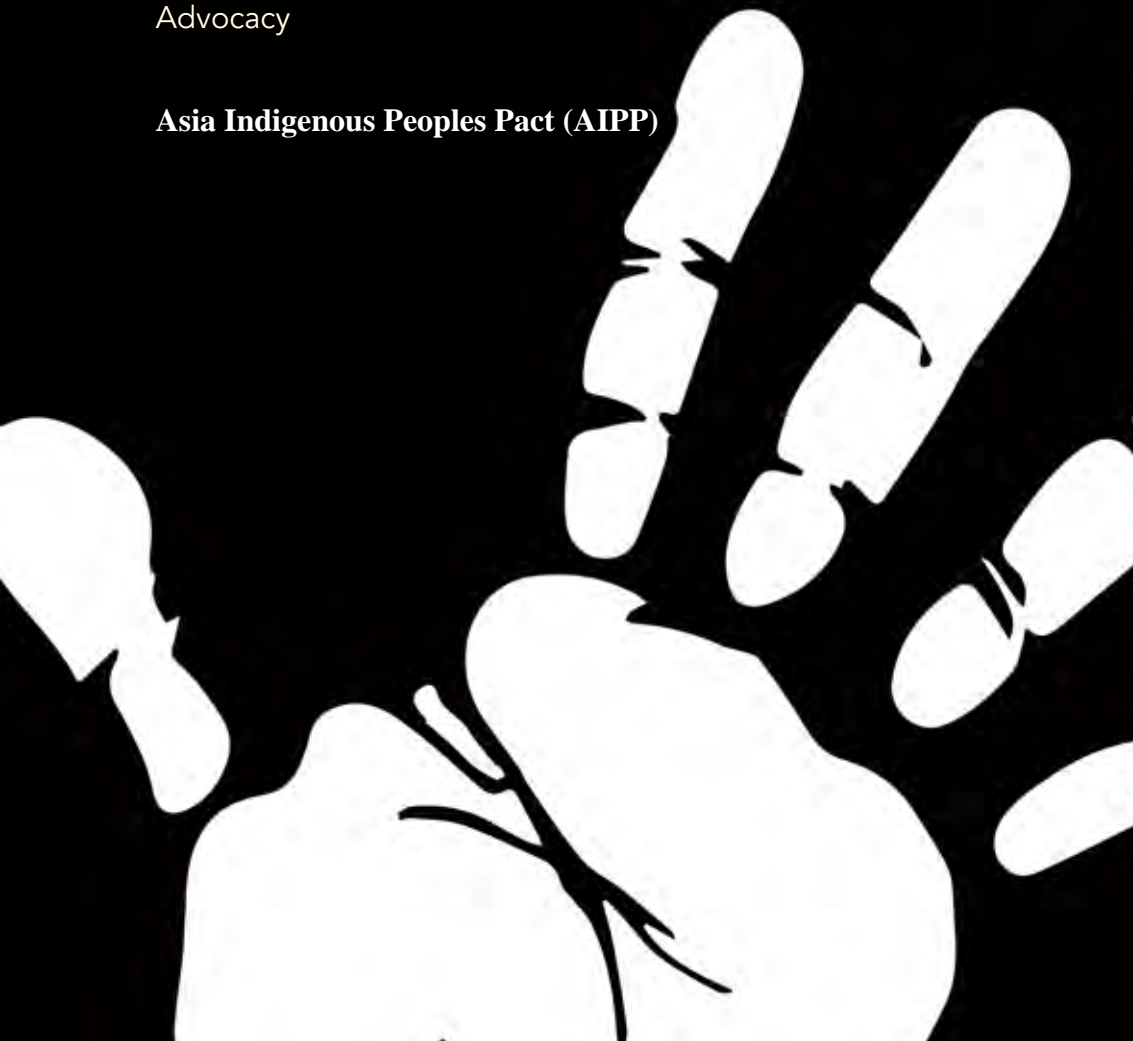


DEFENDING OUR RIGHTS FOR OUR FUTURE

A Handbook for Indigenous Peoples Human Rights
Defenders on Human Rights Documentation and
Advocacy

Asia Indigenous Peoples Pact (AIPP)



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Contents

- PART I. INTRODUCTION 5
- PART II. HUMAN RIGHTS AND THE RIGHTS OF INDIGENOUS PEOPLES 6
 - A. WHAT ARE HUMAN RIGHTS? 6
 - Human Rights Principles 6
 - B. WHAT ARE HUMAN RIGHTS STANDARDS? 8
 - NATIONAL HUMAN RIGHTS STANDARDS 8
 - INTERNATIONAL HUMAN RIGHTS STANDARDS 8
 - What is the United Nations (UN)? 9
 - Universal Declaration on Human Rights (UDHR) 9
 - International human rights conventions 9
 - C. INTERNATIONAL HUMAN RIGHTS STANDARDS FOR INDIGENOUS PEOPLES 12
 - Who are Indigenous Peoples? 12
 - Indigenous Peoples around the world and in Asia 12
 - Indigenous Peoples in Asia 12
 - Key international standards for the rights of Indigenous Peoples 15
 - D. HUMAN RIGHTS VIOLATIONS 19
 - How human rights violations occur? 19
 - Who commits human rights violations? 19
 - Linking issues to human rights 19
 - EXERCISE: Understanding human rights violation 20
- Part III. Documenting and Reporting Human Rights Violations 22
 - A. DOCUMENTATION 22
 - B. REPORTING 22
 - C. IMPORTANCE OF DOCUMENTATION AND REPORTING 23
 - D. DOCUMENTATION METHODS 23
 - EXERCISE: Interviewing a victim of human rights violations 24
 - F. STRATEGIES FOR DEVELOPING CREDIBLE DOCUMENTATION 25
 - EXERCISE: Submitting information to the Special Rapporteur 25
- Part IV. HUMAN RIGHTS ADVOCACY 27
 - A. NATIONAL HUMAN RIGHTS MECHANISMS 27
 - B. INTERNATIONAL HUMAN RIGHTS MECHANISMS 27



Overview of UN Human Rights System	27
Treaty bodies	28
Special Procedures	32
Universal Periodic Review (UPR)	34
EXERCISE: Analyzing recommendations from UN human rights mechanisms	35
C. REGIONAL HUMAN RIGHTS MECHANISMS	36
ASEAN Intergovernmental Commission on Human Rights (AICHR)	36
D. ACCOUNTABILITY MECHANISMS OF INTERNATIONAL FINANCIAL INSTITUTIONS	37
E. ADVOCACY FOR HUMAN RIGHTS IN BUSINESS CONTEXTS	39
F. PLANNING FOR ADVOCACY	41
G. ADVOCACY STRATEGIES	42
Part V. PROTECTION OF HUMAN RIGHTS DEFENDERS AT RISK	43
A. WHO IS A HUMAN RIGHTS DEFENDER?	43
B. INTERNATIONAL STANDARDS AND MECHANISMS FOR PROTECTION OF HUMAN RIGHTS DEFENDERS	43
UN Declaration on Human Rights Defenders	43
UN Special Rapporteur on the situation of Human Rights Defenders	45
European Union (EU) Guidelines on Human Rights Defenders	46
C. HOLISTIC SECURITY OF HUMAN RIGHTS DEFENDERS	47
Holistic Security Paradigm	47
When defenders are at risk	48



PART I. INTRODUCTION

This Handbook is a supplement to the earlier Indigenous Peoples Human Rights Defenders Field Handbook on Human Rights Documentation and Advocacy produced as part of the series of interrelated educational and training materials on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) produced by the Asia Indigenous Peoples Pact (AIPP) as follows:
Volume I: Rights! Training Manual on the UNDRIP (2010)

Volume II: Rights! Updated Training Manual on the UNDRIP (2015)
Volume III: Indigenous Peoples Human Rights Defenders Field Handbook on Human Rights Documentation and Advocacy (2015)
Volume IV: Training Manual on Advocacy and Lobby on the Rights of Indigenous Peoples (2015)

This Handbook provides simplified information on human rights and the rights of Indigenous Peoples and step-by-step instructions on how to document human rights violations, particularly Indigenous Peoples' collective rights, and use the data gathered for human rights advocacy.

Community-based Indigenous Peoples Human Rights Defenders (IPHRDs) are the target users of this Handbook. It is primarily intended to guide members of the IPHRD Network and their organizations, institutions and communities in gathering information on specific cases of human rights violations.



PART II. HUMAN RIGHTS AND THE RIGHTS OF INDIGENOUS PEOPLES

A. WHAT ARE HUMAN RIGHTS?

HUMAN RIGHTS are the rights and freedoms that we have simply by virtue of being human beings.

HUMAN RIGHTS are **inherent** to us all and derived from the **dignity** of the human person.

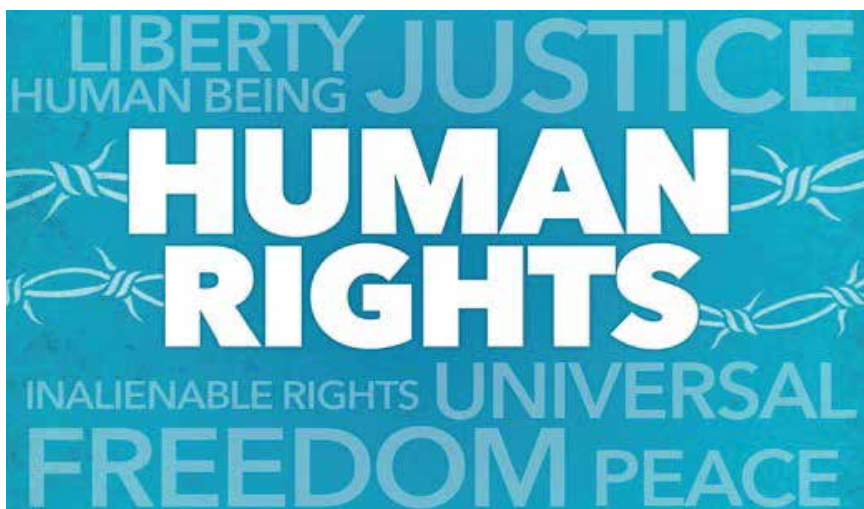
HUMAN RIGHTS range from the most fundamental right (such as the right to life) to those that make life worth living (such as the rights to food, education, work, health and liberty).

Inherent – we are born with them, they do not have to be given, bought, earned or inherited

Human Rights Principles

- Universal and inalienable

All people everywhere in countries around the world are entitled to



fundamental human rights. Universality of human rights is basis of international human rights law.

Human rights are inalienable - they should not be taken away except in specific situations and according to due process. E.g. even if someone has committed a crime, the State cannot take away their right to life.

• **Interdependent and indivisible**

Human rights are interdependent and indivisible.

Human rights should be addressed as a whole, including civil, political, social, economic, cultural, and collective rights.

Advancing one right facilitate other rights and deprivation of one right affects other rights.

Countries cannot decide to apply just a part of the human rights.

• **Equal and non-discriminatory**

All individuals are equal as human beings and have the same rights regardless of their sex, race, color or any other characteristic.

Human rights should be respected without any discrimination on any ground.

Equality and non-discrimination are cross-cutting principle of international human rights law.

• **Both rights and obligations**

At individual level, we (rights holders) are entitled to human rights but we should also respect human rights of others.

At the same time, human rights are obligations of the States (duty bearer). It is the State duty to respect, protect and fulfill human rights.

RESPECT: States must avoid from interfering with or curtailing the enjoyment of human rights.



PROTECT: States must safeguard individuals and groups against human rights abuses.

FULFILL: States must take positive action to facilitate the enjoyment of basic human rights.

B. WHAT ARE HUMAN RIGHTS STANDARDS?

Human Rights are defined nationally, regionally and internationally by various law-making bodies.

For example, at national level, the constitution, laws and policies of the country define rights of the citizens and persons within its territories.

At international levels, human rights are guaranteed in declarations, conventions, etc.

Those constitute the **HUMAN RIGHTS STANDARDS**.

NATIONAL HUMAN RIGHTS STANDARDS

Constitutions of the countries usually have chapters that provide for the rights of persons and citizens within the territories of the countries.

Various laws and resolutions elaborate on those rights and often also provide limitations. Some examples are:

- Civil Rights Act, 1955 of Nepal
- Right to Information (RTI) Act, 2009 of Bangladesh
- Forest Rights Act (FRA), 2006 of India
- Indigenous Peoples Rights Act (IPRA), 1997 of the Philippines
- Gender Equality Act, 2015 of Thailand



INTERNATIONAL HUMAN RIGHTS STANDARDS

Intergovernmental or multilateral organizations such as the United Nations define human rights standards at international levels.

What is the United Nations (UN)?

- Inter-governmental organization created in 1945 after the World War 2
- 193 States as members that are treated equally – no one State above the other
- Promoting human rights is one of the objectives of the UN
- States adopt human rights declarations, conventions, etc. that constitute international human rights standards



Universal Declaration on Human Rights (UDHR)

The Declaration adopted by the UN General Assembly in 1948 is the first legal document to set out the fundamental human rights to be universally protected. Its 30 articles provide the principles and building blocks of current and future human rights conventions, treaties and other legal instruments.

International Human Rights Conventions

1. International Covenant on Civil and Political Rights (ICCPR)

- Sets out civil and political rights of persons
- Includes the right to life, liberty, integrity and security; right to privacy; right to freedom of religion and belief; and right to freedom of movement among others



THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

1 Equality

Everyone is born free and equal in dignity and with rights.



2 Freedom from Discrimination

You should never be discriminated against for any reason.



3 Life, Liberty and Security

Everyone has the right to life, liberty and personal security.



4 Freedom from Slavery

No one shall be held in slavery or servitude.



5 Freedom from Torture

No one shall be subjected to torture or inhuman or degrading treatment.



6 Recognition as Person Before Law

You have the right to be treated as a person in the eyes of the law.



7 Equality Before the Law

You have the right to be treated by the law in the same way as everybody else.



8 Remedy by Tribunal

You have the right to remedy by competent tribunal.



9 Freedom from arbitrary arrest

No one shall be subject to arbitrary arrest, detention or exile.



10 Fair Public Hearing

You have the right to a fair public hearing.



11 Innocent until Proven Guilty

You have the right to be considered innocent until proven guilty.



12 Privacy

You possess the right to privacy with your personal, family, or home.



13 Freedom of Movement

You have the right to freedom of movement in and out of the country.



14 Asylum

You have the right to seek asylum in other countries from persecution.



15 Nationality

You have the right to a nationality.



16 Marriage and Family

You have the right to marriage and to found a family.



17 Property

You have the right to own property.



18 Freedom of Belief

You have the right to freedom of belief and religion.



19 Freedom of Opinion

You possess the right to freedom of opinion and expression.



20 Freedom of Assembly

You have the right to freedom of peaceful assembly and association.



21 Take Part in Government

You have the right to take part in the government of your country.



22 Social Security

You have the right to social security.



23 Work

You have the right to choose your work and to join trade unions.



24 Rest and Leisure

You have the right to rest and leisure.



25 Adequate Living Standard

You have the right to a standard of living that includes food, clothing, housing, and medical care.



26 Education

You have the right to education.



27 Participate in Cultural Life

You have the right to participate in the cultural life of your community.



28 Social Order

You have the right to a social order that fulfills this Document.



29 Mutual Responsibility

We all have a responsibility to the better world we and should protect their rights and freedoms.



30 Freedom from State or Personal Interference

There is nothing in this declaration that confers any special or exclusive rights upon the rights in which we all are united.



2. International Covenant on Economic, Social and Cultural Rights (ICESCR)

- Provides economic, social and cultural rights
- Includes the right to form trade unions and the right to access to education and health care among others, the right to food, community rights, etc.

The UDHR, together with the two covenants - the ICCPR and the ICESCR - make up the International Bill of Rights.

3. International Convention on the Elimination of all forms of Racial Discrimination (ICERD)

4. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

5. Convention on the Rights of the Child (CRC)

6. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

7. Convention on the Rights of Persons with Disabilities (CRPD)

8. International Convention on the Protection of the Rights of Migrant Workers and Members of their Families (CRMW)

9. International Convention for the Protection of All Persons from Enforced Disappearances (CED)



C. INTERNATIONAL HUMAN RIGHTS STANDARDS FOR INDIGENOUS PEOPLES

Who are Indigenous Peoples?

There is no globally accepted definition but only working definition/criteria. Accordingly, **Indigenous communities, peoples and nations** are those groups that

- have **historical continuity** with pre-invasion and pre-colonial societies that developed on their territories,
- consider themselves **distinct from other sectors** of the societies,
- form at **present non-dominant sectors of society**, and
- are determined to preserve, develop...their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.

Further, they **self-identify as indigenous people/person** (which is considered as the criteria of self-identification).

Indigenous Peoples around the world and in Asia

- Globally, indigenous peoples represent as many as 5,000 different indigenous cultures and speak more than 4,000 languages of the some 7,000 languages today.¹
- They account for over 6 per cent of the world's population but they constitute around 19% of the poorest poor.²
- It is estimated that they occupy around 22 per cent of the earth's territory, which holds 80% of the biodiversity.³

1 United Nations (UN). 2009. State of the World's Indigenous Peoples (New York, UN).

2 International Labour Organization (ILO). 2019. Implementing the ILO Indigenous and Tribal Peoples Convention No. 169 – Towards an Inclusive, Sustainable and Just Future (Geneva, ILO).

3 Sobrevilla, C. 2008. The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but Often Forgotten Partners (Washington DC, World Bank)



- **Asia is home to two-thirds of the estimated 476.6 million Indigenous Peoples worldwide⁴ while the AIPP estimates that about 411 million Indigenous People live in South East, East and South Asia regions.⁵**

Indigenous Peoples in Asia

Country	Common External Designations	Number of ethnic groups	Estimated total population and % of national population
Bangladesh	Pahari, Jumma, Adivasi, Tribal	45-54	1,586,141 1.8%
Cambodia	Indigenous minorities	24	170,000 1.4%
China	Ethnic minorities	Ca. 400 (grouped into 55 officially recognized "ethnic minorities")	111,964,901 8.4%
India	Scheduled Tribes, Adivasi	705 ethnic groups recognized as "Scheduled Tribes"	104 million 8.6%
Indonesia	Masyarakat Adat	over 700	Ca. 78 million 30%
Japan	Indigenous peoples	Ainu people are officially recognised as indigenous people. Ryukyans are not recognised as an indigenous people	Ainu: 16, 996 Ryukyans: 1.4 mio (1%)

4 ILO 2019

5 Asia Indigenous Peoples Pact (AIPP). 2018. Status of Indigenous Peoples' Lands, Territories and Resources in Asia (Chiang Mai, Thailand, AIPP).



Lao PDR	Ethnic minorities	ca. 200 (49 officially recognized "ethnic minorities")	2.3 - 4.6 million 35-70%
Malaysia	Orang Asli, Natives, Orang Asal	86	3.724 million 13.8%
Myanmar	Ethnic nationalities	135	14.4 - 19.2 million 30 - 40%
Nepal	Adivasi Janajati, Indigenous Nationalities	over 80 (59 recognized "Indigenous Nationalities")	10.6 million 37.1%
Pakistan	Adivasi, Tribal people	over 20	35 - 42 million 21 - 25%
Philippines	Indigenous Cultural Communities/ Indigenous Peoples	110 officially recognized Indigenous Peoples	10-20 million 10-20%
Taiwan	Indigenous Peoples	23 (14 officially recognized)	534,561 (2013) 2.28%
Thailand	Ethnic Minorities, Hill Tribes, Hill/ Mountain People	over 25 (10 officially recognized "hill tribes")	Ca 5 million 7.2%
Vietnam	Ethnic minorities	over 90 (53 officially recognized "ethnic minorities")	12.3 million 13.23%

Adapted from AIPP and IWGIA⁶

⁶ AIPP 2018. Some figures revised as per IWGIA, The Indigenous World, 2021



Different peoples, common challenges

Although Indigenous Peoples in Asia are diverse and distinct peoples, they face common challenges, which include

- History of discrimination, exclusion, marginalization and oppression, including in political participation
- Dispossession of their traditional lands and resources, including with militarization
- Denial of good access to social services, including education, health and employment, and forced cultural assimilation

In most Asian states, there is also lack of legal recognition of Indigenous Peoples as distinct groups with collective rights as per international human rights standards

Key international standards for the rights of Indigenous Peoples

1. Indigenous and Tribal Peoples Convention of the International Labor Organization (Convention 169) (ILO C169) – Ratified by only 22 States around the world (by only Nepal in Asia)
2. UN Declaration on the Rights of Indigenous Peoples (UNDRIP) – Most Asian States (except Bangladesh) voted in favor of adopting the Declaration in 2007, so they bear the obligation to implement it.

The rights of indigenous peoples include individual as well as collective rights and elaborate existing human rights standards as they apply to specific



situation of Indigenous Peoples. Some key rights of Indigenous Peoples include

1. Right to self-determination
2. Rights over lands, territories and resources
3. Right to Free, Prior and Informed Consent (FPIC)
4. Right to development, education, language, etc.
5. Right to maintain cross-border contact, etc.

Right to self-determination

- Indigenous Peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (UNDRIP Art. 3)
- Indigenous Peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions. (UNDRIP Art. 4)

Right to lands, territories and resources

Indigenous Peoples have the rights to lands, territories and resources which they have **traditionally owned, occupied or otherwise used or acquired**

- States should give legal recognition and protection to these lands, territories and resources with due respect to the land tenure system of concerned peoples.
- States should establish a fair, independent, impartial, open and transparent process to recognize and adjudicate Indigenous Peoples' rights to their lands, territories and resources.
- Indigenous Peoples have the right to redress, including restitution or fair compensation, for confiscation, use or



damage of their lands, territories and resources without their free, prior and informed consent.

(UNDRIP Art. 26-28, ILO C169 13-15, 17-19)

Free, Prior and Informed Consent

Indigenous Peoples shall not be forcibly removed from their lands or territories.

- No relocation without their **Free, Prior and Informed Consent** and after agreement on compensation with option of return, where possible

(UNDRIP Art. 10, ILO C169 16 – *free and informed consent*)

Under the UNDRIP, FPIC is also required for

- adopting and implementing legislative or administrative measures that may affect them (Art. 19);
- storage or disposal of hazardous materials on their lands or territories (Art. 29.2); and
- approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources (Art. 32).

Military activities shall not take place in the lands or territories of Indigenous Peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the Indigenous Peoples concerned. (UNDRIP Art. 30)

Right to development, education, customary laws and institutions, etc.

- Right to determine and develop priorities and strategies for the development or use of their lands or territories (UNDRIP Art. 32, ILO C169 Art. 7)



- Right to establish and control their educational systems and institutions providing education in their own languages and in a manner appropriate to their cultural methods (UNDRIP Art. 14, ILO C169 26-30)
- Right to retain their own customs and customary laws and institutions as compatible with international human rights standards (UNDRIP Art. 33-34, ILO C169 Art. 8-9)

Indigenous women and other vulnerable groups

- The UNDRP requires that particular attention be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in its implementation. Thereby, States should take measures, in conjunction with Indigenous Peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination (Art. 22).
- Similarly, the ILO Convention 169 states that the Convention shall be applied without discrimination to male and female members of the indigenous and tribal peoples (Art. 3(1)). It also provides that governments shall do everything possible to prevent any discrimination between workers belonging to indigenous and tribal peoples and other workers – such measures shall, among other things, ensure that workers belonging to those peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment (Art. 20).



D. HUMAN RIGHTS VIOLATIONS

How human rights violations occur?

- **State agencies themselves violate human rights (Acts of commission)**

Example: extrajudicial killing and killing committed by the police or other security agencies violating the right to life

- **State agencies fail to protect human rights (Acts of omission)**

Example: Forced evictions of a particular community for a development project and government is not able to protect their land and other rights

Who commits human rights violations?

It is important to identify perpetrators when human rights violations occur. Such actors could be:

1. State agencies or representatives (such as police, government bodies, etc.)
2. Non-state actors, such as company, armed groups, etc.

Linking issues to human rights

Often, human rights violations are only understood as social or environmental issues. So, it is necessary to identify the relevant human rights that can be linked to carry out reporting and advocacy. For example:

- Pollution of air due to haphazard industrialization
Relevant rights – right to adequate standard of living; environment; etc.
- Lack of schools teaching in ethnic language
Relevant rights - right to education and non-discrimination



EXERCISE: Understanding human rights violation

Take a case of human rights violation and discuss

- What are the human rights violated?
- What national laws and international standards were infringed?
- Who are the victims and perpetrators?

For example, case of forced evictions of indigenous Newars and other locals in Kathmandu of Nepal for road widening without consultation and compensation⁷

- Human rights violated: rights to property, to land and resources to non-discrimination, FPIC, etc.



⁷ For more details, see the Special Rapporteur on the rights of indigenous peoples et al communication to Nepal, 2017, UA NPL 3/2017, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23122>



- Relevant national and international standards: Nepal's Constitution; UDHR, ICESCR, CERD, UNDRIP, etc.
- Victims: Newar communities
- Perpetrators: Kathmandu Valley Development Authority, Department of Road and other officials, police and government ministry

For example, case of forced evictions of Karens to establish Kaeng Krachan National Park in Thailand ⁸

- Human rights violated: rights over land and resources, to non-discrimination, property, FPIC, etc.
- Relevant national and international standards: Cabinet resolution on protection of Karen livelihoods, Thai Constitution; UDHR, ICESCR, CERD, UNDRIP, etc.
- Victims: Karen communities
- Perpetrators: National Park officials, police and the concerned government ministry



⁸ For more details, see Thailand: UN experts warn against heritage status for Kaeng Krachan national park, OHCHR, 23 July 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27333&LangID=E>



Part III. Documenting and Reporting Human Rights Violations

A. DOCUMENTATION

- Gathering credible evidence/information on human rights violations from primary as well as secondary sources
 - Primary sources (testimonies; police/forensic reports; official government data (e.g., census); photos/videos; laws, policies and court decisions; official statements; satellite imagery and scientific test results; investigative reports of the NHRIs and UN mechanisms, research-based academic journals, etc.)
 - Secondary sources (news reports, social media, NGO and other research reports, etc.)
- Prioritise primary sources of evidence and verify the information
- Corroborate against multiple and contrasting sources
- Fact check with media and other reports
- Organize the information as per an outline, such as the complaint form⁹ to UN Human Rights Council
- **Submit to national and international human rights mechanisms to increase credibility as well as post them online or in media sources**

B. REPORTING

After a case of human rights violation has been documented and thoroughly reviewed (including with the victims/communities), submit the information (in the form of letter, petition, complaint, email, etc.) to

⁹ Available at:

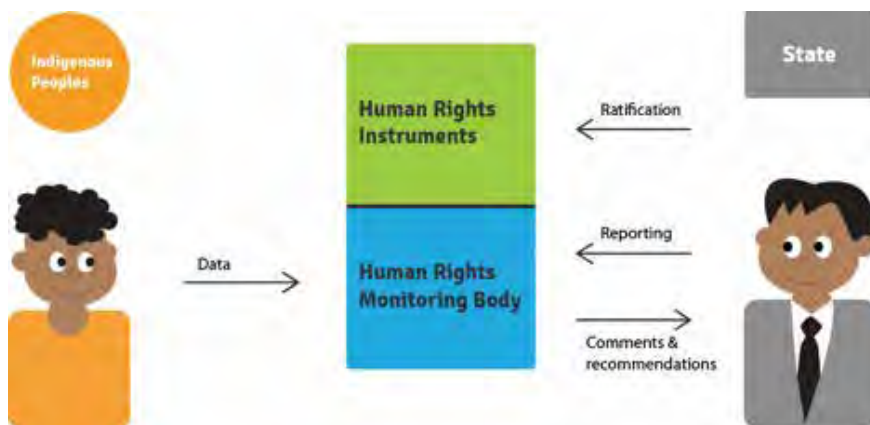
<https://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>



1. Local and national authorities
 2. Parliament members/bodies
 3. National Human Rights Institutions
 4. CSOs and human rights organizations
 5. Regional human rights mechanisms
 6. UN human rights mechanisms
- Although the outline for submitting information to those bodies may differ, the core information to be submitted is often the same.
 - If possible, petitions should be filed at courts as well by accessing necessary legal aid.
 - Recommendations for actions need to be made as per the mandate of the mechanisms.
 - Confidentiality and other measures should be undertaken for security/protection of the victims and complainants

C. IMPORTANCE OF DOCUMENTATION AND REPORTING

Documenting violations of human rights and reporting them to human rights mechanisms help to:



- Monitor States' compliance & implementation of their human rights obligations
- Put pressure on State bodies to improve human rights situation on the ground

D. DOCUMENTATION METHODS

- Interviews
- Household survey
- Individual survey
- Focus group discussion
- Communal assembly
- Consultation with community authorities
- Public Hearings
- Community profile
- Community-based impact assessments, etc.

Make sure to carry out photo and/or audio-video recording of the documentation wherever possible.

EXERCISE: Interviewing a victim of human rights violations

Role play an interview with a victim of human rights violation to document the following information

- What happened?
- When and where?
- Affected persons/communities
- Perpetrators
- Actions taken by the affected before State authorities and their responses



- Actions taken before international bodies and their responses
- Additional comments:

Make sure that the interviewer makes the victim comfortable to speak and records the interview carefully.

F. STRATEGIES FOR DEVELOPING CREDIBLE DOCUMENTATION

- Corroboration of information (against multiple and contrasting sources)
 - o Collect multiple pieces of evidence and determine if they are consistent or not.
 - o Use official government data, police reports, NHRC investigations, results from community consultations, results from surveys.
- Analysis of trends and patterns to develop policy recommendations so as to exhibit widespread and systemic violations of human rights (e.g., for sexual and other violations against indigenous women)
- Partnerships with credible to legitimize the evidence and make it more credible, such as undertaking research and producing reports with UN agencies, NHRI, academics.
- Submission of information to the UN mechanisms (such as Special Procedures) to be included in their yearly reports so as to enhance the credibility of the information.

EXERCISE: Submitting information to the Special Rapporteur

Draft information for submission to the Special Rapporteur on the rights of indigenous peoples on a case of human rights violation as per the following instructions



1. When and Where: Date (the information submitted can refer to abuses or violations that are said to have already occurred, that are ongoing or about to occur) and precise location of the incident (Country, region, municipality)
2. Victim(s) or Community Affected: Name, number and full details on the location of the indigenous people, community or individual(s) whose rights allegedly have been violated or are under threat.
3. What happened: Detailed circumstances of the alleged violation.
 - If an initial event leads to others, please describe them chronologically.
 - In cases of general measures, such as national legislation or policies, indicate their stage of development and how Indigenous Peoples have or will be affected by them.
4. Perpetrator(s): Detailed information on the person(s) or institution(s) responsible for the violation and their relation, if any, to the Government concerned. If circumstances require, provide an explanation of the reasons for suspecting responsibility of the person(s) or institution(s) identified.
5. Action taken by State authorities: If applicable, what actions have been taken by the relevant authorities to remedy the situation? Has the matter been reported to the administrative or judicial authorities of the State concerned?

Note that exhaustion of domestic remedies is not a requirement. This information merely aids the Special Rapporteur in understanding the allegation and developing an appropriate response.

6. Action taken before international bodies: Has any action been initiated before other international or regional human rights mechanisms? If so, at what stage are these other international actions?
7. Source: Name and full address of the Indigenous People, organization or individual(s) submitting the information.

These contact details are essential in the event the Special Rapporteur needs clarification or further information on the case. This information is kept confidential, unless the source authorizes otherwise.



There are two types of UN human rights mechanisms

1. Treaty-based bodies that monitor the implementation of core international human rights treaties (that generally apply only after States ratify certain treaties)
2. UN Charter-based bodies (that should apply to all Member States of the UN)
 - Special Procedures
 - Universal Periodic Review (UPR)

Treaty bodies

These are committees consisting of independent experts tasked to monitor the implementation of specific human rights treaty/convention. They meet 2-3 times per year. There are ten treaty bodies:

1. Human Rights Committee (CCPR)
2. Committee on Economic, Social and Cultural Rights (CESCR)
3. Committee on the Elimination of Racial Discrimination (CERD)
4. Committee on the Elimination of Discrimination against Women (CEDAW)
5. Committee against Torture (CAT)
6. Subcommittee on Prevention of Torture (SPT)
7. Committee on the Rights of the Child (CRC)
8. Committee on Migrant Workers (CMW)
9. Committee on the Rights of Persons with Disabilities (CRPD)
10. Committee on Enforced Disappearances (CED)



How do they work?

- State parties submit periodic report (which they do not often do);
- NGOs can submit “shadow report or alternative report” in response to State reports or independently; and
- The Committees examine the reports and make recommendations, often known as “concluding observations”.
- The Committees also produce “General Comment” on specific human rights issues related to their respective treaty applicable to all State.
- CCPR/HRC, CERD, CEDAW and CAT also receive petitions or “individual communications”.

Examples of General Comments

The Human Rights Committee, in its General Comment No. 23 on article 27 of the International Covenant on Civil and Political Rights (ICCPR) on right to culture of persons belonging to minorities, has affirmed that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples, and thus the right to enjoy culture may include such traditional activities as fishing or hunting and the right to live in reserves protected by law, which may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.”

Similarly, the Committee on the Elimination of Racial Discrimination has consistently affirmed that discrimination against indigenous peoples falls under the scope of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In its



General Recommendation No. 23 on the rights of Indigenous Peoples, the Committee especially called upon States to recognize and protect the rights of Indigenous Peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation, which should as far as possible take the form of lands and territories.

Further, in the General Comment No. 24 of the Committee on Economic, Social and Cultural Rights, which monitors the International Covenant on Economic, Social and Cultural Rights (ICESCR), on State Obligations under the ICESCR in the Context of Business Activities, the Committee affirms that States and businesses should respect the principle of free, prior and informed consent of Indigenous Peoples in relation to all matters that could affect their rights, including to their lands, territories and resources. Further, it necessitates States to specifically incorporate impacts of business activities on Indigenous Peoples into human rights impact assessments and businesses to obtain the free, prior and informed consent of Indigenous Peoples in exercising human rights due diligence. Discrimination against indigenous women and girls, sharing of benefits with Indigenous Peoples, their right to control intellectual property over their cultural heritage and their accessibility to effective remedies and protection of indigenous leaders at risk are other issues covered in the general comment.



How to Engage with the Treaty Bodies

1. For Periodic Review

Submit Shadow report > Engage in the consultations undertaken for reporting of the State and/or the National Human Rights Institution > Submit information on the List of Issues identified by the Committee > Engagement with Committee members at the time of the review > Use media to bring attention to your issues



Only submission of shadow report and information to the list of issues is not enough – FOLLOW THROUGH AND USE THE RECOMMENDATIONS FROM THE TREATY BODIES FOR FURTHER LOBBYING

2. For Individual Complaints/communication (CCPR/CAT/CERD/CEDAW) and, Early Warning and Urgent Procedure (CERD)

Submit Complaint about a specific case of ongoing or potential violation > Engage with Committee members to get communication to the government on the complaint > Use media to bring attention to your issues

Only submission of complaint is not enough – FOLLOW THROUGH AND USE THE RECOMMENDATIONS FROM THE TREATY BODIES FOR FURTHER LOBBYING

Special Procedures

These are mechanisms established by the UN Human Rights Council to address human rights situations in specific countries or territories or human rights issue. They can be

- either an individual or a working group usually composed of five members
- independent, part-time, unpaid and serve in a personal capacity

Examples:

- Special Rapporteur on human rights situation in Cambodia
- Special Rapporteur on the rights of indigenous peoples;
- Working group on business and human rights
- Expert Mechanism on the Rights of Indigenous Peoples



How do Special Procedures work?

Among other functions, they

- **undertake country visits,**
- **respond to individual complaints,**
- conduct studies, and
- provide advice on technical cooperation at country level, and
- make recommendations to the States.

Some Special Procedures intervene directly with Governments on specific allegations of human rights violations

NGOs/victims can submit information or complaints to them. Governments usually don't respond to interventions/communications from Special Procedures and do not necessarily accept the violation.



The screenshot shows the United Nations Human Rights Office of the High Commissioner website. The header includes the UN logo, the text 'UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER', and navigation links such as 'WHAT ARE HUMAN RIGHTS?', 'DONATE', 'HOME', 'ABOUT US', 'ISSUES', 'HUMAN RIGHTS BY COUNTRY', 'WHERE WE WORK', 'HUMAN RIGHTS WORKS', 'NEWS AND EVENTS', and 'PUBLICATIONS/RESOURCES'. Below the header, a press release is displayed with the title 'UN experts call for halt to contentious tourism resort in Bangladesh'. The text of the press release reads: 'GENEVA (9 February 2021) – UN human rights experts* said today Bangladesh should suspend the construction of a large-scale tourist resort in the Chittagong Hills Tracts because it threatens to displace the indigenous Mro peoples of their traditional lands and cause serious environmental damage. The Bangladesh Army and Silder Group conglomerate company R&R Holdings Limited started construction in September 2020 on Mro land in the Bandarban district. The experts said they were disturbed about irregular land leasing practices and the Army's denial of access for grazing and water resources on traditional lands the Mro depend on for culture and identity. "We are concerned that threats and intimidation have escalated in January against indigenous human rights defenders who are peacefully defending the land rights of the community," said the experts. "We call on the government to allow peaceful demonstrations, to refrain from threatening protesters and to refrain from the use of force against peaceful assemblies."

Press release issued by a group of Special Rapporteurs in response to a complaint filed regarding violation of indigenous rights in Bangladesh¹⁰

¹⁰ See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26733&LangID=E>



Universal Periodic Review (UPR)

The UPR is a unique process, which involves a review of the human rights records of all UN Member States.

- Each State declares what actions they have taken to improve human rights situations in their countries and to fulfill their human rights obligations.
- **NGOs/CSOs can make submissions to the UN on specific human rights issues or general human rights situation in a country for the review of the concerned State.**
- Other Member States make recommendations to the State under Review, which accepts or notes them.

How to engage in the UPR

Draft and make UPR submission > Engage in the consultations undertaken for reporting of the State and/or by National Human Rights Institution > Engagement with diplomatic missions in the



Thailand's indigenous and CSO representatives engaging with diplomatic missions in Bangkok to inform their issues and produce favorable recommendations



country and in Geneva to influence their recommendations to the State under Review > Use media to bring attention to your issues

MONITOR THE IMPLEMENTATION OF FOLLOW UP

Examples of UPR recommendations

Strengthen the legislative and institutional framework for the promotion and protection of rights of indigenous peoples, in particular to ensure their full participation in society (Mexico to Nepal, supported)

Put in place an effective mechanism for addressing the reported multiple forms of discrimination against indigenous women in Nepal (Uganda to Nepal, supported and “already implementing”)

EXERCISE: Analyzing recommendations from UN human rights mechanisms

Find concluding observations or recommendations to your country from a treaty body, Special Procedure or through Universal Periodic Review and analyze

- What are the recommendations relevant to your human rights issue?
- How have the recommendations been implemented or not implemented?
- What can be the follow up actions?

Reports of the treaty bodies, Special Procedures and Universal Periodic Review can be accessed from the OHCHR website at <https://www.ohchr.org/EN/pages/home.aspx> (under Human Rights by Country).



C. REGIONAL HUMAN RIGHTS MECHANISMS

ASEAN¹¹ Intergovernmental Commission on Human Rights (AICHR)

- Consultative inter-governmental body inaugurated in 2009
- Aimed to promote and protect human rights and fundamental freedoms of the peoples of ASEAN
- Mandate and functions focus on promotion of human rights than protection (cannot take complaints or undertake investigations for human rights violations)
- Develops strategies, conducts capacity building and awareness raising and thematic studies
- Drafted ASEAN Human Rights Declaration adopted in 2012 (does not include indigenous peoples at all)
- CSOs can seek consultative relationship with the AICHR to lobby the ASEAN through AICHR country representatives
- Useful for increasing attention on indigenous issues and mainstreaming them and setting regional standards

Similarly, ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) is another regional inter-governmental body mandated to promote and protect the rights of women and children in ASEAN “taking into consideration the different historical, political, socio-cultural, religious and economic context in the region and the balances between rights

11 The Association for Southeast Asian Nations (ASEAN) is a regional intergovernmental organization that promotes economic, political-security and socio-cultural cooperation among its ten Member States – Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Established in 1967, the ASEAN gets its institutional framework based on the **ASEAN Charter**, which entered into force in 2008. The Charter sets out the principles for the ASEAN and its Member States, which include respect for fundamental freedoms, promotion and protection of human rights and promotion of social justice as well as upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by the Member States.



and responsibilities". It has also produced regional standards such as the ACWC Regional Action Plan on Violence Against Women and Violence Against Children.

D. ACCOUNTABILITY MECHANISMS OF INTERNATIONAL FINANCIAL INSTITUTIONS

- In case of projects supported by International Financial Institutions (IFIs) such as the World Bank Group and the Asian Development Bank (ADB) that negatively affect communities or their rights, the Safeguard Policies of those institutions can be leveraged to remedy the harms.



- The institutions have Safeguards related to Environment, Involuntary Resettlement and Indigenous Peoples, among others.
- Two or more persons who are or potentially affected by an IFI-financed project can file complaint with the concerned accountability mechanism of the institution in accordance with the rules of the mechanism.



- However, such complaint process require significant energy, resources and time and also have potential for failure or loss of other opportunities while those mechanisms are often very complicated and are not courts.¹²

Indigenous communities' engagement with accountability mechanisms

Indigenous communities in Cambodia have been able to obtain some remedy of harms caused by a Vietnamese rubber developer Hoang Anh Gia Lao (HAGL) by filing a complaint to the accountability mechanism of the International Finance Corporation (IFC)¹³ – the Compliance Advisor Ombudsman (CAO), which was financing the HAGL through Dragon Capital, an equity fund in Hong Kong and other financial intermediaries.¹⁴

Often, the accountability mechanisms can provide added avenues for advocacy for the rights of Indigenous Peoples beyond State bodies and can even contribute to push governments for recognition and respect of indigenous rights. For example, in Indonesia, the IFC's Compliance Advisor Ombudsman was involved in mediation to resolve land disputes between different Wilmar subsidiary palm oil companies and affected indigenous communities as per the

¹² For more details, see

<https://www.accountabilitycounsel.org/accountability-resources/guides/>

¹³ The IFC is a sister organization of the World Bank Group and the largest global development finance institution focused exclusively on the private sector. It helps developing countries achieve sustainable growth by financing investment, mobilizing capital in international financial markets, and providing advisory services to businesses and governments.

¹⁴ For more details, see Cambodia: Defending Indigenous rights and resources against HAGL land grab, Inclusive Development International (IDI),

<https://www.inclusivedevelopment.net/campaign/cambodia-rubber-land-grabs/>



Performance Standards 7 on Indigenous Peoples of the IFC although the government does not officially recognize Indigenous Peoples.¹⁵

E. ADVOCACY FOR HUMAN RIGHTS IN BUSINESS CONTEXTS

- Knowing the financier, buyer and other actors involved in an investment chain, what has also been called following the money¹⁶, opens up a range of opportunities to influence them for justice for the affected communities.
- Another approach for advocating respect for human rights in business contexts is engaging with the concerned business associations and multi-stakeholder mechanisms that look into certification of business products or value chain in terms of socio-environmental performance.
- Engagement with such actors and mechanisms often might not bear fruits for accountability or remedy of harms, if any, in short-term or of a specific business operation causing negative impacts. However, such engagement can result in long-term benefits in the form of changes in the business conduct or market consumption.
- Ways to lobby such actors and mechanisms vary and again require long-term commitment and significant resources and energy.

¹⁵ For more details, see IFC Ombudsman strongly criticises palm oil giant Wilmar for selling off PT Asiatic Persada in mid-mediation, Forest Peoples Programme (FPP), 2 January 2014, <http://www.forestpeoples.org/en/topics/palm-oil-rspo/news/2014/01/ifc-ombudsman-strongly-criticises-palm-oil-giant-wilmar-selling-pt>

¹⁶ For more details, see <https://www.followingthemoney.org/>



Indigenous peoples defending their rights in business contexts

Indigenous Dongria Kondh tribe in India have taken their struggle against mining giant Vedanta Resources, including by filing complaint to the National Contact Point of the United Kingdom under the OECD Guidelines¹⁷ and lobbying several important shareholders of Vedanta (such as the Norwegian government and the Church of England) for violation of rights of the tribe.¹⁸ While those efforts led to some positive results for accountability, it was the Supreme Court of India that ultimately ordered cancellation of mining plans in Dongria Kondh's traditional lands. Similarly, indigenous Bunong community of Cambodia have filed a lawsuit in a court in France against a French multinational group for its investment in a Belgian company operating rubber plantations in their lands without their consent or any compensation.¹⁹

17 Founded in 1961, the OECD is an inter-governmental economic organization with 36 member countries that works on establishing international norms and finding evidence-based solutions to a range of social, economic and environmental challenges. The OECD Guidelines for Multinational Enterprises (the OECD Guidelines) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards. Originally adopted in 1976, they have been subsequently revised – the most recently in 2011. They include standards on the environment, labor rights, human rights, corruption and other issues. National Contact Points for Responsible Business Conduct (NCPs) are agencies established by governments to a) promote the OECD Guidelines for Multinational Enterprises, and related due diligence guidance, and b) to handle cases (referred to as “specific instances”) as a non-judicial grievance mechanism.

18 For more details, see Royal descendants of the mountain God, Survival International, <https://www.survivalinternational.org/tribes/dongria>, For OECD complaint, see Survival International vs Vedanta Resources plc, OECD Watch, https://complaints.oecdwatch.org/cases/Case_165

19 For more details, see Cambodian communities follow different routes to justice over Socfin rubber project, Mongabay, 13 October 2015, <https://news.mongabay.com/2015/10/cambodian-communities-follow-different-routes-to-justice-over-socfin-rubber-project/>



Indigenous peoples' representatives and organizations, particularly in Indonesia and Malaysia, have lobbied for respect of rights, including by file complaints for abuses by specific palm oil plantations, with Roundtable on Sustainable Palm Oil (RSPO) – a multi-stakeholder certification mechanism for sustainable palm oil products. Recently, the RSPO itself has been challenged for violation of Indonesian Indigenous Peoples' rights under the OECD Guidelines.²⁰

F. PLANNING FOR ADVOCAC

Human rights advocacy can be, among other things, aimed to:

- seek justice for or redress the victims of human rights violations,
- educate and aware targeted groups or wider communities on a human rights issue, and
- bring about legal or policy change for enjoyment of human rights.

Plan out your human rights advocacy, including through the following prior tasks:

- Decide your advocacy goal, including messaging of your campaign (e.g., India: Investigate and remedy killing of unarmed civilians in Nagaland²¹).

20 For more details, see TuK Indonesia vs. Roundtable on Sustainable Palm Oil (RSPO), OECD Watch, https://complaints.oecdwatch.org/cases/Case_491

21 For more details, see Condemnation of State-sponsored violence on unarmed civilians in Nagaland, India, AIPP, 10 December 2021, <https://aippnet.org/condemnation-of-state-sponsored-violence-on-unarmed-civilians-in-nagaland-india/>

21For more details, see About human rights defenders, OHCHR, <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx#ftn3>



- Identify your allies, neutrals and opponents through stakeholder mapping so as to wisely determine who you engage with and how.
- Determine your advocacy targets (such as national and international human rights mechanisms) and activities aimed at each target.

G. ADVOCACY STRATEGIES

- Ground/public mobilizations, e.g. local protests, sit-ins, etc.
- Petitions to and lobbying government agencies
- Court litigations
- Media
- Network and alliance building
- Alliances with local politicians and parliamentary lobbying
- Complaints to international human rights mechanisms and lobbying
- Complaints to International Financial Institutions (IFI) and/or their grievance mechanisms (for projects supported by those institutions)
- If businesses are involved in human rights violations,
 - o leveraging their grievance mechanisms of businesses where applicable, and
 - o shareholder and consumer advocacy
- Etc.

*** PLAN SIMULTANEOUS OR CONSECUTIVE AND TIME-BOUND STRATEGIES THAT SHOULD BE BACKED BY CREDIBLE DOCUMENTATION OF VIOLATIONS AND STRONG COMMUNITY ORGANIZING**



Part V. PROTECTION OF HUMAN RIGHTS DEFENDERS AT RISK

A. WHO IS A HUMAN RIGHTS DEFENDER?

“Human rights defender” is a term used to describe people who, individually or with others, act to promote or protect human rights.

- Human rights defenders must accept the universality of human rights as defined in the Universal Declaration of Human Rights.
- Human rights defenders must be defined and accepted according to the rights they are defending and according to their own right to do so.
- The actions taken by human rights defenders must be peaceful in order to comply with the Declaration on human rights defenders.²²

B. INTERNATIONAL STANDARDS AND MECHANISMS FOR PROTECTION OF HUMAN RIGHTS DEFENDERS

UN Declaration on Human Rights Defenders

- Official known as “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”

²² For more details, see About human rights defenders, OHCHR, <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx#ftn3>



- Resolution adopted by consensus by the UN General Assembly in 1998 and thus represents a strong commitment by States to its implementation
- Does not create new rights but articulates existing rights to apply them to human rights defenders

Rights and protections accorded to human rights defenders

- To seek protection and realization of human rights;
- To conduct human rights work individually and in association with others;
- To form associations and NGOs;
- To meet or assemble peacefully;
- To seek, obtain, receive and hold information relating to human rights;
- To make complaints relating to human rights;
- To benefit from an effective remedy;
- To solicit, receive and utilize resources for protecting human rights, etc.

Duties of States

- To protect, promote and implement all human rights;
- To provide an effective remedy for persons who claim to have been victims of a human rights violation;
- To conduct prompt and impartial investigations of alleged violations of human rights;
- To take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration;



- To ensure and support creation and development of independent national institutions for the promotion and protection of human rights, such as ombudsmen or human rights commissions;
- To promote and facilitate the teaching of human rights at all levels of formal education and professional training.

Responsibilities of everyone

- to promote human rights, to safeguard democracy and its institutions and not to violate the human rights of others.
- makes a special reference to the responsibilities of persons exercising professions that can affect the human rights of others, and is especially relevant for police officers, lawyers, judges, etc.

Role of national law

- relationship of the Declaration to national and international law with a view to assuring the application of the highest possible legal standards of human rights

UN Special Rapporteur on the situation of Human Rights Defenders

The Special Rapporteur is a Special Procedure established by the Human Rights Council with the mandate to

- seek, receive, examine and respond to information on the situation of human rights defenders;
- establish cooperation and conduct dialogue with governments and other actors on promotion and implementation of the Declaration;
- recommend effective strategies better to protect human rights defenders and follow up on these recommendations;
- integrate a gender perspective throughout her work



Among other things, the Special Rapporteur,

- Presents Annual reports;
- Undertakes Country visits;
- Takes up individual cases of concern with Governments when he receives complaints

European Union (EU) Guidelines on Human Rights Defenders

- Adopted in 2008 to support human rights defenders, including when they are at risk
- Require the EU missions to
 - undertake monitoring, reporting and assessment through periodic reports on human rights situation in the country, including to make recommendations for possible EU actions such as condemnation of threats and attacks against HRDs as well as public statements;
 - coordinate closely and share information on human rights defenders, including those at risk;
 - maintaining, suitable contacts with human rights defenders, including by receiving them in missions and visiting their areas of work;
 - provide, as and where appropriate, visible recognition to human rights defenders, through the use of appropriate publicity, visits or invitations;
 - attend and observe, where appropriate, trials of human rights defenders.
- Call for promotion of respect for human rights defenders in relations with third countries and in multilateral fora through
 - meetings with, and raising individual cases of, human rights defenders as an integral and part of the visits of EU officials to third countries;



- o inclusion of the situation of human rights defenders in the human rights component of political dialogues between the EU and third countries and regional organisations;
 - o working closely with other likeminded countries with similar views notably in the UN bodies;
 - o promoting the strengthening of existing regional mechanisms for the protection of human rights defenders, and the creation of appropriate mechanisms in regions where they do not exist
- Commit the EU's support for Special Procedures of the UN Commission on Human Rights, including the Special Representative on Human Rights Defenders as well as practical supports for Human Rights Defenders including through Development Policy

C. HOLISTIC SECURITY OF HUMAN RIGHTS DEFENDERS

Holistic Security Paradigm

Multi-factorial and interwoven security aspects of human rights defenders as follows:

Personal

Physical

Digital

Emotional

Spiritual

Collective/Communal

Traditional



(Organisational)

(Financial)

(Reputational)

(Environmental)

(Safety – Occupation Health and Safety, such as health issues, diseases, etc.)

References

Front Line Defenders: <https://www.frontlinedefenders.org/>

Tactical Technology Collective: <https://holistic-security.tacticaltech.org/>

When defenders are at risk

Human rights defenders facing risks, threats or reprisals for their works can access various financial and other assistance from support groups, including the following:

- Front Line Defenders Protection Grants for individual HRDs at risk, see <https://www.frontlinedefenders.org/en/programme/protection-grants>.
- Lifeline Embattled CSO Assistance Fund (led by Freedom House) provides three types of grants for Emergency Assistance, Rapid Response Advocacy and Resiliency. See <https://www.csolifeline.org/>.
 - o The latter two can be accessed by the organizations of HRDs also for urgent advocacy or other campaigns and proactive security capacity building or other needs respectively.
- Also, European Union Human Rights Defenders mechanism (ProtectDefenders.eu) emergency grants (<https://www.protectdefenders.eu/en/supporting-defenders.html#emergency-support>) and organizational grants



<https://www.protectdefenders.eu/en/strengthening-organisations.html>) of the

- Specifically for security and advocacy interventions of women human rights defenders and their organizations and movements, small grants are also available from Urgent Action Fund for Women's Human Rights. See <https://urgentactionfund.org/apply-for-a-grant/>





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