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**Model Law on the Recognition, Protection and Promotion of the rights of  
Human Rights Defenders in Africa**

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**December 2020**

# MODEL LAW ON THE RECOGNITION AND PROTECTION OF HUMAN RIGHTS DEFENDERS, 2020

## MEMORANDUM

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### Introduction

The National Human Rights Institutions (NHRIs) across the world are indeed taking a keener interest in the protection and promotion of the rights of Human Rights Defenders (HRDs) based on their broad mandate to promote and protect fundamental rights, including the of HRDs. Consequently, a major stride was achieved in October 2018 when the Global Alliance of National Human Rights Institutions (GANHRI) convened the 13<sup>th</sup> International Conference in Marrakech, Morocco. The conference marked several auspicious anniversaries, namely, the 70th anniversary of the Universal Declaration of Human Rights (UDHR); the 25th anniversary of the adoption of the Paris Principles by the United Nations General Assembly and the establishment of GANHRI; and the 20th anniversary of the Declaration on Human Rights Defenders (DHRDs). The theme of the conference, *‘Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions’*, reflected the determination and commitment of NHRIs to build their capacity and role in recognising and protecting the rights of HRDs.

Civic space is gradually shrinking on account of competing interests, thus the role of NHRIs in the protection of HRDs has become crucial and urgent. There have thus been concerted efforts in recent years to clarify and articulate the exact nature and contours of this role. A key outcome of the conference is the Marrakech Declaration. The Declaration is a product of a dynamic discussion during the conference that involved sharing of lessons learnt and good practices amongst NHRIs. It contains commitments undertaken by NHRIs to expand civic space and protect HRDs, with a specific focus on women HRDs. These commitments are clustered in three main areas: promotion; protection; and cooperation and partnerships. The resolutions so adopted are accompanied by several activities or action points so that the promotion, protection and cooperative objectives would be achieved in practice.

In February 2013, former United Nations Special Rapporteur on the Situation of HRDs, Margaret Sekaggya submitted a report to the United Nations (UN) Human rights Council, wherein the Rapporteur made a strong case for recognition of NHRIs themselves as HRDs.<sup>1</sup> Proceeding from the premise that NHRIs “can potentially play a substantive role in protecting human rights defenders”, the Rapporteur recommended a range of possible

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<sup>1</sup> Report of the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, A/HRC/22/47, 16 January 2013.

measures and interventions that NHRIs could take in order to ensure effective and consistent protection of HRDs. These measures include:

- Conducive legal, institutional and administrative framework;
- Fight against impunity and access to justice for violations against defenders;
- Strong, independent and effective national human rights institutions;
- Effective protection policies and mechanisms, including public support for the work of defenders;
- Special attention for risks and challenges faced by women defenders and those working on women's rights and gender issues;
- Non-State actors' respect and support for the work of defenders;
- Safe and open access to the United Nations and international human rights bodies; and
- Strong, dynamic and diverse community of human rights defenders.

In 2016, her successor, Michel Forst, went a step further by calling on NHRIs to;

Enact legislative and policy frameworks with a view to establishing national protection programmes for defenders, in consultation with defenders and civil society. In States with a federal structure, federal legislation should be the basis for the programme, and federal authorities should have oversight over the programmes that are administered by local governments.<sup>2</sup>

Therefore, the Network of African National Human Rights Institutions (NANHRI) has prepared this Model Law on the Recognition and Protection of HRDs in Africa to assist and guide NHRIs in Africa in their efforts to implement the Marrakech Declaration. Inspired by the by the International Service for Human Rights' Model Law on the Recognition and Protection of HRDs (2017)<sup>3</sup> and HRDs laws already adopted in Cote d'Ivoire (2015)<sup>4</sup> and Burkina Faso (2017),<sup>5</sup> this Model HRDs Law builds on NANHRI's broader work on supporting and boosting the capacity of African NHRIs to effectively and efficiently discharge their mandate. The NANHRI is implementing a programme that seeks to support NHRIs to develop or strengthen existing protection mechanisms for HRDs in accordance with the Marrakech Declaration. Other related key outputs of this programme include a study on existing practices and experiences of African NHRIs in the protection of HRDs and a reference handbook for a HRD complaints handling mechanism.

In practice however, the Model Law seeks to assist and provide technical guidance to States when developing laws, policies and institutions at the national level to support the

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<sup>2</sup> Report of the Special Rapporteur on the Situation of Human Rights Defenders, A/HRC/31/55, 1 February 2016.

<sup>3</sup> This Model Law is inspired by the International Service for Human Rights' Model Law on the Recognition and Protection of HRDs (2017); OSCE Office for Democratic Institutions and Human Rights (ODIHR) 'Guidelines on the Protection of Human Rights Defenders' (2014).

<sup>4</sup> Copy of the Law available at: [http://www.ishr.ch/sites/default/files/documents/jo\\_loi\\_defenseurs.pdf](http://www.ishr.ch/sites/default/files/documents/jo_loi_defenseurs.pdf).

<sup>5</sup> Available at: <https://www.ishr.ch/bf-human-rights-defenders-protection-law>.

work of HRDs and protect them from harassment, reprisals and attacks. It also provides a tool for HRDs advocating for stronger legal recognition and protection of their work; and provides both States and HRDs with a tool against which to measure and assess the coverage and effectiveness of existing laws and policies.

Accordingly, each NHRI should initiate national dialogue on the adoption of HRDs law, conscious of the fact that NHRIs themselves are also HRDs. The neutral nature of NHRIs including their role as government advisors on human rights issues places them in a better place to trigger multi-stakeholder consultations on the subject.

### **Structure of the proposed law**

Part of the Law	Content
Part I	Preliminary provisions on short title, interpretation and application.
Parts II	Recognition of human rights defenders.
Part III	General Provisions on the rights of human rights defenders.
Part IV	Articulates the general obligation of public authorities regarding recognition and protection of human rights defenders.
Part V	Establishes the National Mechanism for the Recognition and Protection of the rights of human rights defenders, provides for its functions, establishes a Human Rights Defenders' Fund and composition.
First Schedule	is in terms of sections 16 & 21 on "protection measures" that may be required to be deployed in the event of threats or attacks on human rights defenders.

# LAW

TO provide for the legal recognition of human rights defenders; provide for their rights and freedoms; guarantees the protection of these rights and freedoms; provide for the establishment of a National Mechanism for human rights defenders and its administration; provide for the Human Rights Defenders Fund; and to provide for matters incidental to the above.

ENACTED by [cite the authority that enacts laws in the country].

## PART I:

### PLELIMINARY

#### 1 Short title

This law may be cited as the ***Recognition and Protection of Human Rights Defenders Law***.

#### 2 Interpretation

In this Act, unless the context otherwise requires,  
“*Board*” means the governing body of the Authority established under section 8;  
“*Intrusion and interference*” within subsection (2) includes any form of surveillance, recording, search and seizure in association with his or her legitimate activity or work as a human rights defender.  
“*Human rights defender*” means any person who, individually or in association with others, acts or seeks to act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional and international levels.  
“*Association or organisation*” means an association or organisation as defined by the law providing for the registration, if required, and or management and conferral of legal personality on such associations or organisations; and shall also include coalitions of such associations or organisations.

## PART II

### RECOGNITION OF HUMAN RIGHTS DEFENDERS

#### 3. Recognition of human rights defenders and their rights

(1) Every person who, individually or in association with others, acts or seeks to act to promote and to strive for the protection and realisation of human rights and fundamental freedoms, at the local, national, regional and international levels shall have the right to be recognised as a human rights defender.

(2) Every person has the right, individually or in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms, at the local, national, regional and international levels.

## PART III

### RIGHTS OF HUMAN RIGHTS DEFENDERS

#### **4. Freedom to form or join groups or associations and organisations**

(1) Every person has the right, individually or in association with others, to form, join and participate in groups, associations and non-governmental organisations, for the purpose of promoting and striving for the protection and realisation of human rights and fundamental freedoms.

(2) Every association or organisation referred to in subsection one above shall have the right to form or join any coalition, union or federation of associations or organisations for purposes of pursuing matters of common interest in the promotion and protection of human rights.

(3) Every person, association or organisation, individually or in association with others, has the right to solicit, receive and utilize resources, including from domestic and international sources of whatever nature for the express purpose of promoting and striving for the protection and realisation of human rights and fundamental freedoms.

*Provided* the source of such resources shall exclude any person or organisation working on or connected to persons or organisations engaged in terrorist or money-laundering activities.

#### **5. Right to seek, receive and disseminate information on human rights**

(1) Every person, individually or in association with others, has the right to know, seek, access, obtain, receive and hold information about all human rights and fundamental freedoms, including information regarding how those rights and freedoms are given effect in the legislative, judicial and administrative systems of their country.

(2) Every person, individually or in association with others, has the right to know, seek access, obtain, receive and hold such information from business enterprises as may be necessary for exercising or protecting, or assisting to exercise or protect, human rights or fundamental freedoms.

(3) Every person, individually or in association with others, has the right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms.

(4) Every person, individually or in association with others, has the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other means, to draw public attention to those matters.

(5) Everyone, individually or in association with others, has the right to develop and discuss new ideas and principles which relate to human rights and fundamental freedoms, and to advocate their acceptance.

## **6. Right to communicate with national and international human rights bodies**

(1) Every person, individually or in association with others, has the right to freely communicate with governmental, non-governmental and intergovernmental organisations, including subsidiary bodies, mechanisms or experts with a mandate relevant to human rights and fundamental freedoms.

(2) Every person, individually or in association with others, has the right, in accordance with applicable international instruments and procedures, to unhindered access to, and to communicate and co-operate with, international and regional human rights bodies and mechanisms for the protection and promotion of fundamental rights.

## **7. Right to participate in the public affairs**

(1) Everyone, individually or in association with others, has the right to participate effectively in the conduct of public affairs, including participation on a nondiscriminatory basis in the government of his or her country, regarding human rights and fundamental freedoms.

(2) The right in subsection (1) includes the right:

(a) to submit to any public authority, or agency or organisation concerned with public affairs, criticism on or proposals for improving its functioning with respect to human rights and fundamental freedoms;

(b) to make recommendations to any public authority regarding legislative or regulatory changes relating to human rights and fundamental freedoms;

(c) to draw to the attention of any public authority any aspect of its work that may hinder or impede the promotion, protection and realisation of human rights and fundamental freedoms;

(d) to draw to the attention of any public authority any action or omission by any actor, private or public, that may involve or contribute to a violation of human rights or fundamental freedoms; and

(e) to freely publish, impart or disseminate to others any information submitted to any public authority in the exercise of the rights set out in this law.

## **8. Right to peaceful assembly**

(1) Every person, individually or in association with others, has the right to peaceful assembly and to participate in peaceful activities at the local, national, regional or international level concerning human rights and fundamental freedoms, free from arbitrary interference that is arbitrary or unlawful by public authorities and private actors.

(2) The right in subsection (1) includes the right to plan, organise, participate in and disseminate information regarding peaceful activities concerning human rights and

fundamental freedoms, including holding demonstrations, protests, seminars and meetings, whether conducted in a public or private place.

#### **9. Right to representation**

(1) Every person, individually and in association with others, has the right to assist, represent or act on behalf of another person, group, association, organisation or institution in relation to the promotion, protection and exercise of fundamental rights and freedoms, including at the local, national, regional and international levels.

(2) The right in subsection (1) includes the right:

(a) to complain about the policies and actions of public authorities with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means before domestic judicial, administrative or legislative authorities or any other competent authority;

(b) to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms; and

(c) to attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and human rights and fundamental freedoms; and

(d) to submit communications and information of the type referred to in Section 7.

#### **10. Freedom of movement**

(1) Every person lawfully within the territory, or subject to the jurisdiction, shall, within that territory or place of jurisdiction, have the right to liberty of movement and freedom to choose his or her residence and the right to carry out his or her human rights activities in the entire territory or place of jurisdiction.

(2) No person lawfully within the territory of the country shall be expelled, by means of an individual measure or a collective measure, wholly or partially on account of his or her lawful acts as a human rights defender.

(3) No person may be deprived entry or exit the territory on the grounds of or in association with his or her status, activities or work as a human rights defender.

#### **11. Right to privacy of life, communication and home**

Every person, individually or in association with others, has the right to privacy which includes the right of a human rights defender to protect his or her privacy, including through encryption, and be free from intrusion and interference that is arbitrary and unlawful in his or her family, home, and places of work, possessions and correspondence of any form.

#### **12. Freedom from harassment and intimidation**



(1) No person shall subject a human rights defender to any form of defamation, stigmatisation, or other harassment, whether offline or online, in association with his or her status, activities or work as a human rights defender.

(2) Any person who contravenes subsection (1) above shall commit an offence and shall be, upon conviction by a court of law, liable to a period of imprisonment or fine or both.

### **13. Right to cultural life and development of personality**

Every person, individually or in association with others, has the right to the unhindered exercise of his or her cultural life in his or her activities and work as a human rights defender and to the free and full development of his or her personality, which includes the right to freely challenge and change traditional customs and practices that violate human rights and fundamental freedoms.

### **14. Right to effective remedies**

(1) Every person, individually or in association with others, has the right to an effective remedy and full reparation in the event of a violation of the rights in this Part or a breach of obligations under Part III of this Law.

(2) Anyone whose rights have been violated or who has been adversely affected by a breach of obligations has the right to apply to a court or tribunal of competent jurisdiction to obtain such effective remedy and full reparation.

(3) Any of the following may file a complaint at relating to the violation of rights under Part II of this Law or a breach of obligations under Part III of this Law:

- (a) a human rights defender;
- (b) an associate of the human rights defender;
- (c) a legal or other representative of the human rights defender appointed to conduct the affairs of or to otherwise act on behalf of the human rights defender;
- (d) a family member of the human rights defender;
- (e) a group, association or organisation with which the human rights defender is associated;
- (f) any person acting in the public interest and consistently with the purposes of this Law;  
or
- (g) the Mechanism established under Part IV of this Law.

### **15. Limitation of the rights of human rights defenders**

(1) In exercising his or her rights in this Part, a human rights defender, individually or in association with others, shall be subject only to limitations that are prescribed by law, in accordance with international human rights obligations and standards, are

reasonable, necessary and proportionate, and are solely for the purpose of securing due recognition and respect of the human rights and fundamental freedoms of others and meeting the requirements of public order in a democratic society.

(2) Nothing in this law shall affect any provisions which are more conducive to the recognition and protection of human rights defenders and which may be contained in applicable domestic or international law or instruments.

#### **PART IV. OBLIGATIONS OF PUBLIC INSTITUTIONS AND STATE AGENCIES**

##### **16. Obligation to respect, promote, protect and fulfil the rights of human rights defenders**

All state institutions and agencies shall take all necessary measures to ensure:

(a) that the human rights and fundamental freedoms in Part II of this Law are effectively guaranteed and ensured;

(b) that all laws, policies and programs are consistent with the rights in Part II of this Law; and

(c) that human rights defenders are able to undertake their activities, work in safety, and free from undue restriction.

##### **17. Obligation not to disclose confidential sources**

(1) No person shall require a human rights defender to disclose the identity of sources their sources.

(2) Notwithstanding subsection (1), public authorities may disclose the identity of sources used by human rights defenders if both the relevant source and the relevant human rights defender give informed consent in writing to such disclosure or if so required in terms of an order issued by a court or tribunal established by law.

##### **18. Obligation to prevent and to protection against intimidation or reprisal**

(1) Public authorities shall take all necessary measures to ensure the prevention of, and protection against, any intimidation or reprisal by any other public or private actor.

(2) Public authorities shall take all necessary measures to ensure the protection of human rights defenders against arbitrary or unlawful intrusion and interference in his or her family, home, places of work, possessions and correspondence, both offline and online.

(3) Whenever there is reasonable ground to believe that a human rights defender has been killed, disappeared, tortured, ill-treated, arbitrarily detained, threatened or subject to a violation of any of the rights provided by this Law, the competent authority shall ensure that a prompt, thorough, effective, independent and impartial investigation is conducted with due diligence and is prosecuted as appropriate.

(4) Any person who conducts himself or herself in a manner that could be construed as an act of intimidation or reprisal against another person or organisation on the grounds of or in association with his or her status, activities or work as a human rights defender, shall commit an offence and liable upon conviction to a fine or period of imprisonment or both.

#### **19. Obligation of effective remedy and full repair**

Public authorities shall take all necessary measures to ensure that an effective remedy and full reparation for violations of the rights in Part III of this Law and for breach of the obligations in Part IV of this Law.

### **PART V. ESTABLISHMENT OF A MECHANISM FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS**

#### **20. Establishment of Mechanism for the Protection of Human Rights Defenders**

(1) The National Mechanism for the promotion and protection of the rights of human rights defenders is hereby established.

(2) The National Mechanism shall be composed of representatives of public authorities, non-state actors in the country and the national human rights institution.

(3) The National Mechanism may establish committees or sub-committees as are necessary to deal with special cases such as women human rights defenders.

(4) A law shall provide for adequate budget of the National Mechanism and other procedural issues of its operation.

(5) A Human Rights Defenders Fund is hereby established. It shall be made up of funds received by the Mechanism from the government or non-government areas; individual or institutional membership fee received from the human rights defenders or donors.

#### **21. Functions of the National Mechanism for Human Rights Defenders**

The National Mechanism shall have the following functions;

- (a) Deal with complaints about intimidation or reprisal;
- (b) Provide protect human rights defenders from intimidation or reprisal;
- (c) assist in ensuring investigation of, and accountability for, acts of intimidation or reprisal;
- (d) facilitate and promote inter-agency and inter-departmental coordination to prevent, protect against, investigate, and ensure accountability for acts of intimidation or reprisal; and
- (e) promote and publicly acknowledge the legitimate and important role, function, activities and work of human rights defenders.

- (f) promote and publicly acknowledge the legitimate and important role, function, activities and work of human rights defenders.
- (g) aid, assist and inform investigations for the purpose of prosecuting the offences created under this Law.
- (h) propose and implement, or ensure the implementation of, prevention measures and protection measures to guarantee the life, integrity, liberty, security and the work of human rights defenders, giving particular attention to the situation and protection needs of women human rights defenders and other human rights defenders at increased risk.
- (i) receive and assess applications for protection measures and implement the appropriate protection measures, including emergency measures, in coordination with other relevant authorities.
- (j) disseminate information to the public about protection programmes for human rights defenders.
- (k) carry out periodic reviews of the implementation of this Law and the Mechanism's effective functioning.
- (l) Carry out any other function necessary to achieve recognition and protection of human rights defenders.

## **22. Miscellaneous Provisions**

Nothing in this Law shall be construed as limiting the rights and freedoms of human rights defenders or protection provided in any other law, or limiting the competence of other public and non-state mechanisms for the recognition and protection of human rights defenders.

**FIRST SCHEDULE**  
***(In terms of sections 16 & 21 of this Law)***

“*Protection measures*” shall include the following;

- (a) Provision of cellular devices, radio, satellite phones or other communication equipment;
- (b) Installation of cameras, locks, lights or other safety measures at the home or places of work of the beneficiary;
- (c) Provision of bullet-proof vests;
- (d) Installation of metal detectors; 136 Compendium on the legal protection of human rights defenders in Africa;
- (e) Provision of armored vehicles;
- (f) Setting up of emergency telephone lines;
- (g) Assignment of armed or unarmed protection personnel;
- (h) Provision of, or access to, legal aid;
- (i) Provision of cyber security advice, support and infrastructure;
- (j) Making public or private statements or representations of support;
- (k) Attending or observing trials or legal proceedings;
- (l) Provision of a safe house;
- (m) Provision of alternative identity documents;
- (n) travel assistance; (o) relocation outside the area of risk;
- (o) Evacuation;
- (p) Provision of psychosocial support and including counselling for trauma, stress management and well-being; and
- (q) Financial assistance or income support.