

Normative and Institutional Frameworks for Defending Human Rights Defenders in Liberia

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This paper postulated that human rights defenders (HRDs) are diverse foot soldiers from all works of life who operate as individuals or group of individuals in rural communities or cities and who devote their professional services, trade, or skills to the protection of human rights. This paper argued that the need to protect HRDs arose out of increasing threats against them and the global normative framework to protect them was fluid until the adoption of the Declaration on Human Rights Defenders by the United Nations in 1998, followed by regional and national frameworks. These frameworks gave birth to global and regional institutional mechanisms to protect HRDs including the United Nations Secretary General's Special Representative for Human Rights Defenders and the Special Rapporteurs on the Situation of Human Rights Defenders. In the case of Liberia, whereas there is no applicable framework that specifically provide for the protection of HRDs, the key institutional mechanism for the protection of HRDs is the Independent National Commission on Human Rights (INCHR). Despite the protective shields of both the global, regional, and national frameworks and institutions for the protection of HRDs, the climate for HRDs in Liberia is precarious.

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Introduction

“Human rights defenders (HRDs)” is an elastic term generally used to describe people who, individually or collectively, advocate and contribute through pacific means to the promotion and protection of fundamental

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freedoms, including ensuring accountability for human rights violations.¹ In other words, HRDs are individuals or civil society agents, acting independently or cooperatively and through whom constant, continuing, and peaceful pressures are mounted on duty bearers for the realization of human rights norms and standards subscribed to in national, regional, and international treaties.

A vibrant and viable HRD is indispensable in a democratic society and is a veritable platform for non-governmental and independent truth seeking or fact-finding at national and international levels. The role of HRDs is indispensable in achieving sustainable peace, building a strong democratic culture and pivotal to exposing state's non-compliance with applicable human rights treaties and obligations. There is no gainsaying the fact that most governments would seldom protect human rights without the complimentary roles of vibrant HRDs and the inflow and outflow of external and critical information generated by them (Rhodes, 2006).

In the case of Liberia, like in most other countries in Africa, HRDs belong to diverse occupational groups and active in a variety of contexts depending on their circumstances. They operate, in urban and rural settings, from any gender or age group and belong to professional and non-professional trades and employments, including environmentalists, journalists, media owners and employees, freelance authors, political commentators, academics, bloggers, legal practitioners, and public defenders. Others are activist judges, politicians, professional and non-professional activists, trade unionist, market women, etc. The lowest common denominator of HRDs is not the qualification they wield, the name of the organization they work for or their professional or religious affiliation or inclination (Xenos, 2012). They are classified as HRDs because of the character and effects of the work undertaken by them and the fact that they work peacefully on the frontline of promoting and protecting human rights for all, either alone or in association with others.

HRDs, especially those that stand up to advocate for good governance, anti-corruption or seek to protect persons based on their sexual orientation and gender identity, are increasingly under attack in Africa and Liberia in particular (UNDP, OHCHR, 2018). Due to the fact that they speak truth to authority, HRDs are often subject to varying degrees of push-back attacks by state and non-state actors, which most times are disguised and clothed in the guise of legitimate form of law enforcement. They are often intimidated by government and its institutions, including armed and organised crime groups and individual citizens, exposed to illegitimate restriction and curtailment of the exercise of their rights and freedoms, including peaceful assembly, association, movement, opinion, expression and access to information, killings, enforced disappearances, torture, arbitrary detentions, forced displacement, threats and attacks, both physical and online (Gleason & Mitchell, 2009).

The severity and scale of reprisals committed against HRDs by state and non-state actors vary significantly based on the country context and were among the motivating considerations behind the global adoption of normative and institutional frameworks for their protection. The global consensus on the exigency to defend HRDs was also borne out of the need to preserve the critical role they play in the entrenchment of a culture of human rights and rule of law. In the case of Liberia, the threat, actual violation and perennial challenges confronted by HRDs often relate to lack of political will and absence of enabling legal, policy and institutional frameworks for their protection. It further relates to dearth of effective remedies and reparation in cases of violations against them.

¹ Office of the High Commissioner for Human Rights; Fact Sheet No. 29, p. 2, available at <https://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>.

Normative Frameworks for Defending HRDs

The safety or otherwise of HRDs in a particular country is often on the one hand, the principal scale for calibrating the democratic foundations of the country and on the other hand, the gauge for evaluating the functionality of national, regional, and international human rights systems on the ground (Xenos, 2012). Prior to 1998, the normative framework for the protection of HRDs was fluid and deduced from general human rights provisions in related instruments (McChesney, 1995), including the Vienna Declaration which mandates States to promote and protect all human rights and fundamental freedoms regardless of their political, economic, and cultural systems.² Appreciating this gap and bearing in mind the increasing threats against HRDs globally, including the exigencies of protecting them, the United Nations set up a working group in 1985 to articulate a global framework for their protection.

After 13 years of vacillating debate, the United Nations General Assembly, on December 9 1998, adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, generally called the Declaration on Human Rights Defenders (DHRD).³ As a collective effort of State and human rights organizations, the DHRD addresses not just the States or HRDs, but everyone and places an obligation on respective governments on the one hand and governments as a global collective on the other hand to protect HRDs and to prevent retribution against them due to their human rights work. Although the DHRD is not a legally binding instrument and does not create new rights per se, it congregates and encapsulates other legally binding principles and standards in regional and international instruments most relevant to HRDs and seeks to protect them in the context of their work (Eaton, 2016). It also shields them from violence, attack or intimidation and further obligates states to ensure the safety of HRDs through prompt investigation and prosecution of perpetrators of violations against them.

Outlining specific duties of states and the responsibilities of everyone with regard to defending HRDs, the DHRD, in its Article 1, guarantees to everyone the right, individually or in association with others, to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. While reiterating the universality, indivisibility, interdependence, and interrelatedness of human rights and fundamental freedoms, the DHRD recognized a wide range of actions for the protection of HRDs and grants to everyone the right to “promote and strive for the protection and realization of human rights and fundamental freedoms at the international and national levels” including by “participating in peaceful in peaceful activities against human rights violations; forming, joining and participating in associations or groups for the purpose of promoting human rights; providing legal or other assistance in defending human rights”.⁴

² United States Country Report on Human Rights Practices “Human Rights” (2013) 2013 Dig Prac Int’l L 123.

³ General Assembly Resolution A/RES/53/144 adopting the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms adopted 9 December 1998.

⁴ Articles 5, 6, 7, 8, 9, 11, 12, and 13 and Articles 10 and 18 of Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Adopted by General Assembly resolution 53/144 of 9 December 1998 available at <https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx>.

In addition to the protection guaranteed in other regional and international instruments, including Universal Declaration of Human Rights,⁵ the International Covenant on Civil and Political Rights⁶ and the Covenant on Economic, Social and Cultural Rights⁷, the DHRD avails HRDs additional and specialist protection due to the nature of their work. This is the case because whereas many of the rights contained in several other human rights treaties relate to the protection of HRDs in general, there are normative standards that are more specific to them that are specifically articulated in the DHRD based on the recognition that they are in need of special protection and support because of the challenge they face (Rhodes, 2006).

In the Secretary-General's report to the 56th Session of the Commission on Human Rights in 2000, the proposal for the implementation of the DHRD was made.⁸ Similarly, the Special Rapporteur on Human Rights Defenders, issued a Commentary in 2011 on the DHRD and interpreted the rights provided therein (Sekaggya, 2014). Although the term "HRDs" was not expressly defined in the DHRD, it has been interpreted to not only relate to those seeking protection and promotion of civil and political rights, but also extends to those striving for the promotion, protection, and realization of social, economic, and cultural rights as well.⁹

At the regional level, the European Union replicated the DHRD through the adoption of the European Union guideline on HRDs. The guideline provides practical suggestions for a coordinated response and action toward the protection of HRDs, particularly in countries outside the European Union through their embassies (Xenos, 2012). Likewise, the African Union leveraged on the DHRD to establish a mechanism to protect HRDs in the continent. In 2004, the African Commission on Human and Peoples' Rights (ACHPRs) adopted a Resolution on the Protection of Human Rights Defenders in Africa, popularly known as the Kampala Declaration of Human Rights Defenders. The Kampala Declaration is aimed at ensuring that Africa Member States make active use of regional and international mechanisms for the protection of human rights defenders. It calls on Member States to promote and give full effect to the DHRD, to take all measures to ensure the protection of HRDs and to include information on measures taken to protect HRDs in their periodic reports (Gleason & Mitchell, 2009).

In Liberia, despite the existence of a national policy on non-governmental organization (NGO) adopted in 2018 to guide how NGOs operate and the Liberia's Gender Policy of 2009 which strives to mainstream gender in both public and private engagements, there is no policy that specifically target the protection of HRDs in Liberia. The same absence of specific provision for human rights defenders is also found in the Local Government Act of 2018¹⁰ that expands civic space for civil society organizations and the recently adopted Domestic Violence Act¹¹ which also made ample provision for CSOs to address issues of violence in relationships and within the family setting. In comparison, it is worth nothing that Liberia's neighbours in the Mano River Union are making effort to

⁵ Universal Declaration of Human Rights, available at https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf.

⁶ International Covenant on Civil and Political Rights, available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

⁷ Covenant on Economic, Social and Cultural Rights, available at <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.

⁸ Implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: Report of the Secretary-General, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G00/101/47/PDF/G0010147.pdf?OpenElement>.

⁹ U.N. ECON. & SOC. COUNCIL [ECOSOC]. Commission on Human Rights, Promotion and Protection of Human Rights Human Rights Defenders, Annex II U.N Doc. E/CN.4/2001/94.

¹⁰ Local Government Act of 2018, available <https://molg.go.ug/sites/default/files/LOCAL%20GOVERNMENTS%20ACT.pdf>.

¹¹ Domestic Violence Act, available at https://www.emansion.gov.lr/2press.php?news_id=4977&related=7&pg=sp.

adopt specific legislations on the protection of human rights defenders.¹² In 2014, a human rights defenders' bill was passed by the Parliament of Cote d'Ivoire and became effective in 2017 following the signature of a presidential decree serving as enabling legislation. In Guinea, the human rights defenders' bill under consideration by the parliamentary committee on human rights.

Whilst the Constitution of the Republic of Liberia has ample provisions in its Chapter III that guarantees fundamental rights and liberties, it however did not expressly cater for the specific needs of HRDs. Overall, there is no policy or legal framework in Liberia that specifically provide for the protection of HRDs in the course of their work, except for the deductive and extrapolative reading and interpretation of the generic contents of statutory and constitutional provisions and general human rights instruments subscribed to and applicable in Liberia.

As a signatory to most of the major regional and international human rights treaties, Liberia has the obligation to respect, protect, and fulfil human rights of all persons. HRDs in Liberia can thus seek protection under regional and international human rights law to the extent that these frameworks have been domesticated, applicable and translated into corresponding obligations in Liberia. According to Art. 2(2) of the ICCPR,

...each State Party shall undertake to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant. (Xenos, 2012, pp. 767-783)

It is thus a treaty obligation of the Government of Liberia to protect HRDs within its jurisdiction.

This obligation is not merely in relation to non-interference with the rights of defenders, but extends to their active protection through appropriate judicial and administrative measures to prevent, apprehend, punish, investigate, or redress any harm caused by acts of private persons or government entities.¹³ As such, HRDs in Liberia who are victims of human rights violations and abuse perpetrated by the state and non-state actors should be adequately and promptly compensated,¹⁴ and where the violation is by private actors, a thorough investigation, prosecution and punishment of the perpetrators should be ensured by the Government of Liberia under its regional and international treaty obligations to prevent human rights violation (Xenos, 2012).

Institutional Frameworks for Defending HRDs

Following the adoption of the DHRD and to give support to its implementation, the Commission on Human Rights impressed upon the Secretary-General to establish a mandate on HRDs so as to gather information on the actual situation of HRDs around the world and give support to the implementation of the DHRD as part of a systematic mechanism to protect HRDs.¹⁵ Two years after the adoption of the DHRD, the United Nations

¹² See Loi 2014-388 du 20 juin 2014 portant promotion et protection des défenseurs des droits de l'homme at https://www.fidh.org/IMG/pdf/loi-no-2014-388-du-20-juin-2014-portant-pro-motion-et-protection-des-de_fenseurs-des-droits-de-lhomme.pdf and décret d'application https://www.fidh.org/IMG/pdf/di_bdi_bdcet_ni_bdi_bd_2017-121_du_22_fi_bdi_bdv_2017_promotion_et_protection_des_.pdf.

¹³ UN Human Rights Committee, General Comment No. 31(80). The Nature of the General Legal Obligations Imposed on State Parties to the Covenant, UN Doc. CCRP/C/21/Rev.1/Add. 13, para. 8. It is also implicit in Art 7 that State parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their powers.

¹⁴ Human Rights Committee in the Case of Evangelina Hernandez v. the Philippines (2010) UN Doc. CCPR/C/99/D/1559/2007, para. 9.

¹⁵ Resolution 2000/61 establishing the mandate of the Secretary General as Special Representative of the Secretary-General on the situation of human rights defenders.

Commission on Human Rights created the post of United Nations Secretary General's Special Representative for Human Rights Defenders in 2000 with a mandate of gathering information on HRDs, entering into dialogue with governments and other actors and making recommendations for the protection of human rights defenders.¹⁶ While the protection of HRDs is the overriding purpose of the mandate, the scope of the mandate is elastic and requires the articulation of innovative strategies, impact-oriented priorities and activities to protect HRDs on the one hand and protect their rights to defend human rights on the other hand (Rhodes, 2006). Other components of the mandate of the UN Special Representative are maintaining regular contacts with HRDs, undertaking country visits, raising individual cases of concern with governments, and reporting to the UN Human Rights Council and General Assembly.¹⁷

The position has been renewed severally and currently held by a Special Rapporteur since 2008 whose responsibility is to “report on the situation of HRDs in all parts of the world and on possible means to enhance their protection”¹⁸. The Special Rapporteur is also empowered to work with governments and other stakeholders to promote and implement the DHRD, recommends strategies to protect HRDs and receives and reviews complaint relating to human rights violations committed against HRDs (Gleason & Mitchell, 2009). The mandate holder receives substantive support in the implementation of the mandate from the Office of the United Nations High Commissioner for Human Rights and expected to be accessible to HRDs and other actors and receive information from them, including allegations of human rights violations. He or she also maintains regular contacts with states through country visits, conferences, workshops, or forums, such as sessions of the Human Rights Council in Geneva and the General Assembly in New York, during which annual or thematic reports are presented to States on the state of HRDs.¹⁹

In recognition of the need to protect HRDs, the Special Rapporteur on the Situation of Human Rights Defenders enunciated principles that should underpin good practices by States in the protection of HRDs (United Nations, 2016). While urging states to adopt a rights-based approach to protecting HRDs, he called on states to empower HRDs to know and claim their rights and increase the ability and accountability of those responsible for respecting, protecting, and fulfilling rights. He also called on states to recognize that defenders are diverse, come from different backgrounds, cultures, and belief systems and from the outset, may not self-identify or be identified by others as defenders.

The Special Rapporteur, while recognizing the need for “holistic security” of defenders, in particular, their physical safety, digital security and psychosocial well-being, adverted the attention of states to recognize the significance of gender in the protection of defenders and mainstream inter-sectionality approach in the

¹⁶ In August 2000, Ms. Hina Jilani was named by the Secretary General as Special Representative of the Secretary-General on the situation of human rights defenders. Her mandate was renewed by the Commission in 2003 (Resolution 2003/64) and by the Human Rights Council in 2007 (Resolution 5/1). In 2008, with Resolution 7/8, and in 2011, with Resolution 16/5, the Human Rights Council, decided to renew the mandate on human rights defenders for a period of three years. In March 2008, the Human Rights Council appointed Margaret Sekaggya as Special Rapporteur on the situation of human rights defenders.

¹⁷ Relevant Resolutions include Resolution 22/6 on Protecting Human Rights Defenders which was adopted on March 21, 2013. UN Doc. A/HRC/RES/22/6; Resolution 22/10 on Promotion and Protection of Human Rights in the Context of Peaceful Protests was adopted March 21 UN Doc. A/HRC/RES/22/10.

¹⁸ Resolution of Human Rights Defenders Commission on Human Rights resolution 2000/61, available at https://ap.ohchr.org/documents/alldocs.aspx?doc_id=4764.

¹⁹ Office of the High Commissioner for Human Rights, available at <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/MethodsWork.aspx>.

assessment of risks and to the design of protection initiatives. Bearing in mind that some defenders are at greater risk than others because of who they are and what they do, he called on states to co-opt HRDs in the adoption of tailored protection strategies, acknowledge the interconnectedness of defenders and the fact that focus should not only be on the rights and security of individual defenders alone, but also include groups, organizations, communities, and family members who share their risks (United Nations, 2016).

At the continental level, the African Commission on Human and Peoples' Rights established the position of Special Rapporteur on Human Rights Defenders through Resolution 69 at the 35th Ordinary Session held in Banjul, The Gambia from 21st May to 4th June 2004. The mandate calls for the Special Rapporteur to seek, receive, examine, and act upon information on the situation of human rights defenders in Africa; submit reports at every ordinary session of the African Commission; cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders and other stake holders; develop and recommend effective strategies to better protect human rights defenders and follow up on his/her recommendations; and raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa.²⁰

Similar to the ACHPR Special Rapporteur mandate, representatives of civil society organizations, national human rights institutions and governments from across Africa, under the auspices of the African Commission on Human and Peoples' Rights adopted in 2017, the Cotonou Declaration on strengthening and expanding the protection of all HRDs in Africa.²¹ The Declaration reaffirmed the importance and role of HRDs in promoting and protecting human rights in Africa, in consolidating democracy, the rule of law and sustainable development on the continent.

The United Nations Declaration, the Kampala Declaration and the Cotonou Declaration on HRDs recognize the growing roles of women HRDs in the promotion and protection of human rights, due to increasing gender based threats.²² Noting that men and women do not experience similar risk and that women do face multiple risks beyond men, the first UN Special Representative on Human Rights Defenders report in 2002 underlined the fact that "promoting and protecting women's rights can be an additional risk factor, as the assertion of some of such rights is seen as a threat to patriarchy and as disruptive of cultural, religious and societal mores".²³ In the same vein, the Human Rights Council in 2008 mandated the Special Rapporteur on HRDs to integrate gender perspectives in her report and pay particular attention to the situation of women HRDs.

Following this, the Special Rapporteur in her joint statement on HRDs acknowledged the peculiar vulnerability of women HRDs and underlined the fact that women HRDs are most often stigmatized and subject to attacks and harassment by non-state actors because of the social, cultural, and political controversies surrounding their perceived or real anti-patriarchy campaigns.²⁴ The stigma they suffer legitimizes or fans the

²⁰ At the time of this writing, Professor Rémy Ngoy Lumbu (Democratic Republic of Congo) is the special rapporteur on human rights defenders and focal point on reprisal in Africa. The mandate was renewed through Resolutions adopted at the 38th Ordinary Session in 2005, the 42nd Ordinary Session in 2007, the 46th Ordinary Session in 2009, and the 49th session in 2011. For more information see <https://www.achpr.org/specialmechanisms/detail?id=4> (accessed 1 July 2020).

²¹ Adopted at the 2nd International Symposium on Human Rights Defenders in Africa—Johannesburg +18 (2017).

²² Resolution on Protecting Women Human Rights Defenders U.N. Doc. A/RES/68/181.

²³ Special Representative of the Secretary-General on Human Rights Defenders, Promotion and Protection of Human Rights: Human Rights Defenders, UN Doc. E/CN.4/2002/106.

²⁴ *Ibid.*

embers of harassment and intimidation and further disposes them to selective and discriminatory enforcement of existing laws by law enforcement agencies (Soohoo & Hortsch, 2011).

In Liberia, the institutional mechanism for the protection of HRDs is the Independent National Commission on Human Rights (INCHR) mandated to promote and protect all human rights. Established pursuant to the Independent National Commission on Human Rights Act 2005 and in accordance with Paris Principles, the INCHR is charged with the responsibility of promoting and protecting human rights and addressing the root causes of conflict, as well as the various conflict triggers.²⁵ The INCHR executes its mandate by receiving complaints, monitoring and reporting on human rights conditions, proposing policy and legislation, and promoting human rights education. It is also mandated to inquire or investigate by itself or upon a complaint presented to it by a victim or any other person representing the victim on any human rights violation by the state, its functionaries, public servants or any other related person.²⁶

Although the Act establishing the INCHR did not specifically mention protection of HRDs as a stand-alone mandate, an expansive interpretation of the INCHR Act presupposes that since the INCHR draws its mandate to protect human rights in general and HRDs in particular from the DHRD and other relevant regional and international instruments, which recognizes the duty of states to develop and support national human rights institutions to protect HRDs, the INCHR is ostensibly the natural contact point for HRDs in case of threat or imminent danger. As was observed by the United Nations Security Council, the INCHR has the potential to “play a key role as a publicly accessible human rights institution and as a mechanism to monitor and follow-up on the implementation of the recommendations of the Truth and Reconciliation Commission”. Despite its recent progress, including accreditation as an “A” category Commission by the Global Alliance of National Human Rights institutions, INCHR has faced operational, political, capacity and resources challenges, which have largely prevented it from fulfilling its mandate of defending HRDs.

Another national human rights institution in Liberia relevant in the protection of HRDs is the Human Rights Division of the Ministry of Justice. The HRD is the Government of Liberia’s inter-ministerial body mandated to

coordinate and prepare reports to and engage with international and regional human rights mechanisms including Treaty Bodies, Universal Period Review and Special Procedures and to coordinate and track national follow up and implantation of treaty obligations and the recommendations emanating from this mechanisms.²⁷

While the Human Rights Division of the Ministry of Justice is responsible for leading the articulation and implementation of the National Human Rights Action Plan (NHRAP) which seeks to address many of Liberia’s human rights challenges, it faces similar challenges with the INCHR due to the absence and lack of specific focus on HRDs in its mandate. It is also challenged by the glaring lack of technical capacity and ability to coordinate the implementation of government’s human rights obligations and devoid of human and financial resources to fulfil its mission to move forward the implementation and reporting of government’s human rights obligations.

In the absence of institutional framework for defending HRDs and systemic measures of addressing protection challenges faced by them, the last resort for intervention and assistance for HRDs is most times the

²⁵ Article III (1), Independent National Commission on Human Rights Act 2005.

²⁶ Ibid, Article III (3)(a).

²⁷ National Mechanism for Reporting and Follow-Up: A Practical Guide to Effective State Engagement With International Human Rights Mechanisms (OHCHR, 2016).

Liberia National Police (LNP) which mandated and responsible for maintaining public order and safety, enforcing the law, preventing, detecting, and investigating criminal activities in the Republic. Bearing in mind that the LNP is more often than not the principal perpetrator of human rights violation against HRDs, grossly underfunded, does not have enough personnel to cover the whole counties in Liberia, and appear helpless, most often, in the face of impunity committed in the name of traditional practices, the protective mechanism of HRDs through the LNP is somewhat weak.

Despite institutional mechanisms linked to the government, there are also non-governmental schemes for the protection of HRDs in Liberia. As a coalition of human rights organizations in Liberia, civil society organisations are mandated to forge a CSO nucleus for the promotion and protection of human rights in general and the protection of HRDs in particular. As a “watch dog” of the society regarding human rights observance, CSOs, which is also a grouping where all HRDs belong, is a very important avenue for coordinating protection for rights activists. The work of CSOs as institutional mechanism for the protection of HRDs is very important because of their affiliation to similar international human rights organizations across the world whose experience in the protection of HRDS is invaluable to the Liberian experience.

Calibrating the Enabling Climate for HRDs in Liberia²⁸

The process of post-conflict recovery and reconstruction in Liberia has been ongoing for over a decade and has resulted in several major human rights, governance, and legislative and policy achievements. However, Liberia still faces serious human rights challenges including threats and intimidation against HRDs that militate against their defense of human rights.²⁹ There are several HRDs in Liberia operating at the national, county, and community levels to amongst things collect and disseminate information on human rights violations, support victims of violations, act to secure accountability, end impunity and promote good governance. Anecdotal evidence suggests that a great number of HRDs in Liberia have been subject to violations of their human rights including restrictions of their freedoms of movement, expression, association and assembly (OHCHR, 2019).

In view of their role, HRDs in Liberia, as is the case in most other countries, are regularly at physical risks and violations ranging from violence, harassment, and intimidation. These violations most commonly target them individually or collectively or through organizations that they work. Occasionally, their families are targeted as a means of applying pressure on them. The category of HRDs mostly threatened and at risk are those advocating for accountability for past human rights violation in Liberia, those working on issues of Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and those advocating for abolition of harmful traditional practices,

²⁸ The data that informed and on which this article is based was carried out through desk research and semi structured interviews with 71 human rights activists from diverse civil society actors from 10 out of 15 counties of Liberia (Montserrado, Bomi, Bong, Nimba Maryland, Rivercess, River Gee, Sinoe, Grand Kru, and Grand Bassa). The information gathered from the semi structured interviews was validated in two focus group discussions in each of the three randomly selected counties (Nimba, Grand Gedeh, and Grand Cape Mount) to assess the protection mechanisms available to the HRDs. 48 individuals from 16 CSOs took part in the focus group discussions and were drawn from both government, civil society actors and private legal practitioners, all of whom work on a variety of human rights issues. In other to ascertain protection programs available to human rights defenders in Liberia, the study sought to investigate these major issues, namely: (a) The legal and policy framework; (b) Civil Society Organizations (CSOs) informal policies and practices to protect human rights defenders and their own staff; (c) The nature of the risks and threats; (d) The possible perpetrators of the threats; and (e) The perception of insecurity by human rights defenders in undertaking their work.

²⁹ DPKO Strategic Assessment of Liberia (2016).

including female genital mutilation (FGM) and child marriage. Some in these groups narrated experiencing threats, intimidations which inadvertently compel them to self-censorship and disinterest in advocating for their mandated concerns. According to the SOGIR Liberia Country Report “discrimination and violence against individuals based on their sexual orientation and gender identity is widely reported in Liberia” (UNDP, OHCHR, 2018).

Although the nature of their threats differ, the lowest common denominator of these threats and risks is that they are mostly triggered by State and non-state actors, especially by individuals and traditional institutions and structures under the acquiescence of the police and law enforcement apparatus. The foregoing findings are in tandem with the conclusion of the public report issued by the United Nations Mission in Liberia (UNMIL) and the Office of the High Commissioner for Human Rights (OHCHR) in 2015 (OHCHR/UNMIL, 2015).

The enabling climate for HRDs in Liberia is precarious. This is the situation despite the protective shields of both the United Nations and African Union Declaration of HRDs which impose an obligation on the Government of Liberia to protect, promote, and implement all human rights and fundamental freedoms guaranteed in the Declaration and other instruments to which Liberia is a signatory. Consequently, the Government of Liberia and its institutions are to ensure that they take legislative, administrative and other measures to protect HRDs against violence, threats or intimidations as a result of their work. In the case where there is a violation, both frameworks require the government to conduct prompt and impartial investigations into such alleged violations.

According to the Special Rapporteur on HRDs appointed by the African Commission on Human and Peoples Rights, the situation of HRDs has deteriorated considerably in the continent with freedom of association, assembly and expression under intense attack. It is for this reason that the United States Government in its Country Report on Human Rights Practices called on states to investigate, in a prompt, effective, independent, and accountable manner, complaints and allegations regarding threats or human rights violations perpetrated against HRDs and to initiate, when appropriate, proceedings against the perpetrators so as to ensure an end to such impunity.³⁰

Another issue evident in the situation of HRDs in Liberia is the fact that most of them did not self-identify as defenders. This lack of knowledge of their status cut across many of the counties in Liberia except for Monrovia and environs where HRDs were more assertive and conscious of their status. Although the protection available to HRDs is not dependent on their self-identification as HRDs, self-identification has crucial implications for awareness and access to available normative and institutional protection mechanisms because those who are aware of their status as HRDs are more likely to seek protection. According to the United Nations Special Rapporteur on the situation of human rights defenders,

without being perceived by others or perceiving themselves as [HRDs], they may not be aware of their rights as defenders, not seek support from peers or support networks and may not receive protection from the State, civil society and the international community. (United Nations, 2016)

Whereas HRDs in Liberia agree on the need for a policy and legal framework specifically to protect them, most of them were not aware of any legal or policy framework that specifically protects them. The few that claimed knowledge of the existing legal and policy framework to protect HRDs referred to the fundamental

³⁰ United States Country Report on Human Rights Practices “Human Rights” (2013) 2013 Dig Prac Int’l L 123.

human rights provisions in the Liberian constitution and others relevant regional and international human rights treaties.

On the safety of HRDs to freely operate and do their work in Liberia, their perception of safety varied greatly. Whilst few noted that there is an enabling climate for them to operate to promote and protect human rights in Liberia, majority were of the view that they do not feel safe and protected because of their work in promoting and protecting human rights (OHCHR, 2019). Although most of the HRDs feel unsafe to do their work and have regularly experienced physical attack, high incidences of harassment, threats by the community and overall lack of protection by state authorities, the most affected are the categories of HRDs advocating for LGBTI issues, those agitating for accountability for past human rights violations and those advocating against harmful traditional practices.

For HRDs working on the issue of LGBTI and accountability for past human rights violations, most of the threat and insecurity emanate from non-state actors and traditional leaders and structures who see diverse sexual orientation as perversion of cultural and religious values and whose perception of the call for accountability for past human rights violations as an attempt and alien imposition to single out for persecution, certain former warlords. In all these threats and insecurity, state actors, particularly law enforcement agencies are either unable or unwilling to protect HRDs.

Regardless of the challenges faced by HRDs in general, there is also a gender dimension of the challenge because women in Liberia suffer disproportionately from the devastation and aftershock of the civil wars in the country including gender based violence and discrimination. Consequently, women HRDs most often confront risks that are gender-specific and require particular attention. The reason adduced for the insecurity of HRDs in general and women HRDs in particular ranged from lack of protection mechanisms, the limited interest of government to implement human rights norms and the lack of legal and policy frameworks to protect them.

In a related development, reprisals, or threats of reprisals against HRDs who cooperate with international human rights mechanisms have been documented in Liberia (OHCHR, 2019). These findings validate other studies and reports on Liberia. According to the 2018 World Report on the Situation of Human Rights Defenders, HRDs in Liberia face severe restrictions in exercising their rights to freedom of opinion and freedom of expression, including threats from state and non-state actors (Forst, 2018). Also, the United Nations Human Rights Committee in its 2018 Concluding Observation on Liberia expressed concern "...that LGBTI individuals experience violence, arbitrary detention and police abuse of authority..."³¹ and frowned at reports "...of harassment and reprisal against defenders and associations advocating for the rights of LGBTI individuals".³² Similarly, the 2018 European Union Annual Human Rights Report analyzed the climate for HRDs in Liberia. The report concluded that "there are incidents of individual harassment and abuse of power by public officials who feel directly threatened by the activities of specific HRDs".³³

Despite the threats and risks currently faced by HRDs in Liberia, their situation is comparatively better than most African countries. It is gratifying that the restrictions on HRDs in Liberia has not extended to imposition of

³¹ Paragraph 18 of the Concluding Observation of the Human Rights Committee Initial Report of Liberia held on 23rd July 2018.

³² Ibid.

³³ EU Annual Human Rights Report: Liberia Country Update, available at https://eeas.europa.eu/delegations/liberia/45530/eu-annual-human-rights-report-liberia-country-update_en accessed 05/08/2019.

undue bottle-necks in registering and operating non-governmental organizations or holding public protests, gatherings and assemblies. It has also not stretched to the use of financing restrictions by the government to undermine association of HRDs. In the same vein, the prevalence of extra-judicial killings, enforced disappearances, torture and inhuman and degrading treatment, violence and arrests as well as arbitrary detentions of HRDs in Liberia compared to most other countries in the continent is very low in Liberia.

Conclusion

HRDs in Liberia still face violations and abuses despite normative and institutional advances made for their protection and in disregard to constitutional provisions and regional and international treaties ratified and applicable in Liberia which obliges it to protect HRDs within its jurisdiction (Athanasios, 2005). The substantive content of Liberia's tripartite obligation to protect, prevent, and fulfil human rights within its jurisdiction should extend beyond the prohibition of acts of violence against a person's physical integrity in the constitution and must ensure on the one hand that the work of HRDs are protected and not randomly criminalized.³⁴

The government ought to reaffirm that the protection of human rights and fundamental freedoms of HRDs as a national priority and concern through the adoption of specific legislation for the protection of HRDs. It should also adopt effective measures to prevent violations against them and or address such violations whenever they occur. The government should also refrain from criminalizing or taking other adverse actions against HRDs, repeal punitive and restrictive laws and policies, abolish practices that infringe upon the activities and rights of HRDs, engage in dialogue and consultation with HRDs and publicly recognize and support their work through communication and information campaigns. It is an obligation on the part of the Government of Liberia to make conscious efforts like most countries to end *impunity and break the cycle of violence against HRDs by developing feasible national protection mechanisms*.³⁵ The government can do this through legislative measures aimed at establishing designated police or security outfit for the investigation and prosecution of threats or violations against HRDs.³⁶

Whereas Liberia has not degenerated to the stage whereby the criminalization of expression is used as a deliberate policy of repression against HRDs, however, the government has an obligation not to be passive when any form of threats emerges through citizenry self-help measures. To contribute to the development of a safer and more conducive environment for HRDs to be able to carry out their work in Liberia, there is certainly the need to raise awareness about the DHRD and the crucial role of HRDs. To enable government conduct more responsive oversight roles over its institutions and traditional structures and forestall harmful customary practices that infringe human rights in general and fester attack on HRDs in particular, the capacity of relevant stakeholders, including the Police, Ministry of Justice, Ministry of Internal Affairs and County Officials should be strengthened.

Similarly, the INCHR should better implement its mandate and rise to the occasion of being the clearing house for the protection of HRDs in Liberia. It should fully apply its mandate and rigorously monitor

³⁴ UN Human Rights Committee, General Comment No 6: Art 6 (Right to Life) UN Doc. CCPR:30-/04/1982 para. 3.

³⁵ Some States like Brazil, Burkina Faso, Colombia, Côte d'Ivoire, Guatemala, Honduras, Mali, Mexico, the Philippines and Sierra Leone have recently introduced or are considering legislation or decrees to protect defenders. See also the 2016 Report of the Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, p. 17.

³⁶ UN Human Rights Committee, General Comment No. 34. See also the case of Philip Afuson Njuru v Cameroon where the HRC stated that "there can be no legitimate restriction under Art. 19, para. 3, which would justify the arbitrary arrest, torture, and threats to life".

government's compliance with all relevant human rights norms and standards in respect of HRDs, systematically monitor and denounce violations including reprisals against HRDs, implement a mechanism to address any such reprisals and make recommendations through its annual or thematic reports. It should also continue to coalesce and reinforce collaboration and dialogue amongst HRDs, support the development of informal network of HRDs for consultation and coordination of initiatives to protect them and review and advocate against legislation and policies that impose restrictions on civic space.

The INCHR can also use its promotion and protection mandates to hold the Government of Liberia accountable for violations committed against HRDs, maintain an institutional focus, prioritize the work of protecting HRDs, improve and promote dialogue with the government on the situation of HRDs. Through proper funding by the government and effective resource mobilisation from donor and development partners, INCHR can establish and manage an "Emergency Defenders Protection Fund" specifically for quick response to the protection needs of HRDs.

On the other hand, HRDs coordination and network can be strengthened and consolidated into a very strong nucleus that is able to provide protection for defenders through a variety of ways, including institutionalizing security training and sharing security information applicable to their immediate environment. They could be trained to have organization-specific protection mechanism, as well as empowered to develop security resources for individual organization or networks. This is very important because knowledge of safety measures by HRDs will complement the efficacy of any applicable national normative and institutional frameworks for their protection.

Another protective mechanism for HRDs by HRDs can be to set up networks and peer collaboration amongst themselves and to be emboldened by external assurances and existence of regional and international mechanisms for their protection, including the presence and implementation of the mandate of the Office of the United Nations Office of the High Commissioner for Human Rights in Liberia, the presence of the delegation of the European Commission and western embassies in Liberia. HRDs in Liberia can avail themselves of the open spaces for dialogue created by the active and respectful presence of the United Nations and international community in Liberia. They can also use the mandate of the UN Human Rights Protection Mechanisms to prevent, document, denounce and seek redress for human rights violations suffered by HRDs, develop training for government actors and institutions in order to raise their awareness of the role of HRDs in promoting and protecting human rights.

HRDs in Liberia can leverage the EU Guideline to interface with EU embassies in Monrovia since Member States of the EU are under obligation to adopt necessary protective measures towards the protection of HRD, including coordination and sharing of information, giving visible recognition to the risks of HRDs and periodic monitoring of institutional frameworks within which HRD operate. HRD in Liberia can also benefit from EU support to social and economic development programs, including financial support for capacity building and public awareness campaigns.³⁷ Keeping close contact with embassies bilaterally or multilaterally, particularly those that wield strong influence over the Government of Liberia can facilitate timely information sharing with the embassies of imminent threats and also avail the "preventive actions" of the EU embassies including public

³⁷ Ensuring Protection—European Union Guidelines on Human Rights Defenders, available at <https://www.refworld.org/docid/4705f6762.html>.

actions. Public actions, including public statement of the embassies in Liberia can increase the legitimacy of the HRDs and the work they do and reassure them that they are not alone in the struggle.

HRDs are expected to enhance collaboration with national, regional and UN human rights mechanisms to prevent and respond to human rights violations perpetrated against them. They should also set up and reinforce national and regional defenders networks to promote collaboration and intersectoral approaches that establish alliances with different groups, develop innovative approaches that involve the diverse stakeholders, including the media. Since reasonable degree of threats and violence against HRDs in Liberia are perpetrated by private citizens acting individually or on behalf of a community, it is also expedient to create platform for mutual engagement between traditional practitioners and HRDs as a veritable medium for sensitizing traditional practitioners and the citizenry on the essential roles of HRDs in the promotion and protection of human rights in Liberia.

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