
MODEL LAW ON THE PROTECTION AND PROMOTION OF HUMAN RIGHTS DEFENDERS



APRIL 2023

**SOUTHERN
DEFENDERS**



Southern Africa Human Rights Defenders Network

THE MODEL LAW

A Model Law to provide for the rights and responsibilities of human rights defenders in Southern Africa, to prescribe the obligations of Governments in protecting and promoting the work of human rights defenders, and to provide for the greater protection, promotion, fulfilment and respect of human rights in Southern Africa.

PREAMBLE

Recognising that the Treaty of the Southern African Development Community (SADC Treaty), recognises “the need to involve the people of the Region centrally in the process of development and integration, particularly through the guarantee of democratic rights, observance of human rights and the rule of law”, and that one of the five principles that SADC and its Member States are enjoined to act in accordance with, is “human rights, democracy and the rule of law”,

Acknowledging the key role played by human rights defenders (HRDs) in advancing the ideals of the ‘SADC we want’ in the observance of human freedoms and liberties, and the manifestation of the highest potential of human industry, capabilities and potentials, and acknowledging that these can be attained when the dignity and humanity of all who live in SADC are recognised and protected,

Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

Acknowledging the difficulties HRDs face in executing their duties, and the absence of legal structures to provide dedicated support and response,

Recognising and affirming the principles contained in the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Reaffirming provisions of the African Union Constitutive Act and other relevant human rights instruments in particular the African Charter on Human and Peoples' Rights which requires member states of the African Union to recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them”

Recalling various resolutions of the African Commission on Human and Peoples Rights in particular Resolution 376 on the Situation of Human Rights Defenders in Africa which calls on member states to adopt specific legislative measures to recognise the status of human rights defenders, and protect their rights and the rights of their colleagues and family members, including women human rights defenders and those working on issues such as extractive industries, health and HIV/AIDS, reproductive health, sexual orientation and gender identity, promotion of peace and democracy, fight against terrorism, and respect for human rights

Stressing that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation,

Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms.

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PART I PRELIMINARY

1. Title

This Model Law may be cited as the SADC Model Law on the Protection and Promotion of the Work of Human Rights Defenders.

2. Application

This Model Law applies to all human rights defenders in the Southern Africa Development Community (SADC) without discrimination based on gender, race, colour, tribe, language, religion or conviction, political or other opinion, ethnic origin, birth, creed, religion, nationality, age, economic position, marital status or disability.

3. Interpretation

In this Model Law, unless a specific definition is provided in a clause, the following terms shall bear the following meanings:

“Abroad” means geographical territories outside the boundaries of the state and outside the jurisdiction of the state.

“Designated body” means a new or existing state, constitutional or statutory body, official or authority, assigned functions on the protection and promotion of the work of HRDs

“Head of police service” means the commanding officer of the national police service, including a Commissioner of Police, Inspector-General, General Commander, Commissioner-General, as the case may be.

“Human rights defender (HRD)” means

- i. any person who, individually or in association with others, acts or seeks to act to promote, protect or strive for the protection and realisationrealisation of any human right or rights and fundamental freedoms, either on their own behalf or on behalf of others, at the local, national, regional and international levels on a full-time or part-time basis, on a paid or voluntary basis and can act as part of their profession/occupation but need not do so. It should be emphasised that not only are HRDs those acting and defending fundamental rights on behalf of others such as media, journalists, lawyers, but also affected individuals defending the communities to which they belong and collectively, communities fighting for their rights.
- ii. any organisation, association, or institution which acts or seeks to act to promote, protect or strive for the protection and realisationrealisation of human rights and fundamental freedoms, at the local, national, regional and international levels in accordance with its mission or mandate.

“Human Rights Defence Fund (Fund)” means a fund created by an Act of Parliament, and administered through a designated body, to provide social protection and social security to HRDs in need and their families.

“Human rights defenders network/coalition” means any association of grouping of human rights defenders, in whatever manner or form it is constituted, whether registered or not, as existing in a Member State.

“Funding” means material and non-material support, whether monetary or not, provided to HRDs whether as donation, sponsorships, return on investments or fees for any services rendered to which HRDs are entitled.

“Member State” means a Member State of the Southern African Development Community (SADC).

“Minister” means the government minister to whom the administration of the law on the protection and promotion of human rights defenders is assigned.

“Online” means digital platforms of data and information transmission on the world wide web, whether social and non-social digital platforms.

“Special mechanisms and procedures” means special mechanisms or procedures of the African Union and of the United National, including working groups, committees, special rapporteurs and independent experts

4. Objectives

The objective of this Model Law is to provides Member States with a framework and standard for the development of binding and enforceable legislative enactments for the protection and promotion of the work of human rights defenders. In particular, the Model Law seeks to:

- a. to encourage and support member states to enact domestic laws, policies and frameworks to support the work of defenders and protect them from human rights, legal, socio-economic and political violations occasioned by their work;
- b. to provide a tool for HRDs advocating for stronger legal recognition and protection of their work;
- c. to provide redress and recourse mechanisms for HRDs to attain justice;
- d. to provide States, non-state-actors and HRDs with a benchmark and measuring framework to assess the adequacy and effectiveness of national laws, policies and frameworks; and
- e. to provide for mechanisms to enforce the promotion and protection standards provided for in the Model Law.

5. Domestication of Model Law

- (1) This Model Law is non-binding but persuasive in guiding the law reform and in particular law that advance the protection of human rights defenders and the promotion

of their work. It serves as a blueprint to comprehensively guide law and policy makers in modelling domestic human rights defenders' laws.

- (2) Member States shall incorporate the provisions of this law into their domestic legal systems to give rise to a binding legal effect.
- (3) Member states shall review all their laws to be consistent with the United Nations Declaration on Human Rights Defenders.

6. Minimum standards

- (1) This Model Law sets minimum standards to the protection of HRDs. Where existing national constitutions and/or legislation provide greater protection on any aspect covered in this Model Law, such national constitutions and/or legislation shall prevail in specific to that aspect for which national laws provide a greater protection or a greater standard of protection.
- (2) Nothing in the present Model Law shall be interpreted as implying for any individual, group or organ of society or any Member State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this Model Law.
- (3) No Member State shall revise its laws to reduce or diminish the protection of HRDs to the standards of this Model Law, where existing laws provide greater protection than that provided for under this Model Law.

PART II
PRINCIPLES OF THE MODEL LAW

7. Commitment to the respect, protection, promotion and fulfilment of human rights

- (1) The Member State and every natural or juristic person and including every institution and agency of the Member State at every level must respect, protect, promote and full the rights and freedoms set out in this Model Law.
- (2) The Member state shall take necessary steps to ensure realisation and protection of the HRD rights under its jurisdiction.

8. Primary duty of the state

- (1) The Member State bears the primary and foremost duty for the respect, protection, promotion and fulfilment of human rights and human rights defenders.
- (2) The state must take all measures within its power and capabilities to realise the full protection of human rights defenders and or human rights.

9. Obligation to respect, promote, protect and fulfil the rights of human rights defenders

- (1) The Member State has a duty to protect and promote human rights and fundamental freedoms and to ensure their effectiveness. States shall therefore 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 can undertake their activities and work in a safe and enabling environment free from restriction.
- (2) Private persons, whether natural or juristic, shall respect and recognise the rights of human rights defenders and be guided by international human rights norms in carrying out their activities. Participating States should hold them accountable if they fail to do so in accordance with domestic legal procedures and standards.

10. Obligation to facilitate the activities and work of human rights defenders

The Member state shall take all necessary measures:

- a. to facilitate and protect the exercise of to facilitate the activities of human rights defenders for the promotion and protection of human rights, and in particular by:
 - i. Permitting and facilitating access of human rights defenders to places of detention in accordance with the law;
 - ii. Permitting and facilitating access to the information necessary for their activities in accordance with the law.
- b. to develop and implement policies and measures to promote, support and enhance the capacity of human rights defenders to promote and protect human rights and fundamental freedoms; and
- c. to promote and publicly acknowledge the role, function, activities and work of human rights defenders as legitimate and important.

11. Rule of law and due process

Rule of law and due process must be followed in dealing with HRDs.

12. Removal of barriers

The defence of human rights is for all, and any form of barriers to the defence of human rights just be eliminated, so that all are able to be human rights defenders.

13. Supporting and encouraging defence of human rights

The defence of human rights must be promoted and encouraged, as a way towards greater observance of a culture of human rights. Defending human rights should not be promoted to be, or perceived as, an occupational hazard.

14. Freedom of movement and transnational work

- (1) HRDs are entitled to move freely in and out of, and within, the national borders, including the right to reside in any part of their country of citizenship or permanent residence and to leave the country.
- (2) HRDs shall not be prohibited from or constrained in conducting cross-border lobby and advocacy, including cross border mobilising and engagement.
- (3) Member states shall not promulgate laws that criminalise the work of HRDs, in particular their engagement with international, multinational and transnational organisations, and their engagement with development partners and diplomatic representatives and missions within and outside the country.

- (4) No HRD shall be arbitrarily deprived of the right to return to their own country.
- (5) States shall facilitate access to relevant sites, such as places where assemblies or protests are held and places where people are deprived of their liberty, for the purpose of human rights monitoring and reporting.

15. Observance and respect of international law and extra-territorial protection

- (1) The provisions of this Model Law must be read, interpreted and applied in a way that accords with international law and all treaties and conventions to which the country is a party to, which advance human rights and the rights and protection of HRDs, and the standards and provisions thereof.
- (2) Member States must ratify relevant instruments that allow for HRDs to access regional and international dispute resolution mechanisms and access to justice platforms.
- (3) Member States shall recognise the need for protecting human rights defenders both on their territories and in other states. They shall set up appropriate instruments and mechanisms that deal with the protection of human rights defenders domestically and abroad.
- (4) Member States should support, including through their diplomatic missions, human rights defenders who face imminent risks to their lives and well-being by temporarily moving them to a safe environment when required and, if necessary, by issuing emergency visas.
- (5) In line with their obligations under international law, states should also grant human rights defenders longer-term international protection in the event that they have to leave their country for fear of persecution on account of their human rights work. They must fully comply with their obligation under international law not to return persons to countries where they face a real risk of being subjected to violations of their right to life, to be free from torture and other ill-treatment or other serious human rights violations.
- (6) HRDs travelling to another state should not be subjected to border checks that are disproportionate or constitute a violation of their human rights.
- (7) HRDs traveling to another state should not be subjected to searches at the border, including body searches that are disproportionate, fail to respect their dignity or are otherwise arbitrary.
- (8) HRDs crossing national border shall not face arbitrary confiscation of equipment, including information and technology equipment, personal data or information materials such as publications, leaflets and hand-outs, necessary for carrying out their human rights activities.

PART III
RIGHTS OF HUMAN RIGHTS DEFENDERS

16. The right to defend human rights or be an HRD

- (1) Everyone has the right to be a human rights defender, and no discrimination shall be visited upon a person for electing to be a human rights defender, or for doing the work of a human rights defender.
- (2) The right to defend human rights is a universally recognised right: It derives from universal human rights, which are indivisible, interdependent and interrelated, and which States have committed to respect, protect and fulfil for everyone on their territory and subject to their jurisdiction.
- (3) No law, practice or conduct may provide a bar from being a human rights defender, as a pre-condition for access to employment, resources, support, protection, care or any need or right of a person.

17. Recognition of HRDs and the work of HRDs

HRDs shall be recognised as such for the work they do, and as a protected category of persons.

18. Protection under the constitution and all laws of the country

- (1) All HRDs are entitled without expectation of the basis of the being HRDs, to all the right accorded to every citizen from the country's Constitution and national legislation.
- (2) The Member State and all juristic and natural persons must respect, protect, promote and fulfil the rights of HRDs as contained in this model law and in national laws.

19. Limitations on the rights of human rights defenders

- (1) In exercising his or her rights, a human rights defender, individually or in association with others, shall be subject only to limitations that are prescribed by a law of general application, 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 and general welfare in an open and democratic society.
- (2) Human rights defenders are required to undertake their activities and exercise their rights and freedoms impartially, while respecting the rights of others, public security and the general interest.

20. Right to life

- (1) Every HRD has the right to life.
- (2) The death penalty shall not be imposed under any circumstance.

21. Right to human dignity

Every person has inherent dignity in their private and public life, and the right to have that dignity respected and protected.

22. Right to a safe and enabling environment to carry out human rights defence

HRDs have the right to a safe and enabling environment for the effective carrying out of human rights defence work.

23. Right to personal liberty

- (1) An HRD shall not be detained without trial and shall not be deprived of their liberty arbitrarily or without just cause.
- (2) No law may permit arbitrary arrest and detention of HRDs, and no law may permit the use of their human rights work to justify arrest, detention, denial of bail and other such treatment.
- (3) An HRDs previous arrests or convictions may not be used as justification for refusal of bail.

24. Right to personal security

Every HRDs has the right to bodily and psychological integrity, which includes the right-

- a. to freedom from all forms of violence from public or private sources;
- b. not to be subjected to medical or scientific experiments, or to the extraction or use of their bodily tissue, without their informed consent.

25. Freedom from torture or cruel, inhuman or degrading treatment or punishment

No HRD may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment.

26. Equality and non-discrimination

- (1) Human rights defenders shall not be discriminated against in the exercise of the full range of their human rights because of their work. The right to defend human rights

must be guaranteed without discrimination, and measures to protect human rights defenders should be reflective of the specific needs of defenders facing multiple forms of discrimination.

- (2) No HRD shall be treated differently from another HRD on the basis of any prohibited ground of discrimination, such as nationality, race, age, place of birth, sex, sexual orientation, disability, language, political affiliation, religion, the nature of rights they champion, or any other such ground, unless where such differential treatment is lawful affirmative action, or complies with the limitation of rights standards.
- (3) Any differential treatment of an HRD on the basis that they are an HRD shall be presumed to be unfair, unless proven otherwise.

27. Freedom of assembly and association

- (1) Every HRD has the right to freedom of assembly and association, and the right not to assemble or associate with others.
- (2) HRDs have the right to belong to, associate with, form, and run, associations in any legal form in which non-profit entities can be legally constituted per the country's laws. This includes association and coalition of human rights defenders at local, national, regional and international levels. This also includes association through belonging to, forming and running civil society organisations including in the form of non-governmental organisation, NGOs, NPOs non-profit-organisations, clubs, trade unions, and any other form of group entity.
- (3) No HRD may be compelled to belong to an association, network, organisation, platform or to attend a meeting or gathering convened by anyone.
- (4) Human rights defenders shall be able to form groups or associations without an obligation to register or obtain legal personality to pursue their activities.
- (5) Laws and administrative procedures for NGOs to register officially or to obtain legal personality for HRDs, should be voluntary, clear and simple and not discriminatory.

28. Protection of associates and relations of HRDs

No HRD may be discriminated against or treated unfairly based on their association with a human rights defender. This includes an employer, employee, family member, community, community relations, business partner or any associate of an HRD.

29. Privacy and confidentiality

- (1) HRDs are entitled to the right to privacy, which includes the right not to have-
 - a. their home, premises or property entered without their permission;

- b. their person, home, premises or property searched;
 - c. their possessions seized;
 - d. the privacy of their communications infringed; or
 - e. their health condition disclosed.
- (2) There shall be no surveillance, recording, search and seizure related to the legitimate activity or work of human rights defenders without due process.
- (3) HRDs, except in the cases of association, groups, clubs or entities recognised as NGOs or NPOs required under national law to report to a regulatory authority, shall not be required to report on their work or on any of their activities to any individual, office, official or body, whether State or Non-State.
- (4) Government and public authorities shall not disclose or require disclosure of the identity of sources used by human rights defenders. Government and 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 by an independent and impartial tribunal in accordance with international standards.

30. Freedom of expression

- (1) Every HRD has the right to freedom of expression, which includes-
- a. freedom to seek, receive and communicate ideas and other information;
 - b. freedom of artistic expression and scientific research and creativity; and
 - c. academic freedom.

31. Access to information

- (1) Every HRD has the right of access to any information held by the State or by any institution or agency of State at every level, insofar as the information is required for the protection of a right or rights or anyone, or in the interests of public accountability.
- (2) Every HRD has the right of access to any information held by any person, including the Member State, insofar as the information is required for the exercise or protection of a right.
- (3) Any limitation to access to information must be acceptable under international law to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.

32. Prohibition of arbitrary and unjustified interference with access to the internet

- (1) States shall not limit or terminate access to the internet by HRDs to undermine the legitimate work of HRDs.
- (2) Any limitation of access to the internet by States must be:
 - a. in terms of a law of general application, must not be targeted specifically at HRDs, and must be fair, reasonable, proportionate, necessary and justifiable in a democratic society based on openness and must comply with international law;
 - b. subject to prior authorization by a court or another independent adjudicatory body, to avoid any political, commercial or other unwarranted influence; and
 - c. communicated in advance to the public and telecommunications or internet service providers, with a clear explanation of the legal basis for the shutdown and details regarding its scope and duration.

33. Demonstration, picket and petition

Every HRD has the right to peacefully demonstrate and to present petitions.

34. Citizenship and legal status

- (1) All HRDs are equally entitled to the rights, privileges and benefits of citizenship and are equally subject to the duties and obligations of citizenship, including but not limited to:
 - a. to the protection of the State wherever they may be; and
 - b. to national documents, including passports and other travel documents, birth certificates, national identity documents and other identity documents issued by the State.
- (2) No HRD may be deprived of their citizenship, permanent residency, or any form of residency, work, study or business permit or visa on account of being an HRD only except as laid out under national laws that are consistent with international law
- (3) No HRD may be deported or expelled from their country of citizenship.

35. Online work

- (1) HRDs have the right to organise, work, communicate, and impart and receive information online, including on social media platforms.
- (2) Member states must investigate any violations of HRDs rights online as would be investigated offline.

- (3) Private actors offering their platforms must adhere to international human rights law, including provisions of this law.

36. Freedom from threats, hate speech intimidation, reprisal and marginalisation

- (1) HRDs shall not be subjected to hate speech or language on account of their work and how they do it.
- (2) States shall ensure the protection of human rights defenders and members of their families in the event of risks or dangers in the pursuit of their activities.
- (3) States shall take all necessary measures to ensure the prevention of, and protection against, any intimidation or reprisal by any other public or private actor, including the enactment and implementation of laws of protection of whistle-blowers.
- (4) A country shall not promulgate laws that characterise HRDs as foreign agents, sell outs, villains or any such terms on the basis that they receive foreign funding.
- (5) State institutions and officials must refrain from engaging in smear campaigns, negative portrayals or the stigmatisation of human rights defenders and their work. This includes the negative labelling of human rights defenders, discrediting human rights work and human rights defenders or defaming them in any way.
- (6) States should take proactive steps to counter smear campaigns against and the stigmatisation of human rights defenders, including by third parties. They should publicly acknowledge the need to protect human rights defenders and the importance of their work, give recognition to individual human rights defenders and thereby strengthen the legitimacy and status accorded to human rights work in society.
- (7) While fully respecting the right to freedom of opinion and expression, states should combat advocacy of hatred and other forms of intolerance against human rights defenders that constitutes incitement to discrimination, hostility or violence, including where this is conducted online.
- (8) To avoid marginalisation of human rights defenders, state institutions should actively and constructively engage with human rights defenders to empower their participation, including in public debates through National Human Rights Institutions or similarly placed entities.

37. Protection from reprisals and strategic lawsuits against public participation (SLAPPS)

- (1) HRDs shall not be subjected to reprisals, including harassment, physical abuse, verbal abuse and slander for their legitimate work.
- (2) HRDs shall not be subjected to unjustified and strategic lawsuits against public participation lawsuits for their legitimate work, and courts shall take judicial notice of SLAPPS where they occur and pronounce on necessary judicial measures including, but not limited to, striking the case off the list or roll and higher costs to the plaintiffs.

- (3) HRDs cooperating with international and national human rights bodies including SADC, the African Union and the UN or any other designated national human rights bodies are protected against reprisals of any kind including harassment, intimidation and malicious prosecution or suits.

38. Political rights

- (1) HRDs are entitled to all political rights, including rights of political participation, political advocacy and political lobby, to which any ordinary citizen is entitled to, including
 - a. to participation in free, fair and regular elections for any elective public office established in terms of this Constitution or any other law;
 - b. to make political choices freely;
 - c. to vote in all elections and referendums to which this Constitution or any other law applies, and to do so in secret;
 - d. to participate, individually or collectively, in gatherings or groups or in any other manner, in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause.
- (2) Any laws prohibiting political advocacy and lobby must be through a law of general application, which meets the standards of limitation of rights under international law. Such limitations, if they exist, must be clear, precise, unambiguous and capable of precise definition.

39. Prohibition of arbitrary detention

- (1) Member States should not subject human rights defenders to arbitrary deprivation of liberty because of their engagement in human rights activity. Any form of deprivation of liberty must be based on and in accordance with, subject to the possibility for the detained to challenge the legality of detention before a competent court and otherwise comply with international human rights standards.
- (2) Human rights defenders arbitrarily detained should be immediately released.
- (3) Human rights defenders should not be held in temporary or administrative detention for the purpose of intimidation or coercion or to prevent them from carrying out their human rights work.
- (4) Human rights defenders deprived of their liberty must always be treated with respect for and in accordance with international standards, without discrimination of any kind.

40. Access to justice

- (1) HRDs are entitled to the same rights accorded to every person in access to courts, access to legal practitioners of their choice, access to medical treatment and medical practitioners of their choice, and to be treated according to established due process at law. Confidentiality of communication between an HRD and their lawyer(s) must be fully guaranteed.
- (2) Rights of HRDs upon and arrest and detention must be compliant with national laws, as consistent with international law.
- (3) No HRD shall be barred from accessing a court or tribunal for relief on the basis that they have “dirty hands”, have committed an offence, have previously been arrested or convicted or any other ground limiting access on the basis that one is a human rights defender.
- (4) HRDs shall have the same rights and privileges as other citizens in having their matters determined impartially, fairly and expeditiously in the courts of law.
- (5) In criminal cases, HRDs shall not be denied bail on the basis that they are an HRD.
- (6) HRDs shall be entitled to legal protection through government funded legal aid. The State must take all practical measures, within the limits of the resources available to it, to provide legal representation in civil and criminal cases for people who need it and are unable to afford legal practitioners of their choice.
- (7) No formal or informal practice directives, orders, instructions or regulations may be issued in the treatment of cases of HRDs which is different from the treatment of any other cases. Any treatment of like cases alike, joinder of cases, consolidation of records, similar treatment of similar cases, should be in accordance with laid down criminal laws of general applicable to all citizens.

41. Past arbitrary convictions, charges and arrests

- (1) Member States should consider practical measures to ensure that past arbitrary convictions, charges and arrests of HRDS resulting from human rights work do not lead to deprivation of rights for HRDs through undue limitations.
- (2) As much as possible, such past unjust convictions should be vacated, or pardons granted.

42. Right to administrative justice

- (1) Every HRD has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair.
- (2) Any person whose right, freedom, interest or legitimate expectation has been adversely affected by administrative conduct has the right to be given promptly and in writing the reasons for the conduct.

43. Property rights

- (1) HRDs are entitled to buy, rent, lease, sale, mortgage, lien, place a servitude, or otherwise deal in any lawful way, property, per national laws as applicable to everyone else.
- (2) No HRDs may be arbitrary deprived of their property, and deprivation of property may only be in terms of law of general application.
- (3) No HRD may be evicted from their home, or have their home demolished, without an order of a competent court.

44. Right to fundraise and to receive funding

- (1) HRDS shall have the right to fundraise, including but not limited to through soliciting support from development partners and philanthropists, corporates, and government.
- (2) HRDs shall be allowed to fundraise on online platforms, including online crowdfunding platforms, and receiving of digital currencies.
- (3) No law may require, as a compulsory measure, for the registration of an entity as a NGO, NPO, or charity, to be able to fundraise for human rights and advancement for the work of HRDs.
- (4) HRDs have the right to access funding and other material support for their work, through donations of any form of kind, by persons within and outside the country.
- (5) It is unlawful to restrict access to funding by HRDs on the basis of unproven allegations of money-laundering, counter financing of terrorism and allegations of being foreign agents.
- (6) Member States must take all reasonable and practical measures within available resources to support the work of HRDs, including providing funding to organisations, associations, coalitions and networks that advance human rights work and the work of HRDs, provided that such funding must be accessible to HRDs through a competitive, open and transparent process without discrimination and exclusion based on any grounds, including perceived political affiliation and perceived political connections. State funding schemes should be transparent, fair and accessible on an equal basis to all human rights defenders and their NGOs.
- (7) Member States must take appropriate steps to encourage donations by private individuals or business corporations for human rights work, including by offering tax benefits for donations.
- (8) Where states provide, or facilitate access to, funding, public authorities and officials shall fully respect the independence of HRDs and refrain from using government

funding or other financial or non-financial means to influence the work of HRD and the broader human rights work.

- (9) States should not place undue restrictions on NGOs to seek, receive and use funds in pursuit of their human rights work. Domestic laws must not criminalize or delegitimize activities in defence of human rights on account of the origin of funding.

45. Freedom of profession, trade and occupation and labour rights

- (1) HRDs have the right work in any field and occupation of their choice, and no law, practice or conduct may restrict access to trade or occupation for an HRD on the basis of their being an HRD.
- (2) In their chosen profession, field or occupation, HRDs have the right to fair and safe labour practices and standards and to be paid a fair and reasonable wage.
- (3) HRDs, has the right to form and join trade unions and employee or employers' organisations of their choice, and to participate in the lawful activities of those unions and organisations, and enjoy associated rights to strike, sit in, withdraw their labour.
- (4) Women HRDs and men HRDs have a right to equal remuneration for similar work, as with other employees doing similar work.

46. Social welfare

- (1) HRDs who are incapacitated by virtue of their work, either through physical confinement, unemployment, physical and mental hard suffered must, together with their family, receive, through the human rights defence fund, social protection and social security support, including but not limited to livelihoods support.
- (2) In the event of death of an HRD in the line of duty in defence of human rights the family and depends on such HRDs shall be entitled to receive support through the fund in addition to any claims that may be instituted in courts or other tribunals for compensation.

PART IV

SPECIAL INTEREST GROUPS OF HUMAN RIGHTS DEFENDERS

47. General

A gender and diversity-sensitive approach should be mainstreamed into all intervention and activities to strengthen the protection of human rights defenders.

48. Women Human Rights Defenders

Women human rights defenders have the right to be protected from all kinds of threats, violence or any form of discrimination related to their status as women human rights defenders, in accordance with national and international legal instruments on the protection of women.

49. Sexual Minorities

- (1) For the avoidance of doubt, human rights defenders include natural and juristic persons that advocate, promote and protect the rights of sexual minorities, which include lesbians, gays, bisexual, transgender, queer, intersex and asexual persons.
- (2) Any discrimination based on sexual orientation shall be illegal and presumed unfair.
- (3) Necessary accommodations shall be made in the provision of support to HRDs, to individual and groups HRDs that are sexual minorities, according to their needs.

50. Human Rights Defenders with Disabilities

- (1) The State and all institutions and agencies of government at every level must recognise the rights of HRDs with any form of disability, in particular their right to be treated with respect and dignity.
- (2) The State and all institutions and agencies of government at every level must, within the limits of the resources available to them, assist HRDs with any form of disability to achieve their full potential and to minimise the disadvantages suffered by them.
- (3) In particular, the State and all institutions and agencies of government at every level must—
 - a. develop programmes for the welfare of HRDs with disabilities, acceptable to them or their legal representatives;
 - b. consider the specific requirements of persons with all forms of disability as one of the priorities in development plans;

- c. encourage the use and development of forms of communication suitable for persons with disabilities; and
 - d. foster social organisations aimed at improving the quality of life of persons with all forms of disability.
- (4) People with disabilities who are HRDs, are not only confined to advocating and advancing rights of persons with disabilities.

51. Environmental HRDs

- (1) Environmental HRDs, that is, individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna, are entitled to all rights to which HRDs under this Model Law are entitled to.
- (2) Special protection shall be provided to environmental HRDs against reprisals, including unjustified and strategic lawsuits against public participation (SLAPP) lawsuits, harassment and physical abuse perpetrated by anyone, including business entities.

PART V
RESPONSIBILITIES OF HUMAN RIGHTS DEFENDERS

52. Respect of and commitment to human rights

- (1) HRDs must respect, promote, protect and fulfil all human rights of all persons and without discrimination based on any prohibited ground.
- (2) All human rights must be given primacy as interrelated, interconnected, indivisible and interdependent.

53. Observe do-no-harm principle

HRDs must at all times observe the do no harm principle and must not act in ways that endearer people and victims of human right violations. HRDs must pay special attention to unintended consequences of any intervention they seek to make.

PART VI
ENFORCEMENT

54. Right to access court, forum or tribunal

- (1) Any HRDs is entitled to approach a court, alleging that a fundamental right or freedom enshrined in this Chapter has been, is being or is likely to be infringed, and the court may grant appropriate relief, including a declaration of rights and an award of compensation, in any of the following capacities;
 - a. acting in their own interests;
 - b. acting on behalf of another person who cannot act for themselves;
 - c. acting as a member, or in the interests, of a group or class of persons;
 - d. acting in the public interest.
- (2) The fact that an HRD has contravened a law does not debar them from approaching a court for relief.
- (3) Member states shall facilitate by ratifying relevant instruments that allow for HRDs to access regional and international dispute resolution mechanisms and access to justice platforms.

55. Designation of a body responsible for the protection of HRDs

- (1) Member States shall establish or designate to an existing body (designated body), with the responsibilities and duties to facilitate the protection of HRDs and the promotion of their work. A designated body may be an existing national human rights institution, and where a different designated body is appointed, such designated body must work closely and in cooperation with the national human rights institution in doing its work per this model law.
- (2) The designated body, shall have functions which include:
 - a. Managing the human rights defence fund;
 - b. Receiving reports and complaints from HRDs;
 - c. Providing protection mechanisms for HRDs, including referral of matters for investigation to law enforcement authorities, national human rights institutions, and directing the Heads of Police service to conduct investigations;
 - d. Promoting the work of HRDs;
 - e. Collecting and disseminating information within government and to the public on the situation of HRDs in the country;
 - f. Providing training and capacity building to state and non-state actors on human rights and the protection and promotion of the work of HRDs;
 - g. Conduct monitoring and evaluation on the efficacy and effectiveness of protection measures and recommend or adopt reforms as necessary.

56. Designated Body to Submit annual Report to Parliament

- (1) The designate body must produce an annual report on the situation of human rights defenders in the Member State, which report must be submitted to Parliament within a stipulated timeframe each year.
- (2) The report must note in particular the occurrence of any threats or attacks against human rights defenders, noting interventions, and noting efforts being taken to ensure the greater protection of HRDs and the advancement of their work.
- (3) Upon submission to parliament, the report must immediately be made publicly available.

57. Human Rights Defence Fund

- (1) A Human Rights Defence Fund must be established with income appropriated through a parliamentary budget vote, from donor support, and other forms as may be determined by the authority under whose charge the fund is put.
- (2) Member States should designate sufficient funds to this Fund.
- (3) The Fund shall have utilities which include:

- a. provision of physical and psychological protection of human rights defenders at risk, emergency relief and other support services;
- b. support NGOs or group, association, networks and coalitions of HRDs that provide such services; and
- c. fund interventions by the State in the enforcement of this Model Law and HRD protection laws.

58. Protection policies, programmes and mechanisms

- (1) States should develop, through the designated body, and in consultation with civil society and with technical advice from relevant international agencies, appropriate protection policies, programmes and mechanisms to ensure the safety and security of human rights defenders at risk. These should include the provision of physical protection, temporary relocation and other protection measures and support services as may be required.
- (2) States should ensure that any protection programmes, policies and mechanisms have the capacity and means to provide gender-sensitive protection and support that meet the needs of women human rights defenders, and other vulnerable HRDs.

59. Assistance to human rights defenders abroad and refugee status

- (1) Public authorities should take all necessary steps within their power in conformity with international obligations and standards to provide assistance to a human rights defender abroad who has been or may be subject to intimidation or reprisal on the grounds of or in association with their status, activities or work as a human rights defender.
- (2) HRDs who are forced to flee their country of origin as a result of persecution in circumstances that qualify for refugee status, shall on application be granted refugee status by the countries to which they apply for such status, in conformity with international laws regulating refugee status. The fact that the applicant for refugee status is an HRD shall be taken into account to facilitate expediting the application, and shall be a factor weighing in favour of refugee status being granted.
- (3) The principle of non-refoulement as defined in customary international law and in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance shall apply, and States are prohibited from expelling, transferring, removing, surrendering or extraditing individuals from their jurisdiction when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return to their country of origin, including persecution, torture, ill-treatment or other serious human rights violations.

60. Obligation to conduct investigations

- (1) 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 in this Model Law, whether by a public authority or private actor within the Member State, the Government through the head of police service must ensure that a prompt, thorough, effective, independent and impartial investigation is conducted with due diligence and is prosecuted as appropriate.
- (2) An investigation shall take into account:
 - a. whether a motive for the violation of the rights of the human rights defender included his or her status, activity or work as a human rights defender;
 - b. whether there have been previous violations of the rights of the human rights defenders or systematic violations of the rights of similarly situated human rights defenders; and
 - c. whether the violation was perpetrated, aided, abetted or supported by multiple actors.
- (3) The designated body shall have the powers to instruct the head of police service, to conduct an investigation on specific terms of reference from such body.
- (4) During an investigation the head of police service, in consultation with the designated body, shall keep the victim, or his or her or their family, relatives or associates, informed of the status of the investigation.
- (5) Member states shall request such assistance from relevant international or regional human rights bodies or mechanisms as is necessary to conduct an investigation.

61. Obligation to ensure effective remedy and full reparations

- (1) Member states shall take all necessary measures to ensure that an effective remedy and full reparations are available and provided for violations of the rights in this Model Law, for breach of obligation under this Model law, and for breach of any national law protecting HRDs.
- (2) Any violation of this Model Law and human rights defenders protection laws shall attract both civil and criminal sanctions as allowed under the general law of the member state.
- (3) Member state shall ensure that violations committed against human rights defenders are punishable in accordance with the law.
- (4) Any penalties provided for in this law does not prevent an HRD from seeking any other remedy as allowed under the Constitution, or under any other law applicable to the country.

62. Ongoing monitoring, reporting and assessment on the situation of HRDs

- (1) The State through its relevant Ministry and the designated body must conduct ongoing monitoring, reporting and assessment on the situation of HRDs.
- (2) Reports from the monitoring must be produced and published, including through an annual report. These reports must be incorporated into reports to AU and UN treaty bodies as relevant, noting in particular the occurrence of any threats or attacks against human rights defenders, noting interventions, and noting efforts being taken to ensure the greater protection of HRDs and the advancement of their work.

63. Cooperation with SADC, AU and UN agencies, bodies and special mechanisms and procedures

The State, through its various ministries, department and agencies, and independent constitutional commissions, must cooperate with UN and AU Special Procedures (Special Rapporteurs, Special Representatives, Independent Experts and Working Groups) to advance the work and the protection of HRDs, including accepting, as a matter of principle, request for visits and actively inviting the Special Procedures.

64. Cooperation with HRDs and NGOs

- (1) The State must cooperate with HRDs in their individual capacities, and in groups and associations, including civil society organisations and human rights defenders networks and coalitions as existing in the country.
- (2) The government shall work closely and cooperate with non-governmental organisations (NGOs) and HRDs in designing interventions, including in responding to violations of human rights and the rights of HRDs. This includes consultation and inclusion in processes of decisions making, to the greatest extent possible.

65. Training of officials

The member state shall provide for the training on human rights protection and the protection of human rights defenders to judicial officers, law enforcement officers, traditional leaders, religious authorities, other public officers and policy makers with a bearing on the protection and promotion of HRDs, at all levels of the State, in particular on:

- a. the Model Law and its provisions and standards;
- b. national constitution and statutory provisions on the protection and
- c. promotion of human rights and human rights defenders.

**PART VII
MISCELLANEOUS**

66. Regulations

- (1) The designated body through the relevant ministry is hereby empowered to produce regulations for the implementation of this law and deemed necessary, provided that nothing in such regulations shall subtract from the substance, purpose and the spirit of the law.
- (2) Regulations may only be made to facilitate the implementation of this Model Law.

67. Promotion of law and translation into local languages

- (1) The State shall promote the law in the protection and promotion of HRDs, including through raising awareness on the law.
- (2) The State must ensure that the law on the protection of human rights defenders and the promotion of their work is translated and made available in at least all official languages of the country.

END.



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