frameworks should account for differentiated international obligations to ensure the rights of HRDs in all their diversity. Moreover, States may also be required to design institutional frameworks to respond to specific contexts and patterns of violations.

### ***3. Protection policies and mechanisms***

States have a positive obligation to protect HRDs at risk. Although the focus of this Protocol is primarily criminal investigation, the guarantee of a safe and enabling environment may involve the design and implementation of a protection policy that includes measures focused on threats against HRDs when they are at risk. This includes taking into account identifiable patterns of violence against HRDs and other incidents of harassment or crimes committed against the HRD, their family or organization. Although security measures are an important means to protect HRDs from threats, norms and policies should avoid focusing exclusively on physical security.

Such programs should be designed, implemented, and evaluated in consultation with those at risk, with the necessary safeguards to generate HRDs' trust. The program should be capable of early detection of threats and the risks associated with those threats, considering particular contexts, in order to comply with international standards of due diligence and protection as described in this Protocol. Coordination between different agencies at the local and national level is essential.

Protection programs should be defined by law and have the financial and logistical resources needed to operate effectively at both the national and local levels. They should include prompt and comprehensive individual and collective risk analyses that assess the differentiated risks faced by HRDs, considering specific situations such as context and vulnerability of particular groups, identifying differentiated responses applying a gender, ethnic, racial, and cultural perspective, and taking into account intersectional analysis when appropriate. These programs should enable HRDs to have immediate access to authorities that are competent to provide effective protection when needed. Protective measures should be holistic and address all immediate barriers to the right to defend rights.

#### **4. Privacy and data protection**

States are bound by a set of obligations related to privacy and data protection, including protection of personal data, the right to informational self-determination, and the inviolability of communications. HRDs also have the right to develop, use, and teach encryption tools and the right to communicate anonymously.

States have an obligation to protect HRDs' right to privacy; hence, States should adopt data protection legislation that complies with human rights standards relating to the protection and processing of personal data. Such legislation must include independent oversight mechanisms and the right to effective remedies. States should also review their existing laws, policies, and practices to make sure that they comply with human rights standards. Existing and emerging human rights standards must be adapted to the context of emerging technologies.

HRDs' personal data, including digital data, must be exclusively collected for a legitimate and limited purpose and time. Such data must be lawfully processed and stored in a manner transparent to the data subject. Further processing and storage of personal data for public interest purposes, such as scientific, historical, or phenomenological analysis should be considered a legitimate purpose. Personal data must be securely stored. Particular efforts should be made to safeguard or anonymize information related to sensitive data involving HRDs and their family members, e.g., location.

The right to privacy guarantees, among other things, that people, including HRDs, are entitled to communicate, seek, and impart information, and associate with others on- and offline free from surveillance. States, therefore, have the obligations: to enact clear and precise legislation that ensures that any surveillance is limited, proportional, and strictly necessary to advance an important State interest; to conduct a human rights impact assessment prior to applying technology with surveillance capabilities, to ensure that it complies with the principles of necessity and proportionality on a case-by-case basis; to ensure judicial oversight and the right to effective remedies; and to provide

HRDs with notice of any surveillance except where a court finds that notice would defeat a legitimate State interest previously defined by a law.

States should have adequate regulations governing the purchase and use of technologies with surveillance capabilities in order to prevent potential harm to HRDs, including strict transparency and accountability standards. Public mechanisms for approval and oversight of technologies with surveillance capabilities must be generated, as well as strengthening of export and import controls and legal tools to redress victims. States should refrain from implementing technologies with surveillance capabilities that do not meet the threshold of necessity and proportionality, applying a moratorium when the use of such technologies can lead to human rights violations.

### **5. Evaluation mechanisms**

Finally, as with all measures taken by States to address human rights violations, efforts to design and implement policy to address threats against HRDs must have evaluation mechanisms in place that allow all relevant stakeholders to assess their effectiveness and make or propose necessary improvements. Clear indicators should be determined and monitored.

In order to analyze the effectiveness of public policy measures, the State should generate reliable data to understand the current situation, develop a baseline, and establish specific and measurable goals. Evaluations should be participatory and periodic. Should the measures implemented not prove effective, the State must address these deficiencies in order to ensure that its policies are aligned with its obligation to secure an enabling environment for HRDs.

## **VI. Criminal policy**

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

Given concerns regarding the overbroad use of criminal law against HRDs to inhibit their work, the Protocol recognizes that while criminal law is essential to hold perpetrators responsible, States should also ensure it is not used inappropriately to inhibit the work of HRDs. In this respect, the criminal investigation of threats must be one part of a broader comprehensive public policy response to guarantee the safety and integrity of HRDs that should encompass other key measures as developed below.

To comply with general and specific due diligence obligations that protect the work of HRDs against threats, States must take measures to ensure 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. International law provides guidelines applicable to criminal policy regarding threats against HRDs that include responsible data collection, a proactive approach, victim services, protection programs, and proper training of State agents.

#### **A. Data collection, protection, and analysis with adequate safeguards**

A critical component of a proactive approach to addressing patterns of threats against HRDs is the diligent collection and analysis of data to understand criminal phenomena and the design of responses that accurately address such phenomena.

The proactive production and dissemination of phenomenological information regarding attacks against HRDs is key to comply with the principle of transparency and maximum disclosure in public policies. Such phenomenological data should be collected, disaggregated, processed, and stored in a systematic, proactive, timely, regular, accessible, and comprehensible manner, and it should be periodically updated. States have the positive obligation to collect, produce, and make accessible information, and to respond to any requests to access information in a timely manner. In case of denial, there should be clear mechanisms to appeal that decision



Information is key to better understanding the criminal phenomenon of threats and to designing, implementing, evaluating, and eventually modifying public policies to prevent and prosecute threats against HRDs; adequately train officials and other stakeholders; secure protection and assistance programs; and determine the allocation of adequate funding and human resources.

Information on patterns of threats and violence against HRDs is also a key resource in developing responses, including investigations. To pursue accountability, justice actors must have access to cross-checked information that allows for the criminal analysis of threats, as well as the identification of common crime patterns. This information should include: the modalities of threats; their geographic incidence; relevant information about the victim to better understand who is targeted by threats, including membership in an organization or movement, affiliation, and interests affected by their work; possible perpetrators, indicia of presence or involvement of State actors, armed groups, organized criminal groups, businesses and economic interests (including names of individual companies, whenever possible); and associated crimes suffered by HRDs, their families, associations, organizations or social movements; and State response, including the implementation of protection measures, progress in criminal investigation, number of persons brought to trial, and number of convictions.

To collect this data, it is important that HRDs are informed in a timely manner about the data that will be collected and for what purposes in order to provide their informed consent about the collection and use of their data. There may be exceptions to this in certain domestic regulations when data is used by public entities to comply with their legal mandates. The collection of data should be limited to strictly necessary data that is relevant for the purposes for which they are to be used and should be collected only to the extent necessary for those purposes. Data should be accurate and kept up to date. Data should be subject to specific regulations on length and location of storage, and HRDs must have the right to access their own information, as well as the right to challenge or seek deletion or rectification at any time. It is important to note that safeguards are different for personal data and sensitive personal data, being

more restrictive when applied to the latter. Some data should be anonymized to protect the privacy and safety of HRDs.

Processing of personal data should be limited to only what is required to fulfill a specific, previously established purpose and must be done with appropriate safeguards, in accordance with human rights standards regarding the rights and freedoms of the data subject.

Given concerns about the use of surveillance, breaches of privacy, the inadequate protection of personal and sensitive data, and considering the various rights that are put at risk with such practices, enhanced care should be taken when dealing with sensitive information about HRDs. Strict limits should be designed for the collection, storage, and dissemination of this information. Personal data should be protected by reasonable security safeguards against risks such as loss or unauthorized access, destruction, use, modification, or disclosure of data. States should establish processes for periodic evaluation, monitoring, and auditing of the safeguards adopted. There should be a clear distinction between phenomenological information and private and sensitive information in order for its use to be limited to the fulfilment of the purposes. If there is a change in the purpose of data collection, storage, or use, individuals should be notified to provide consent.

Due consideration should be given to the protection of privacy and other relevant rights, and State institutions must ensure that the methods of collection, retention, usage, publication, and sharing of data comply with human rights standards. International standards require a clear normative framework, and a robust oversight framework to monitor collection, storage, sharing, and access to information. Regulations and practices must guarantee that methods of storage and handling of data protect the privacy of HRDs and others concerned.

Therefore, no data that reveals personal information regarding a specific HRD or group of HRDs or sensitive information about their work should be published or shared with any individuals or organizations, including State agents, who do not have a legitimate interest in such information; information

sharing should further be subject to a test of necessity and proportionality. Thus, some information should not be made public if it may put the HRD at greater risk, such as their name and other personal information, as well as information that might lead to a breach of privacy or stigmatization. These same protections should also apply to children whose personal information is collected. Data collection and access without proper safeguards may fuel criminalization, stigmatization, arbitrary detentions, forced disappearances, executions, and attacks against HRDs.

### **B. Proactive approach through criminal analysis**

**To guarantee the right to defend human rights, States should analyze ongoing and emerging criminal phenomena to ensure adequate responses. Specialized criminal analysis should be proactive and focused on prevention, strategic investigation, and prosecution. Without such analysis, investigations of threats face serious limitations, including the inability to identify related crimes and determine all responsible perpetrators.**

A good practice is to have an analytical capacity within prosecution offices to help detect, preempt, mitigate, and investigate criminal efforts to undermine the work of HRDs. These analysis units should be capable of identifying risk factors, especially those affecting particularly vulnerable groups. To do so, the analysis units require a good understanding of existing structural risks and relevant foreseeability indicators. Furthermore, the analysis should seek to understand the source of threats, the objectives of the threats, how these threats operate, and how they relate to the different categories of HRDs. Thus, the analysis should lead to identifying structural risks for HRDs, patterns of criminality, modus operandi of criminal networks, command and support of those networks, differentiated attacks against different types of HRDs, and associated crimes linked to threats, among other components. The analysis units should regularly update their assessment by monitoring as wide a variety of sources as possible to ensure they can provide relevant analysis in a timely manner.

### C. Victim services and protection mechanisms

Criminal policy should acknowledge and respond to the needs of victims guided by the principle of a victim-centered approach. This means ensuring the safety and well-being of victims and witnesses. Such an approach should ensure that victims and witnesses are able to make informed choices about the available protective measures and other victim services available to them.

Intersectional considerations may be relevant in the design or implementation of protective measures, victims' services, and witness protection.

**Individuals at risk must be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their life, physical and psychological integrity, and other rights at risk until they are no longer at risk.**

When responding to threats against HRDs, protective measures should extend to the victim's family circle where appropriate, including children and adolescents. These individuals may also require special legal protection, such as attention in the best interest of the child. States must respect family structures and practices, including diverse families and those of indigenous and tribal peoples.

Given the circumstances, including the type of threat or the existence of other criminal acts, protective measures may include relocation or physical protection measures. Relocation should be a measure of last resort and may involve coordination with HRD networks at the national and international level. All costs associated with such measures should be covered by the State. Special consideration should be given to family structures and practices, including those of indigenous and tribal peoples.

Additionally, States should guarantee witness safety through appropriate means, including an effective witness protection program. Officials subject to threats and intimidation due to their role in the investigation should also be afforded protection. Should the person responsible for threats against an HRD be detained, the HRD victim should be informed upon their release.

All these measures should be continued until they are no longer necessary or appropriate, given the risk to the witness or the HRD, and the status of any investigation. At the same time, there should be mechanisms to evaluate the effectiveness of these services and incorporate feedback from HRDs using such services. State failures to respect and guarantee the rights of HRDs may make them liable for any economic consequences suffered as a result. This may include any costs incurred by the HRD to guarantee their safety and integrity, as well as any losses suffered.

Additionally, should the victims require and consent to medical care, the State should provide medical attention, including psychological care and social services. Any information obtained over the course of medical and psychological treatment should be held in confidence, and only disclosed to other State authorities with the consent of the victim.

It is the State's responsibility to ensure that HRDs are fully informed of all available services. Information should be in accessible formats: when relevant, it should be child-friendly, and it should be provided in different languages or with translation support, among other considerations.

Victims of threats, witnesses, and other affected individuals should also be provided legal assistance to ensure that their rights are guaranteed in any investigation process.

In some jurisdictions, national and local governments, as well as international organizations, have made reparations and financial support available to victims of crimes.

Good practices in the treatment and support of victims abound in civil society. They include awareness campaigns developed by news organizations, institutions, or civil society organizations; the establishment of emergency support funds for the temporary relocation or support of HRDs; the provision of psychosocial services to support the mental health of individuals, their families, organizations, or communities; and the support of refuge houses and shelter cities.

#### **D. Training of State agents**

Public policies should include training programs to ensure that State officials that interact with HRDs are adequately trained. Training should encompass the right to defend human rights, standards of due diligence, existing norms and policies, and in-depth knowledge of the relevant national and local contexts. Training programs should have an intersectional approach. A good practice is to include training on child-friendly justice.

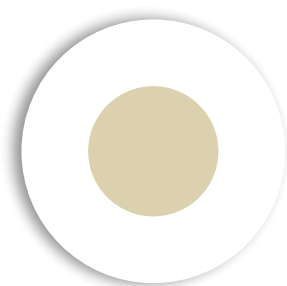
#### **E. Allocation of human and financial resources**

States must ensure that material and human resources are adequately allocated in a way that they enable the investigation and prosecution of threats. It is essential that all justice actors, including prosecutors, investigators, analysts, and judges, are properly and sufficiently trained to investigate and prosecute threats against HRDs. Additionally, justice actors must have a sufficient budget to carry out such duties and develop proactive investigation strategies.

### **VII. Criminal investigation purposes and principles**

International law also establishes specific purposes and principles of investigation relevant to responding to threats and facilitating their prosecution, as well as to ensuring that victims receive transformative redress.

#### **A. Purpose of the Investigation**



The overarching purpose of an investigation is to establish the facts relating to incidents of threats against HRDs in order to attribute criminal responsibility to those responsible for the threat and to redress victims.

This requires diligent actions from State authorities to collect, transport, preserve, and analyze evidence in line with chain-of-custody procedures, as well as an effort to determine the sequence of events, the existence of a contexts of threats, and the commission of associated crimes. Victims of threats, their families, and their colleagues or associates may also require special and urgent measures to guarantee their integrity. Investigation of threats must also have the goal of preventing further threats from being carried out.

## **B. Principles of Investigation**

The following principles are the foundation of international human rights standards regarding the investigation of human rights violations. They reflect some of the State's due diligence obligations for investigating threats against HRDs.

### **1. *Ex officio investigations***

Once alerted of 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 every possible line of inquiry and various theories of responsibility. Even if the threats are committed in conjunction with other crimes, they must themselves be investigated as an independent crime.

### **2. *Promptness and Timeliness***

States should ***investigate threats against HRDs in a prompt and timely manner***. A timely response by the authorities is critical to prevent violence, maintain public confidence in the rule of law and rejection of violent acts, ensure the integrity of the administration of justice, and mitigate the harm done to those subjected to threats. The prompt investigation of threats may contribute to preventing further harm. Conversely, unwarranted delay contributes to impunity and additional violence. However, promptness does not justify a rushed or haphazard investigation, or illegal actions such as the use of torture.

The principle of timeliness should permeate every step of the process. This duty does not cease with the passing of time. It is also required when providing information about the development and results of the investigation to victims. Unwarranted delay can contribute to trauma for victims.

### **3. Equality and Non-discrimination**

**All potential victims should be treated with dignity and without discrimination by all involved in the investigative process.** Moreover, State authorities should investigate whether the threat is motivated by discrimination. The investigation should consider the possible impact of every form of discrimination, including among others, stereotypes, racism, xenophobia, and misogyny on the perpetrator's actions. The investigation should also consider the connections between threats and other violations of human rights. Likewise, the determination of reparations should be made without discrimination.

### **4. Independence and Impartiality**

All cases of attacks against HRDs should be investigated by independent and objective bodies. Those individuals and bodies investigating the alleged violations should be independent of any person, institution, agency, legal or illegal network, or business implicated or likely to be implicated in the events. Moreover, independence requires that those investigating are free from intimidation, harassment, threat of prosecution, or retaliation.

Discrimination puts impartiality in jeopardy. Impartiality demands a strict adherence to equality, meaning that actions by the institutions of justice must be free from prejudices, including stereotypes about the attitudes, characteristics, actions, or roles of HRDs.

**Independence and impartiality should guide the justice system at each stage of the proceedings.**

### **5. Competence and Training**

**It is vital that the individuals responsible for carrying out investigations regarding threats and other forms of violence**



***against HRDs are knowledgeable, of the vital role of HRDs, of the importance of investigating threats against them, and of how to guarantee diligent investigations.*** When investigations are not carried out by duly trained authorities, investigations may miss or misinterpret important evidence or lines of inquiry which will negatively impact any future proceeding in the case.

Expertise on trauma is critical to guaranteeing that ***victims and witnesses receive dignified treatment***, as well as to understanding the risks and impacts associated with threats. Competence requires training on the differential impacts of threats and other acts of violence on diverse HRDs, including gender analysis, intersectional discrimination, and individual and collective impacts.

***Investigators should have specific knowledge*** regarding violence against women HRDs, children and adolescent HRDs (such as understanding the evolving capacities of children and youth), and indigenous and tribal HRDs, among other groups that face particular challenges in access to justice.

## **6. Transparency**

Investigations regarding human rights violations, particularly in relation to threats against HRDs, should be governed by the principle of transparency in relation to the potential victims and their families, and to society in general. This principle should permeate the public and criminal policies surrounding attacks against HRDs, as well as the criminal investigation, process, and execution of judgment. Transparency and publicity are fundamental to secure accountability.

***Information regarding the investigation of threats against HRDs and their outcomes must be transparent and open to public scrutiny as threats constitute human rights violations and society has an interest in the information.*** Some circumstances may justify permissible limitations in the information that is disclosed, including protecting the rights of affected individuals to privacy and integrity, protecting of the integrity of an ongoing investigation, limiting the risk of collusion, or protecting evidence.

However, any limitation on transparency should be strictly necessary to pursue a legitimate purpose, and its pertinence should be evaluated periodically.

### **7. Comprehensiveness**

**The investigation should be comprehensive and explore different lines of inquiry.** Moreover, when investigating a threat against an HRD, the investigation should always include a line of inquiry based on the theory that the threats are related to the victim's role as an HRD. The investigation should consider relevant criminal trends and modus operandi surrounding threats against HRDs and consider all potential perpetrators and modes of liability. Possible discriminatory motive, such as the link between the threat and the gender, ethnicity, or social status of the victim, should also be investigated.

### **8. Victim participation**

**State authorities should ensure the right of victims to participate without discrimination during all phases of the investigation.** Victims and their families have the right to participate actively, if they so wish. Victims should be guaranteed the right to intervene, submit evidence, and be informed about the investigation and its progress, among other rights, while respecting their privacy, security, and judicial guarantees.

At all stages of the proceedings, State authorities should ensure that the necessary measures are adopted to address the consequences of trauma, avoid revictimization, protect the physical and psychological integrity of victims and witnesses, and avoid possible reprisals.

## **VIII. Criminal investigation guidelines**

This section includes concrete investigation standards that should guide the investigation, prosecution, and possible punishment when warranted for threats against HRDs. These standards are thus principally directed to

justice actors (investigators, attorneys, judges, forensic experts, and other specialized personnel), HRDs, and their legal representatives.

#### **A. Determine whether the Protocol applies**

**Criminal complaints or reports regarding a threat should be received in every circumstance, without preconditions.** After a criminal complaint is filed or authorities gain knowledge of the existence of a threat against an HRD, justice actors should **initiate a criminal investigation ex officio.**

If the HRD victim reports the threat, they should receive a written copy of the filed complaint.

In case of doubt regarding the identity of the victim as an HRD or about the existence of a threat, the authorities should presume the Protocol applies until it has been shown that the victim is not an HRD or did not receive a threat. Likewise, the Protocol should apply to the investigation if the threatened or injured party is an HRD's family member or is a member of the same organization or social movement.

In addition, it is appropriate at this early stage to take into account the victim's identity –including characteristics such as age, gender, race, migratory status, ethnicity, socioeconomic status, and sexual orientation– as it may be relevant to the analysis of patterns and may lead to the application of specific regulatory frameworks, for example in the case of women, indigenous peoples, and children.

##### **1. Determine if a victim may be an HRD**

**For the purpose of this Protocol, an HRD is anyone who individually or in association with others, promotes or protects the realization of human rights and fundamental freedoms at either the national or international levels, in accordance with the definition established in the United Nations Declaration on Human Rights Defenders.**

In practice, authorities should consider a person an HRD when that person identifies themselves as such. Additionally, authorities should presume that a person is an HRD when that person self-identifies as a

social or community leader, unionist, a women's rights activist, among others. It is, however, not necessary for the person to be affiliated with a non-governmental organization or a social movement to be considered an HRD.

The investigator should determine whether the person's activities qualify them as an HRD under the established definition, independent of self-identification, in order to apply this Protocol. Some non-exhaustive examples of qualifying activities are: a) if the person acts in the defense of the common good, the public interest, or the defense of rights; and b) if the person reports on human rights violations, on acts of corruption or abuse of power by state or non-state actors, and/or reports on incidents of community violence.

## ***2. Determine if a conduct may qualify as a threat***

As previously mentioned, for the purposes of this Protocol, ***“threat” refers to an intentional conduct that indicates a future harm or that intimidates an HRD, their family, or their community. This definition includes individual and collective, direct and indirect, explicit and symbolic threats, whether they take place in offline or online spaces.***

Threats often indicate a future harm to physical integrity, life or other rights. ***It is not necessary to prove the impact of causing fear or terror to establish the existence of a threat.*** In order to determine that a threat has occurred, it is crucial that the statement or action would reasonably have been understood as a threat.

Threats can be individual or collective, explicit, or symbolic, direct or indirect. Context is often essential to understanding whether certain actions qualify as threats.

***A variety of crimes may involve or include threats. The Protocol should be applied to investigate threats alone as well as threats in conjunction with other crimes.***

## **B. Urgent measures to guarantee the integrity of the victim and others affected or at risk**

The investigation may require the adoption of urgent measures to protect victims and others involved in the investigation. Those in charge of the investigation should:

**1. Ensure that all victims are identified**, with special attention paid to the broader community and group members who may be affected, e.g., members of a family, civil society organization, members of an indigenous community, or trade union.

**2. Identify those characteristics of the HRD that could require specific protection measures**, such as, among others, their membership in a group or association, gender, sexual orientation, gender identity or expression, racial and/or ethnic identity, age, disability, socio-economic status, nationality, religion, or migration status.

**3. Evaluate in a timely manner the level and nature of risk to the victims, both direct and indirect** (e.g. risk to family, community, and the HRD's organizational affiliations). This evaluation should be performed with input from the victims, and the victims should be informed of its conclusions. This evaluation should keep in mind the identity of the victim, the alleged aggressor, and relevant background and context, including attack patterns and the existence of impunity for the specific type of crime and threat.

**4. Take appropriate and adequate measures to guarantee the integrity of the individuals at risk**. Measures should be taken in consultation with the individual at risk and be appropriate to the identity of the person and their associated group.

## **C. Urgent measures to preserve, identify, collect, and transport evidence**

The investigation should begin immediately after the victim(s) inform the authorities or after the authorities first learn of the threat. The first 36 hours of the investigation are crucial for collecting the necessary information and evidence, so that the investigation may fulfill its objectives. In this sense, the top priority in these initial efforts is to detect, establish, preserve, and transfer all evidence.

### ***1. Preserve the crime scene***

The authorities should immediately preserve the scene of the crime following applicable judicial guarantees and procedural safeguards. Depending on the modality of the threat, this may include digital devices, a physical location, or a means of transport. The primary authorities in the investigation should quickly initiate the process to determine all areas where they may find pertinent evidence for the investigation and proceed immediately to document and collect it.

To achieve this, it is essential to secure the location or device where the victim received the threat. Depending on the modality of the threat, the investigators may need to determine if the threats were sent from a different location than where they were received, in which case they should secure and process both locations. Additionally, investigators should initiate the immediate preservation of all evidence.

### ***2. Identify and secure the evidence***

Depending on the modality of the threat, investigators should document the location with video, photography, planimetry, and georeferencing. Investigators must coordinate the preservation of evidence; this may include recordings from audio devices and video cameras, if available. Such devices may have recorded the illegal acts or the perpetrators committing them.

### ***3. Collect the evidence***

All evidence must be collected. Depending on the victim, the location, and the modality of the threat, this may require specific expertise.

During the development of the investigation, investigators must identify all the sources of relevant information in order to determine the facts and should prioritize their collection and protection. In cases where obtaining evidence would restrict fundamental rights, investigators should obtain judicial authorization.

#### **4. Transfer the evidence**

Once identified, documented, and collected, the evidence should be transferred in accordance with chain-of-custody standards. Evidence must be properly stored to ensure the preservation of the integrity of the evidence.

#### **5. Evaluate potential measures in relation to implicated individuals in accordance with national and international law**

Should the initial investigation identify any individual suspected of criminal activity, a determination should be made regarding the need to establish physical measures, including arrest and restraining orders, based on grounds compatible with national and international standards.

### **D. Design of the investigation strategy**

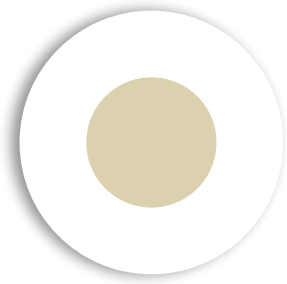
**The investigation of threats should be comprehensive and exhaust different lines of inquiry, based on the evidence, facts, and applicable legal framework.**

A hypothesis that the threats are triggered by the activity of HRDs is a necessary line of inquiry in every investigation. The investigation strategy should also take into consideration context, the potential perpetrators, and the associated crimes.

**The investigation should minimize any interference with the HRD's work.**

#### **1. Line of inquiry that considers the role of the victim as an HRD**

The role of the victim as an HRD should be considered in every aspect of the investigation.



From the beginning, the investigation should operate with the theory that the threat may relate to the HRD's work or associations.

The investigation should also consider relevant criminal trends surrounding threats against HRDs and consider all potential perpetrators and modes of liability.

Additionally, in developing this line of inquiry, justice actors should consider **the connections between an individual incident and the context in which it occurred and avoid examining incidents in isolation.**

Accurately contextualizing threats can permit investigators to examine an incident against a broader context of discrimination in which it took place, identify risk factors, and establish connections between the threat and other human rights violations affecting HRDs and their families, organizations, or communities. **By analyzing threats as part of a broader context, justice actors can better understand the nature, purpose, and impact of the threat,** which can in turn assist them in making charging decisions and in establishing liability.

The analysis of concurring factors –such as the perpetrators, the victims, the protected rights, the modus operandi, economic interests, and the geographical and temporal scope of the crime– can assist in establishing the facts, identifying patterns of criminal conduct, establishing the intent behind the threat or the existence of a criminal plan, and identifying those responsible.

#### **E. Investigation plan**

**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 must prove



the specific facts related to the threat, determine any possible association with other crimes, and prove any relevant contextual factors. At all times, the investigation should consider the identity of the victim, characteristics of the possible perpetrator, the modality of the threat, and the context in which it occurs. The plan should take measures to address risks associated with it in order to protect the victim, as well as to preserve the development of the investigation.

### ***1. Considerations regarding the lines of inquiry linking the threat to the HRD's role***

Regarding the specific threat(s), the investigation should:

1. ***Consider the nature of the human rights activities of the victim***, their identity, and their relation with processes, institutions, or organizations that defend human rights.
2. Consider and establish the time, place, and modality of the acts under investigation.
3. Consider and ***establish whether the threat had the purpose or effect of interfering with the right to defend rights***, or with other protected rights.
4. Identify, document, and evaluate the harm suffered by the victim, members of their family, the community or organization to which they belong, and/or other affected individuals, including the emotional, psychological, physical, financial, legal, and social consequences.
5. Consider the individuals, groups, or interests that are affected by the work of the HRD or who might benefit from the threat if the HRD were to stop their work.
6. ***Consider the specific interest that the potential perpetrators may have***, for example political or economic interests.
7. ***Consider the potential links to other crimes*** taking place around the same time that the threats happened.

8. ***Identify the physical perpetrators, as well as the indirect perpetrators***, including those who gave the order, contracted, financed, or instigated the action, and those who created the conditions for the action to take place. Identify accomplices and those who provided assistance or other means for the action. The authorities responsible for the investigation should inquire into whether the perpetrator acted with other individuals and determine the contribution(s) of each to the criminal act. This includes determining the level of participation of each person that took part, whether they acted as part of a network or criminal structure, and their possible relation to state actors, organized crime, private security businesses or other business actors or economic interests, public actors, or irregular armed actors, among others. In particular, the investigation should examine any indication of possible State responsibility or collaboration or collusion with State actors in order to activate the necessary protection mechanisms.

9. ***Consider the risks to the HRD*** and others throughout the design and implementation of the investigative plan.

Regarding any possible links with other crimes, the investigation should:

10. Seek to establish whether the victim, their family, or community/organization experienced previous attacks, stalking, surveillance, thefts, phone tapping, defamation, sexual violence, kidnapping, attempted murder, or other forms of intimidation that may be related to the threats under investigation. It is important to seek to establish all the facts, even if the affected individuals do not believe the facts are related.

11. Evaluate failures to investigate prior threats against the victim, their group/organization, or similar situations the HRD(s) encountered. In particular, examine failures to effectively and systematically investigate these threats.

12. **Identify patterns and characteristics of threats**, as well as impunity for threats and other violence against HRDs, which can reveal more information about criminal structures, networks, or the individuals responsible for the threat under investigation.

13. Investigate the patterns or use of threats or other acts of violence by criminal networks operating in the area that may have been involved in the crime.

**Regarding the context**, the investigation should:

14. **Investigate the geographic context** in which the HRD carries out their work in order to understand the social, political, cultural, economic, and criminal dynamics, as well as any possible link to the threats.

15. **Consider the pertinence of accumulating cases** based on the patterns and links identified. To do so, the investigation should seek additional evidence, analyze existing evidence, and work with relevant experts.

## **2. Witnesses**

Investigators should approach and interview all relevant individuals, including victims and witnesses, who should be questioned about the facts and the context in which threats occurred. If the authorities in charge of the investigation do not speak the language of the person being interviewed, the authorities should, at a minimum, provide interpretation services to allow that individual to express themselves in their own language.

If children are involved in the process, investigators should adopt a child-centered approach and create a climate of understanding, particularly by using language appropriate for children to allow them to fully participate in the process.

The witness interview should seek to clarify the facts and identify those responsible.

### **3. Documentary evidence**

The authorities in charge of the investigation should request reports and the submission of documents from all public or private offices that may have relevant information for the investigation into the facts.

#### **i. Records from State agencies and institutions**

If there are indicia that suggest that State agents or institutions are involved in any way in the threats against HRDs, the investigation should collect any State records that could help prosecute the crime. For example, records, including disciplinary processes, related to specific individuals who might be involved, their supervisors, or their subordinates, may be relevant to determine additional possible suspects or responsible parties.

Additionally, any records about the victim or their organization held by State agencies, actors, and authorities, including security and intelligence agencies, should be collected and investigated, as well as any communication that may refer to said documents.

In the framework of a criminal investigation, State authorities should provide the relevant information required by the investigating body. The State cannot refuse to provide such information on grounds of national security or confidentiality.

#### **ii. Records from non-State actors**

If there are indicia that suggest that members of a non-State entity are involved in the threats against HRDs, specific information must be collected as well.

If evidence suggests that a business may be involved or responsible (for example, private security businesses, extractive industries, farming, or factories), the investigation should consider the possible existence of business documents relevant to proving the elements of the crime. These include internal reports about the victim or their organization/community, statements or reports

made by the business and other communications, phone records, internal records from due diligence processes, and information regarding the business' supply chain, among others. Likewise, human resources documents, such as employment contracts, hours and shift days, responsibilities, and organization charts, may be relevant to facilitate the determination of the possible suspects. Lifting corporate veil may be necessary to access information on management or shareholders potentially involved in threats.

In the case of criminal groups, it is necessary to investigate the possible perpetrators' criminal record, criminal organization chart within the criminal group, legal or illegal weapons possession and use, and other relevant evidence.

#### ***4. Digital evidence***

Any collection of digital evidence must be subject to prior judicial authorization. The collection of digital evidence must always protect the privacy and security of the victim. The investigation must ensure adequate safeguards of legality, necessity, and proportionality in the collection of digital evidence with clear standards to prevent the investigation from enabling improper surveillance and monitoring.

If there is a compelling and legally justified need to retain cameras, computers, and/or mobile devices that may have relevant information about or be associated with the commission of the crime, or to access certain content on such devices, including data and metadata, this should in no case be done without a court order that specifies the content to be accessed, limiting the access to what is strictly necessary for the investigation and for a fixed time period. In turn, the court order must establish the State body that may access what is collected; this implies that only the body designated by the judge will be able to access the information collected. The same principle must apply when seeking access to a company's records. A priori data retention or collection should never be required of service providers.

In cases where the threat has been made on a social media platform, it is important to recognize the evidentiary value of screenshots of the threats,

as this is often the only evidence of the threat. Although some legislation may require other additional corroborating evidence, it is important that this requirement does not generate delays in the opening of the investigation.

States should generate or adopt protocols regarding standards that should be applied in the identification, collection, preservation, analysis, and presentation of digital information (including open-source information) and its use in criminal investigations.

### ***5. Financial evidence***

Where relevant, investigators should prepare/request a financial profile of the possible suspect(s) which should reflect investments, bank accounts, and records of withdrawals and deposits. Analysis of bank transactions may be particularly useful to determine the suspect's relationships with other individuals and the ability of perpetrators to carry out the threat.

### ***6. Consult necessary experts, including analysis units where applicable***

Different types of experts may be required to collect and analyze evidence. In addition to experts for collection and analysis of physical evidence, anthropological, socio-historical, socio-political, socio-economic, cultural, military, gender, semiotic, and psychosocial experts may assist in understanding and explaining the impact of the threats and the context in which they occur.

The collection, management, and analysis of evidence often requires different kinds of technical expertise and access to specific human and material resources. Therefore, it may be necessary to create specialized teams to investigate threats against HRDs and to consult with experts in the analysis of evidence, such as investigative experts, experts in specific phenomena, and criminal analysts.

These experts should have access to the resources necessary to support their work. They must be able to work without intimidation, harassment, unjustified interference, or any other obstacle that may affect their work. Experts must be free from conflicts of interest or other sources of inappropriate interference. They must adhere to the highest standards of ethical conduct.

*Multidisciplinary.* The team must be made up of experts from different disciplines to assist in the collection and analysis of evidence according to the needs of the case. The expert consulted must have proven expertise in the specific field or area encompassed by the request for assistance.

*Resources.* Investigators must be provided with the necessary personnel and technical, legal, and financial resources to conduct the investigation. The allocated resources must not be reduced or withdrawn to limit or prevent the progress of the investigation.

*Impartiality.* Investigators assigned to an investigation must act with professionalism and impartiality. If during the investigation there is any indication that any of the suspects is linked to a State security organ or to those carrying out the investigation, necessary measures must be taken to prevent the suspect from gaining access to the investigation. In such circumstances, to guarantee the impartiality and integrity of the investigations, it may be useful to request the support of other units and of independent experts.

### **7. Consider seeking cooperation from insider witnesses**

In accordance with national law, prosecutors may offer benefits, including in sentencing, that reward a defendant who cooperated with the investigation, while respecting international standards on the granting of benefits or relief in the sentence. For this agreement to be legitimate, the accused must sign the agreement voluntarily and consciously, without coercion and with judicial supervision.

The effective collaboration of insider witnesses should always be considered in connection with adequate guarantees of truth and justice for the victims. Cooperation may be encouraged to determine those responsible for the events, including to identify those who gave the orders or planned and financed the operation, among other actions.

### **8. Selection of charges and of aggravating circumstances**

Threats against HRDs may be included in various criminal provisions based on the facts of the case in accordance with the laws applicable in each jurisdiction.

All possible legal characterizations and aggravating circumstances of the criminal conduct must be assessed in order to make appropriate selections of charges based on the facts of the case. For example, a single incident may be legally characterized as attempted homicide, assault, illicit association, or threats. The pertinence of charging the different crimes should be assessed. Additionally, all relevant aggravating circumstances must be considered. These may include identity of the perpetrator (e.g., a public official), the characteristics of the victim (e.g. a child under age 18, a person with a disability), intent (e.g. hate crimes), and means (e.g. use of a deadly weapon).

If the criminal conduct involved the commission of torture, an extrajudicial execution, enforced disappearance, or acts of sexual violence, international standards and the respective protocols relevant to these crimes on the matters must be applied.

The charges must reflect the full extent of harms caused to the victim. If the threat included other criminal acts or an attempt to conceal or obstruct the investigation, these criminal aspects must also be considered in the charges.

#### **F. Specific considerations based on threat modality, victim, or suspect's identity**

The investigation of threats may require additional considerations on the basis on their modality, the type of victim, and the characteristics of the perpetrator. The following section is intended to complement the guidelines set out above. While not exhaustive, this section highlights some basic measures to be considered, which are based on the experience of the HRDs and experts involved in the development of this Protocol.

##### ***1. Threat modality***

***Threats can be carried out online or offline. However, the means by which a threat is received may affect the kind of evidence to be collected and the manner of collection of evidence.*** Strategies for gathering evidence will vary depending on several factors.



### **i. In-person threats**

- a) In cases in which the victim receives the threat in person, the victim's statement, as well as other eyewitness statements, must be collected to establish the specific circumstances of the time, place, and manner in which the threat occurred and the possible perpetrators.
- b) If the threat arrived by mail, it is essential that the material(s) be preserved to determine if there are identifying fingerprints. Handwriting experts may be used for this purpose. Postage and means of delivery can be used to identify useful information.
- c) If a weapon was fired, the ballistics evidence remaining at the crime scene will need to be collected and analyzed.
- d) In all the above cases, the investigation must establish whether there were cameras at the scene of the event that could have recorded the act, or if photographs of the event were taken. If so, a copy of the video records or photography must be collected.

### **ii. Threats via telephone, including messaging services and social media**

- a) If the threat was received by phone, the investigation should seek to identify the phone number from which the call was made or message sent and the owner of the phone account. Telephone data should be sought to establish whether there were communications with other individuals of interest (telephone traffic) as well as the location from where the call was made (geo-positioning).
- b) If the investigators have access to the alleged perpetrator's phone, they should safeguard its information, particularly any schedules, appointments, and messages that may be useful to identify other perpetrators or conversations related to the threat.
- c) If the threat is received through messaging applications, such as text messages, WhatsApp, Signal, Telegram, among others., the phone associated

with the account and from where the threat was sent must be identified and managed in a similar way as previously indicated.

d) If the threat was delivered via any social media platform, the account holder and any contacts should be identified and the IP address of the computer or other electronic device from which the threat was issued should be traced to determine if there are people and/or data associated with the account. This information could include the geolocation of access to the account, other threats from the same account, and the links between the account and other identified accounts. Companies can also be asked to freeze specific profiles to avoid losing evidence.

e) Due to the importance of telephones, email, and messaging services for HRDs, it is essential to do everything possible to ensure that carrying out these procedures does not impede the ongoing work of the HRD. Similarly, steps should be taken to ensure that only information related to the ongoing investigation is accessed.

f) Social media companies can facilitate the investigation of threats delivered via social media platforms. Investigators should consider requesting that these companies share the information they possess such as IP address, phone numbers, and name of the person(s) associated with the account.

## **2. Symbolic threats**

a) **Symbolic threats are pervasive in some contexts.** They can occur in different spheres –including online– and be expressed in different forms. Their investigation may require the expertise of historians or cultural or anthropological experts to assist in establishing the meaning behind certain objects, symbols, code words, music, or images.

b) In many cases, threats can manifest through objects that have an intimidating appearance, such as paintings, funeral flower arrangements, and other objects with a specific symbolic meaning.

c) In cases where symbolic threats are carried out offline, it is important to preserve these objects and collect possible fingerprints or

other biological evidence. Investigators must determine whether there are cameras at the location where the events occurred and obtain any relevant video recordings.

### **3. Specific considerations based on victim identity**

**In addition to these general steps, specific guidelines or complementary guidelines may apply based on the identity of the victim, including age, racial or ethnic identity, socioeconomic situation, sexual orientation, and gender of an HRD, among other aspects, which can generate discriminatory behaviors that interfere with a proper investigation.**

Given specific patterns of threats and the existence of specialized legal frameworks, this section summarizes some basic considerations regarding women HRDs, child and adolescent HRDs, and indigenous and tribal HRDs.

#### **i. Women HRDs**

When the victims of threats are women human rights defenders (WHRDs), the investigation must be carried out while taking into consideration gender analysis by justice actors trained in the subject matter. **The officials in charge of the investigation must avoid biases, stereotypes, and prejudices that can lead to blaming the victims for what happened, minimizing or naturalizing the threats they suffered, or more broadly interfering with the investigation. Justice actors should also consider whether intersectional considerations are relevant to the analysis of the specific case.**

Threats against WHRDs frequently contain references to sexist and stereotyped aspects of their private lives which may, in turn, negatively impact the criminal investigation. State officials in charge of the investigation must take every precaution to avoid causing or increasing any prejudices or stigmatization at the social, community, or family levels.

Justice actors must consider the specific gendered norms and practices that inform the perpetration of a threat in a given time, place and context.

Justice actors must consider whether a threat against a WHRD resulted from the victim's gender identity and identify any symbols used in the threat, and the differentiated impacts of the threat on the victim, her family, and her community. Investigators must also consider whether the crime was motivated by the victim's (or their family's or community's) defense of women's rights or other gender issues. In many cases, violence against WHRDs includes sexual content, not only because the threats explicitly refer to sexual acts, but because they may refer to the physical appearance of the victim or of a woman or girl in their circle (for example, the daughter of the HRD) or to objects that imply a sexual content (for example, underwear). In these cases, the investigators must shed light on this type of violence for the purposes of the investigation and document its impact on the victim. The fact that a threat is sexual in nature should not be understood to exclude a purpose of the threat to interfere with the defense of human rights. Moreover, sexual motive itself does not displace the purpose or intent behind the act.

***Threats against WHRDs may be accompanied by campaigns of defamation and stigmatization that question their work and their role as defenders in relation to the personal lives or stereotypical gender roles of women in society*** (for example, by suggesting that they are bad women, mothers, or wives). These campaigns should be scrutinized as they inform the gender analysis of the investigation and can facilitate the identification of potential perpetrators. They must also be documented to prove specific harm and should be considered to determine the appropriate reparations due.

## **ii. Children and adolescent HRDs**

All interactions with a child victim or child witness should be conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to their abilities, age, intellectual maturity, and evolving capacity. These interactions should also take place in a language that the child uses and understands.

#### a. Access to information

One of the main challenges that children face is accessing information about their own rights and how to seek redress. To ensure access to justice, information should be made available to children in a language and format they understand. This should include information on (i) children's rights, (ii) specific mechanisms where children can report threats, and (iii) support services to help children raise complaints, such as legal and paralegal aid.

#### b. Safe spaces to report

Children should have multiple, safe, and child-friendly channels available to them to report complaints regarding threats. In general, institutional spaces available for raising complaints can be intimidating to children and risk further traumatizing them. Additionally, authorities may not take children seriously and refuse to pursue complaints made by them. Facilitating children's access to complaint mechanisms may require adapting processes and practices at police stations, judicial mechanisms, and non-judicial mechanisms (such as national human rights institutions) to ensure that all interactions with children are conducted in a child-sensitive manner in a suitable environment that accommodates the special needs of the child, according to their abilities, age, intellectual maturity, and evolving capacity. State authorities should ensure that the principles of informed consent, privacy, and confidentiality are respected.

#### c. Guidelines on justice in matters concerning child victims and witnesses of crime

***If the victims of threats are child or adolescent HRDs, the investigators must respect the principle of the best interest of the child*** and standards such as the United Nations Guidelines on Justice in Matters Concerning Child Victims and Witnesses of Crimes, especially the rules relating to the treatment with dignity, in order to minimize interference in their private lives and avoid further trauma derived from interviews, examinations, and other types of investigation.

Investigators must have special training in order to work in a way appropriate to the special needs of children and adolescents. In the same

way, age should not be an obstacle for the child to exercise their right to participate fully in the investigation process or to have their testimony on the facts heard and valued.

### **iii. Indigenous and tribal HRDs**

In cases where HRDs are members of indigenous or tribal peoples with their own criminal or legal systems, such as those (self) defined and recognized by the International Labor Organization Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples, particular human rights standards and guarantees apply. For the investigation to be consistent with international human rights standards, ***investigators must ensure that the investigation is carried out with the participation of and in accordance with the indigenous or tribal people's knowledge and practices, and that it is culturally sensitive, according to the worldview of the respective community or tribe.***

In practice, most attacks suffered by indigenous HRDs come from the non-indigenous world, and the ordinary criminal justice system must carry out an effective investigation. Due consideration must be given to the laws of the indigenous or tribal people to which the HRD belongs. In particular, where a specific indigenous or tribal jurisdiction exists and has jurisdiction over the matter, this must be respected. Moreover, the investigation should particularly take into account the way the indigenous/tribal peoples involved handle and interpret crucial aspects related to the investigation such as potential motives, evidence, responsibilities, consequences, and sanctions.

Additionally, indigenous/tribal victims, witnesses, and authorities should have access to an interpreter when needed. The investigation should consider the context in which the HRD carries out their work. Cultural experts may assist in determining the scope and meaning of different threats.

Protection and reparation measures adopted in favor of the victims must be culturally appropriate and consider the special role that women, elders, and other traditional authorities play among indigenous and traditional peoples.

#### **4. Specific considerations based on the suspect's identity**

##### **i. State actors**

**If State actors are among the possible perpetrators, all appropriate measures should be taken to guarantee the independence and impartiality of the investigation.**

**It must be ensured that no person on the investigative team has any links to the suspect that could compromise the investigation.** When there are indicia that State actors might be involved additional controls must be established regarding the handling of information.

If the suspect belongs to State security forces or intelligence services, the investigation must inquire into whether they acted alone or with others. It must also seek to establish who issued the order and whether the suspects are from the same security force, belong to the civilian administration, or are linked to other groups or actors.

##### **ii. Private company and economic interests**

If a private company is among the possible suspects, a financial investigation should be carried out to track possible payments to other individuals and to track their potential participation in a criminal network or organization. To understand the scope of the company and the interests affected, it may be necessary to conduct research on the owners, shareholders, supply chains, and associated companies.

Likewise, if a private security company is among the possible suspects, a contract or agreement that regulates the provision of security services must be documented. Additionally, it is necessary to investigate whether the personnel of the private security company have or have had links with State institutions and examine possible criminal collaboration or concealment.

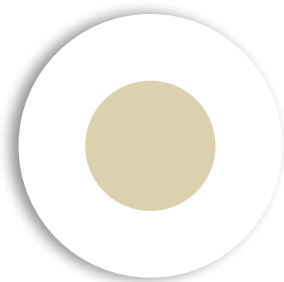
##### **iii. Criminal groups and networks**

If there are facts that suggest the threat was made by criminal groups, investigators should seek to establish the identity of the individuals that make up

the criminal organization, including through financial analysis (the perpetrators' accounts and how they are linked to other accounts), communication analysis (phone calls), and social media platforms. In this case, their possible relationship with state actors must also be determined.

## **G. Judicial proceedings**

### ***1. The right to the truth and a legal decision***



Victims of violations have a right to truth and to an adequately reasoned legal decision.

In this regard, based on what has been demonstrated by the parties, judges should develop the circumstances and modalities of the threats, particularly emphasizing how these threats constitute crimes or human rights violations as appropriate, and how they impede the defense of human rights in a given context.

### ***2. Negotiations with perpetrators in the adjudication of threats against HRDs***

In countries whose legislation allows an agreement to be reached with the perpetrator, justice actors in charge of negotiations with perpetrators must guarantee the fundamental rights of the parties and intervening parties and comply with the imperative of objectively establishing truth and ensuring justice.

The victim should have the right to take part in the negotiation of agreements with the accused/convicted, during which the victim must be heard and informed of the decision. Victims should have the right to freely express their claims for justice and reparation.

### ***3. The judicial process and determination of reparations***

Justice actors must adapt their actions to the needs of the victim so that the victim's participation in the judicial process serves as a restorative experience.



With this in mind, justice officials should:

1. Help to facilitate the closure of the personal process that opened during the judicial process, and to assess any risks that may require a request for protective measures.

2. Explain the judgment issued to the victim and their legal representative.

3. Consider the need for medical and psychological assistance and follow-up for the victim after the final ruling.

4. Initiate the comprehensive reparation process, considering the possible damages or consequences of the events. Among others, these consequences may be associated with: i) impacts on the physical health of the victims; ii) psychological, emotional, and behavioral harm to the victims; iii) impact on the victim's family and community; or iv) forced displacement of the victim(s).

5. In addition, the victim must be provided with the evidence gathered during the investigation that is useful for any additional claims for reparation. For purposes of financial compensation, requests for precautionary measures, including freezing of the assets of the accused, may be considered in order to guarantee payment during the reparation process.

## **H. Other possible measures to ensure accountability**

### ***1. Seek international cooperation if necessary***

In cases where the investigation requires international legal assistance, especially in cases requiring digital or financial investigation, this must be carried out as quickly as possible so that the information is integrated into the investigations in a timely manner.

Technical assistance may be required in the investigation. International organizations or other States may be able to provide technical assistance or cooperate with the investigation.

## **2. Commissions of inquiry and other extraordinary mechanisms**

**International organizations, monitoring bodies, and States may consider establishing mechanisms or measures to facilitate progress in the clarification of truth and the promotion of accountability regarding threats and attacks against HRDs.** In order to determine their relevance, they might take into account, among other factors, the impact of the crimes locally or internationally, the effectiveness and independence of local investigations, and the safety of justice actors.

These mechanisms may include inquiry and investigation commissions, fact-finding missions, extraordinary investigation mechanisms, or hybrid mechanisms of support.


## **3. Civil society and ad hoc investigation efforts**

**Civil society organizations contribute to the pursuit of truth, accountability, and reparations.** They have conducted in-depth investigations that provide crucial information for national and international proceedings, truth commissions, extraordinary mechanisms, commissions of inquiry, and other justice bodies. They have also represented countless victims and provided shelter, solidarity, and psychological support for HRDs at risk. They have undertaken the development of policy initiatives, training tools, normative changes, advocacy through art and documentaries, and guidelines on the investigation of crimes against HRDs.

In the context of criminal processes, civil society organizations can provide information, suggest lines of inquiry, or serve as expert witnesses, among other roles. One good practice is the participation of civil society organizations in criminal proceedings, or their contributions as experts or *amicus curiae* in their areas of specialization.

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