

Providing a safe and enabling environment for Human Rights Defenders: Critical factors to Consider

by Margaret Sekaggya

The Anna Lindh Lecture 2014

23 October 2014

Introduction

Ladies and gentlemen

It is a great pleasure for me to be here. I would like to thank you for inviting me to speak at the Anna Lindh lecture. I feel honoured and privileged to speak at this event and to identify with the memory of a person whose life and career had an impact on the promotion of universal respect for human rights. I believe she was a Human Rights Defender.

I will speak today on how to create a safer and a more enabling environment for Human Rights Defenders. The speech is based on my work as a Special Rapporteur on the Situation of Human Rights Defenders and as a defender of human rights in various capacities and positions in the past. As most of you know, human rights defenders are people who, individually or with others, act to promote or protect human rights in a peaceful manner.¹ Defenders play a key role in safeguarding democracy and ensuring that it remains open, pluralistic and participatory and in line with the principles of the rule of law and good governance. Defending rights and speaking up against violations and abuses still remains a dangerous activity because defenders and their families are often intimidated, harassed, subject to surveillance, threatened, attacked, arbitrarily arrested, criminalized, tortured and ill-treated in detention, subject to enforced disappearances, and sometimes killed. Defenders should be able to carry out their activities in an environment that empowers them to defend human rights for all.

Duties of the State in protecting human rights defenders

It is important to note that the primary duty and responsibility to promote and protect human rights and fundamental freedoms including the rights of human rights defenders lies with the State. States have the obligation to undertake the required steps to create all conditions necessary, including in the political and legal domains, to ensure that everyone under their

jurisdiction can enjoy all those rights and freedoms in practice including the right to promote and defend human rights. Regardless of the status of the alleged perpetrators, States must protect Human Rights Defenders from any violence, threats, or any other arbitrary action as a consequence of the legitimate exercise of their work. This obligation also extends to non-State actors in certain circumstances.

Elements of a safe and enabling environment for human rights defenders

I will discuss nine elements that are critical to the creation of a safe and enabling environment for human rights defenders.

1. Conducive legal, institutional and administrative framework

One of the key elements of a safe and enabling environment for defenders is the existence of laws and provisions at all levels, including administrative provisions, that protect, support and empower defenders, and are in compliance with international human rights law and standards. Moreover, institutional frameworks should be shaped in such a way that they are receptive and supportive of defenders' work.

In countries where human rights are specifically recognized and protected in domestic law, those rights are more likely to be respected and realized in practice. Beyond their normative value, I believe that human rights laws can have an important educational role in that such laws signal the values for which a particular society stands. The adoption of laws that explicitly guarantee the rights contained in the Declaration on Human Rights Defenders is crucial in that it could contribute to building an enabling environment and give these rights legitimacy. Furthermore, such laws could contribute to building wider societal support for the demand of fulfilling these rights. Indeed, there are a number of States that have passed legislation that guarantees the rights of human rights defenders particularly in access to information held by public authorities, and protect those who disclose public interest information that is relevant for the promotion and protection of human rights and those who report on corruption by public officials.

However, legislation is used in a number of countries to restrain the activities of human rights defenders and criminalize them, which is in breach of international human rights law, principles and standards. Legislation such as on: anti-terrorism and public security; anti-homosexuality; public morals; defamation and access to information is sometimes used to restrict the work of defenders. There are also restrictions on the types of activities that associations can engage in, such as political rights advocacy. Moreover, there is a disturbing trend towards the criminalization of activities carried out by unregistered groups. Furthermore, there are restrictions on funding from abroad, which have been introduced in a number of States. This leads to associations risking treason charges, having to declare themselves "foreign agents" or having to seek prior approval to fundraise.

2. Fight against impunity and access to justice for violations against defenders

In many cases, complaints by defenders about alleged violations of their rights are not investigated or are dismissed without justification. A State's lack of investigation into violations could be seen as condoning attacks against defenders and could nurture an environment where further attacks are perceived as tolerated. Ending impunity is an essential condition for ensuring the protection and safety of defenders.

States should ensure prompt and independent investigation of all violations against defenders, and the prosecution of alleged perpetrators regardless of their status. They should also ensure for victims of violations access to just and effective remedies, including appropriate compensation. The provision of an effective remedy should be understood as access to judicial and administrative or quasi-judicial mechanisms. Investigation and prosecution should rest on an effective and independent judiciary. States should also implement the interim measures of protection granted by international and regional human rights mechanisms to defenders.

Unfortunately, in many instances, weaknesses in the judicial system and flaws in the legal framework have deprived defenders of adequate tools for seeking and obtaining justice. Therefore, strengthening the judiciary and making sure that it can operate independently and effectively should be a priority for States.

3. Strong, independent and effective National Human Rights Institutions

As part of the institutional architecture of the State, national human rights institutions can play a key role in ensuring a safe and conducive environment for defenders. National human rights institutions that comply with the Paris Principles are in a unique position to guide and advise Governments on their human rights obligations, and ensure that international principles and standards are adequately incorporated into domestic law and mainstreamed into public policies including that of Human Rights Defenders. Evidence shows that when the mandate of national institutions includes competence to investigate complaints and provide effective protection, they can play a leading role in cases where States' judicial systems are unable or unwilling to adjudicate on alleged violations against defenders. It has been strongly recommended that national institutions have a designated focal point for human rights defenders with responsibility to monitor their situation, including risks to their security, and legal and other impediments to a safe and conducive environment for defenders.

However, there are also violations against national institutions, their members and staff, ranging from attacks, threats and intimidation, to harassment and stigmatization in connection to their human rights work. Such constraints and challenges can seriously undermine the independence, efficiency, credibility and impact of these institutions. States need to protect by law and publicly support national institutions, and their members and staff when necessary.

In order to ensure the credibility of the work of national institutions, Governments must be responsive and ensure adequate follow-up and implementation of their recommendations. This is particularly important given that most of these institutions have advisory functions. Governments should therefore work proactively to implement these recommendations, and follow-up should be tracked and evaluated.

4. Effective protection policies and mechanisms, including public support for the work of defenders

It is necessary to use public policies and specific institutional mechanisms to provide protection, when it is considered necessary, to guarantee a safe and enabling environment for defenders. As Special Rapporteur, I developed guidelines that I believe are essential for the development of protection programmes. Firstly, human rights defenders should be consulted throughout the setting up or review of protection programmes and the structure of such programmes should be defined by law. Protection programmes should include an early warning system in order to anticipate and trigger the launch of protective measures. It should also assess the

safety of the defenders' family members and relatives. Security and law enforcement officials involved in protection programmes should receive specific training on human rights and gender issues. The physical protection of defenders should not be outsourced to third parties unless these have received specific training. Furthermore, adequate financial resources should be allocated to protection programmes. For example the adoption of a law and creation of a protection mechanism for defenders and journalists in Mexico in 2012 has been commended for providing for: an emergency response within 12 hours and collaboration among state-level governments to participate in the protection mechanism. Furthermore, it establishes a complaints procedure and ensures that public officials who do not implement the measures ordered by the mechanism will be legally sanctioned. The new mechanism also ensures the participation of civil society organizations in its decision-making processes and guarantees the right of the beneficiary to participate in the analysis of his/her risk and the definition of his/her protective measures.

In an attempt to delegitimize their work and activities, defenders are often branded enemies of the State or terrorists. This stigmatization makes defenders even more vulnerable to attacks, especially by non-State actors. Therefore, as part of protection policy, it is of crucial importance that the work and role of defenders be publicly acknowledged by State officials at the highest level. I believe that a public acknowledgment of defenders' work could contribute to providing their work with due recognition and legitimacy.

5. Address specific challenges of groups at risk

It is important to address the needs of human rights defenders who face extraordinary risks due to the work that they do and the contexts in which they operate. In this connection, as Special Rapporteur I focused on the situation of selected groups of human rights defenders who are at particular risk of violations, including judges and lawyers; journalists and media workers; trade unionists; youth and student defenders, those working on sexual orientation and gender identity; and defenders working on environment and land issues.

Journalists and media workers are targeted because of their reports on human rights violations or because they have been witness to human rights violations. They are particularly exposed to violations in contexts such as armed conflicts, post-conflict situations and situations of unrest in connection with a coup d'état or contested elections. In many countries, legal frameworks are used to restrict journalists' and media workers' activities. Restrictions on media and press freedom and impunity could foster a climate of intimidation, stigmatization, violence and self-censorship.

With regard to youth and student defenders, their young age and alleged lack of maturity are used as grounds for not giving them a say in public affairs. There is a trend in many countries of passing legislation that prohibits young people from participating in public assemblies. Other legislative moves pertain to the Internet, social media and instant messaging, which are increasingly subject to control by Governments.

Another group that also faces a high risk of violations are defenders working on land and environmental issues in connection with extractive industries and construction and development projects. Violations in this regard generally occur in the context of land disputes, where the perpetrators are both State and non-State actors. A rights-based approach to large-scale development projects could contribute to creating and consolidating a safe and enabling environment for defenders who operate in this context. As Special Rapporteur I stressed the need: for transparency and access to information; for protection, which should be provided

to affected communities and those defending their rights in this context; and to ensure accountability of duty-bearers and access to appropriate remedy. The Guiding Principles on Business and Human Rights, based on the due diligence framework, are an essential reference and tool for States and other stakeholders involved in the context of business operations and the respect for basic rights and freedoms.

Communities and those defending their rights should be able to participate actively, freely and meaningfully in assessment and analysis, project design and planning, implementation, monitoring and evaluation of development projects. Defenders working with local communities can play a crucial role in facilitating communication between the communities and those responsible for the policy or project. Defenders can be instrumental in advancing development, and can ensure that dialogue is used to reinforce social cohesion and preempt conflict and the radicalization of positions. This can contribute significantly to defusing tensions between duty-bearers and local communities, which in turn would and could be a first step towards enhancing the protection of rights holders.

Defenders can also play a crucial role as members of teams conducting human rights impact assessments, taking part in formal multi-stakeholder oversight mechanisms and mediation and grievance mechanisms, and as independent watchdogs monitoring the implementation of large-scale development projects. There are reports detailing harassment of, persecution of and retaliation against human rights defenders seeking judicial remedy for business-related violations. It is essential that those who wish to report human rights concerns and violations can safely access accountability and grievance mechanisms.

The increased criminalization of social protest often in connection with the peaceful expression of opposition to public or private development projects. Authorities should grant defenders, especially journalists and media workers, access to public assemblies to especially facilitate independent coverage and human rights monitoring.

Foreign and development policy can be used to contribute to the protection and enhanced security of human rights defenders on the ground. The initiative by the European Union to adopt the revised European Union Guidelines on Human Rights Defenders in 2008 is a welcome development. These guidelines list a number of practical measures that member States could take to support and protect defenders at risk, such as issuing temporary visas and facilitating temporary shelter in member States.

6. Special attention for risks and challenges faced by women defenders and those working on women's rights and gender issues

Integrating a gender perspective and paying particular attention to the specificities of the environment in which women human rights defenders operate is important. There are specific risks and challenges faced by women human rights defenders and those working on women's rights and gender issues and there are repercussions that such work may have on partners, spouses, and family members of defenders.

Women defenders are subject to arrests, ill-treatment, torture, criminalization, unwarranted judicial proceedings, stigmatization, attacks, threats (including death threats), sexual violence and killings. Furthermore, in many cases, the family members of women defenders are also targeted. In comparison to male defenders, women defenders are more at risk of suffering certain forms of violence, as well as prejudice, exclusion and repudiation. This occurs because women defenders are often perceived as challenging accepted sociocultural norms, traditions,

perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society.

In many countries, there are no specific mechanisms in place to protect women defenders and those working on women's rights and gender issues. In countries where such mechanisms exist, they are often hampered by a lack of gender-sensitivity, implementation or political will. Women defenders need specific and enhanced protection and targeted and deliberate efforts to make the environment in which they operate a safer, more enabling and supporting one.

7. Non-State actors' should also respect and support for the work of defenders

Non-State actors, including private companies, can also play a key role in the promotion and protection of the rights and activities of defenders, and therefore in the consolidation of a safe and enabling environment for defenders to conduct their work. As Special Rapporteur I have highlighted that it is paramount that non-State actors acknowledge and respect the important role of defenders in ensuring the full enjoyment of human rights by all.

As Special Rapporteur, I received credible reports and allegations indicating that non-State actors, including private corporations, are involved in violations against defenders, including stigmatization, threats, harassment, attacks, death threats and killings. Attacks are sometimes committed by groups which are directly or indirectly set off by States, either by providing logistical support or by condoning their actions, explicitly or implicitly.

Defenders working on the rights of gay, lesbian, bisexual or transgender persons are subjected to stigmatization and attacks by, inter alia, community and faith leaders or groups and the media. I raised the difficult situation of this group in various communications and during country visits when I was Special Rapporteur. I recommended that authorities remove legal provisions that hinder and stigmatize these defenders' work, and provide them with adequate protection and public support. I also condemned security guards employed by large-scale development corporations who have threatened to kill, harass and attack defenders working on issues related to access to land and natural resources during peaceful protests. I raised cases where local authorities have allegedly colluded with the private sector, and cases in which private companies had aided and abetted the commission of violations against human rights defenders. I urged non-State actors to respect, and ideally support, the activities of human rights defenders. They should refrain from infringing upon the rights of defenders and should use the Guiding Principles on Business and Human Rights to ensure their compliance with international human rights law and standards.

8. Safe and open access to the United Nations and international human rights bodies

The United Nations, regional and international human rights bodies are part of the environment in which defenders operate. Therefore, it is essential that defenders have a safe and unhindered access to such bodies for their work and their protection.

The universal periodic review (UPR) mechanisms contribute to a safe and enabling environment for defenders. Given that the Declaration on Human Rights Defenders does not have a monitoring body, the UPR as a mechanism is an excellent opportunity to give visibility to the situation of defenders and contribute to their protection.

The challenge for civil society and human rights defenders is to use this valuable tool to enhance visibility and protection of defenders on the ground. In this regard, States have

an important role to play at different stages of the process, mostly by widely disseminating information about the UPR and creating open and safe spaces to allow for the effective participation of defenders. I believe that States seeking election to the Council should commit to implementing the the UN Declaration ON Human Rights Defenders at the national level, as a part of their voluntary pledges and commitments.

I have previously as Special Rapporteur, highlighted certain countries as examples of best practice with regard to consultations in preparation for the UPR. In Guatemala, for the first national report, the Government worked together with the OHCHR country office to consult and train civil society. In Tonga, the first national report was endorsed by civil society as a whole. In Switzerland, the Foreign Ministry posted the first draft national report on their website and invited comments thereto it.

I addressed the UPR process at numerous occasions during my country visits. I recommended that Armenia fully implement the recommendations made by the Working Group on the Universal Periodic Report, and in my reports on visits to India and the Democratic Republic of the Congo I recommended monitoring the full implementation of the UPR recommendations. After my visit to Honduras in 2013, I recalled the country's commitment to improve the protection of defenders during its UPR and was pleased to note that Honduras had accepted a significant number of recommendations relating to defenders.

Within the UPR process, there is still room for improvement. National consultations are a key element in the UPR process and States are responsible for creating space for defenders to effectively engage. Some States have failed to convene national consultations prior to finishing the national report. In other cases, such consultations have been convened, but reportedly were not meaningful, did not include human rights defenders or only included selected ones.

I was concerned that the perspective of human rights defenders seems to be lacking throughout the UPR process. For example, it is still exceptional for national reports to have detailed references to, or separate sections on, human rights defenders. Stakeholders should include information on the situation of defenders in their submissions.

The integration of defender-related issues should become more systematic. I reiterate the recommendation to enhance coordination between States and regional groups. Additionally, recommendations regarding human rights defenders need to be clear and concrete to facilitate their implementation and measure the progress. There is need for awareness-raising and capacity-building to allow for the participation of defenders at the grass-root levels in the UPR process. Defenders continue to face great risks when trying to engage with the United Nations, its mechanisms and representatives in the field of human rights, and international human rights bodies. I noted several cases of reprisals against defenders who have collaborated with the United Nations, including the UPR, and publicly condemned such acts.

The right to access and communicate with international bodies is enshrined in the Declaration on Human Rights Defenders and other international instruments. I commended the strong stance taken by States at the Council on this issue, and supported resolution 24/24 on cooperation with the United Nations, its representatives and mechanisms in the field of human rights. I also welcomed the call addressed to the Secretary-General in cooperation with the High Commissioner to designate a system-wide senior focal point for reprisals against those who engage with the United Nations in the field of human rights. This would reinforce the system in continuing to react firmly against these acts and would contribute to consolidating a safe and enabling environment for defenders.

9. Strong, dynamic and diverse community of human rights defenders

I acknowledge that defenders themselves have a role to play in contributing to a safe and enabling environment. They are responsible for doing their work professionally, in a peaceful manner and with due respect for international human rights principles and standards. I encourage defenders to actively participate in constructive dialogue with the State, lobby for the adoption of laws on the protection of human rights defenders and monitor the progress of such laws. They should also lobby for the implementation of recommendations made by national, regional and international mechanisms.

Defenders should continue supporting the work of national human rights institutions by cooperating with them, advocating for their strengthening and collaborating in the planning and implementation of their activities and programmes. They should also advocate for the establishment of a national human rights institution in full compliance with the Paris Principles in countries where these institutions do not exist.

Defenders should also create or strengthen platforms and networks in order to protect and promote themselves, as well as promote dialogue and coordination amongst themselves. Defenders should work together through networks and have a unitary strong voice. In this regard, it is important that defenders work towards strengthening networks outside capital cities and reach out to defenders working in rural areas, which are often more exposed to risks.

I believe that it is crucial that defenders strive for high standards of professionalism and ethical behaviour when carrying out human rights activities. They should also recognize the important work of women human rights defenders and those working on women's rights and gender issues, and strive towards empowering them.

It is essential that defenders make full use of international and regional human rights mechanisms, including special procedures, the treaty bodies, the UPR and the European Union Guidelines on Human Rights Defenders, when reporting on human rights violations and breaches of international humanitarian law.

Conclusion and Recommendations

Defending human rights is not only a legitimate and honourable activity, but a right in itself. However, defending and claiming rights continues to be a dangerous activity in many parts of the world. States have the primary responsibility to ensure that defenders work in a safe and enabling environment but non-state actors also have some obligations. Such an environment should include a conducive legal, institutional and administrative framework; access to justice and an end to impunity for violations against defenders; a strong and independent national human rights institution; policies and programmes with specific attention to women defenders; effective protection policies and mechanisms paying attention to groups at risk; non-State actors that respect and support the work of defenders; safe and open access to international human rights bodies; and a strong, dynamic and diverse community of defenders.

States should:

- (a) Ensure that defenders can conduct their work in a conducive legal, institutional and administrative framework. In this vein, refrain from criminalizing defenders' peaceful

and legitimate activities, abolish all administrative and legislative provisions that restrict the rights of defenders, and ensure that domestic legislation respects basic principles relating to international human rights law and standards;

(b) Combat impunity for violations against defenders by ensuring that investigations are promptly and impartially conducted, perpetrators are held accountable, and victims obtain appropriate remedy. In this context, pay particular attention to violations committed by non-State actors;

(c) Raise awareness about the legitimate and vital work of human rights defenders and publicly support their work. In this respect, widely disseminate the Declaration on Human Rights Defenders and make sure that human rights educational programmes, especially those addressed to law enforcement and public officials, include modules that recognize the role played by human rights defenders in society;

(d) Provide national institutions with broad and solid mandates, and make sure that they are adequately resourced to be able to operate independently and to be credible and effective. Publicly acknowledge and support the important role of these institutions, including in providing protection to defenders and fighting impunity;

(e) Ensure that violations by State and non-State actors against defenders, particularly women defenders, are promptly and impartially investigated, and ensure that perpetrators are brought to justice. Furthermore, provide material resources to ensure the physical and psychological protection of defenders, including through gender-sensitive polices and mechanisms;

(f) Publicly acknowledge the particular and significant role played by women human rights defenders, and those working on women's rights or gender issues, and make sure that they are able to work in an environment free from violence and discrimination of any sort;

(g) Provide the necessary training to public officials on the role and rights of defenders and the Declaration on Human Rights Defenders, particularly to those who are in direct contact with communities of defenders;

(h) Ensure that public policies, including development policies and projects, are developed and implemented in an open and participatory manner, and that defenders and communities affected are able to actively, freely and meaningfully participate;

(i) Make sure that defenders can actively participate in the universal periodic review process, including by raising awareness about the process, organizing open and meaningful consultations, including a section about the situation of defenders in the national report, and making concrete recommendations towards the improvement of the environment in which they operate;

(j) Ensure that acts of intimidation and reprisals against defenders who engage with the United Nations, its representatives and mechanisms in the field of human rights, and international human rights bodies are firmly and unequivocally condemned. Ensure that these acts are promptly investigated, perpetrators brought to justice and that any legislation criminalizing activities in defence of human rights through cooperation with international mechanisms is repealed.

The international community should:

- (a) Acknowledge and support the legitimate work of human rights defenders, both through the public recognition of their role and the provision of technical and financial assistance to increase their capabilities or enhance their security if needed;
- (b) Ensure safe and open access to international human rights bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights.

Non-State actors should:

- (a) Respect and recognize the work of defenders in accordance with the Declaration on Human Rights Defenders, and refrain from violating their rights or hindering their activities;
- (b) Involve and consult with human rights defenders when carrying out country assessments and develop national human rights policies in cooperation with defenders, including monitoring and accountability mechanisms for violations of the rights of defenders;
- (c) Familiarize themselves with the Guiding Principles on Business and Human Rights, and with human rights impact assessment of business operations;

Human rights defenders should:

- (a) Actively participate in constructive dialogue with the State to encourage it to consolidate a safe and enabling environment for defenders, including by providing inputs on the potential implications of draft legislation;
- (b) Familiarize themselves with the Declaration on Human Rights Defenders and disseminate it widely at the local level;
- (c) Continue supporting the work of national human rights institutions by cooperating with them, and advocating for their strengthening;
- (d) Continue working together through networks including by strengthening support networks outside capital cities to reach out to defenders working in rural areas;
- (e) Strive for high standards of professionalism and ethical behaviour when carrying out human rights activities;
- (f) Continue to make full use of existing international and regional human rights mechanisms, including the United Nations, its mechanisms and representatives in the field of human rights.

I thank you for listening to me.