



**European Master's Degree in Human Rights and Democratisation**

**E.Ma Thesis**

**Watching the Watchmen –The defense and  
promotion of Human Rights by Human  
Rights Defenders in local, national and  
international contexts and the protection of  
their activity**

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**Abstract:**

Human Rights Defenders (HRDs) have emerged as a single category that includes all those who defend and promote human rights and other universally recognized rights and freedoms. The United Nations Declaration on Human Rights Defenders is the main norm regarding this topic, although the European Union Guidelines on Human Rights Defenders and other instruments at international and state level have emerged since then, with different outcomes. The concept of HRDs embraces a number of different actors (NGOs, Social Movements, individual activists and human rights field officers) that have in common their work to strengthen human rights in their different levels of action. Their activity as HRDs influences positively on the situation of human rights but also involves some risks for HRDs themselves such as criminalisation, violence and disappearances. The existence of protection mechanisms is a positive step but those measures need to be reinforced and updated regularly since the protection of HRDs means, undoubtedly, the protection of human rights.

*Keywords:* Human rights defenders; NGOs; social movements; activism.



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## Acronyms

|         |  |
|---------|--|
| ACLU    | American Civil Liberties Union.  |
| AED     | European Democratic Lawyers.   |
| AI      | Amnesty International.   |
| CAT     | Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. |
| CoE     | Council of Europe  |
| CPT(Sp) | Coordinadora para la Prevención de la Tortura.   |
| EChHR   | Charter of Fundamental Rights of the European Union.   |
| ECHR    | European Convention of Human Rights.   |
| ECtHR   | European Court of Human Rights.  |
| EU      | European Union.  |
| HRC     | Human Rights Council.  |
| HRD     | Human Rights Defender.   |
| HRF     | Human Rights First.  |
| HRW     | Human Rights Watch.  |
| IACtHR  | Inter American Court of Human Rights.  |
| ICCPR   | International Covenant on Civil and Political Rights.  |
| ICERD   | International Convention on the Elimination of All Forms of Racial Discrimination.                 |
| ICESCR  | International Covenant on Economic, Social and Cultural Rights.                                    |
| IGO     | Intergovernmental Organization.  |
| INGO    | International Non-governmental Organisation.   |
| NGO     | Non-governmental Organisation.   |
| SMO     | Social Movement Organisation.  |
| UDHR    | Universal Declaration of Human Rights.   |

*“I’m a pessimist because of intelligence, but an optimist because of will”.*

(Antonio Gramsci in his Letter from Prison of 19 December 1929)

*“All over the place, from the popular culture to the propaganda system, there is constant pressure to make people feel that they are helpless, that the only role they can have is to ratify decisions and to consume”.*

(Noam Chomsky)

## **Introduction.**

From the Spartacus revolt (if not before) to the *Cablegate* case<sup>1</sup> there have been a number of men and women who dedicated their life to fight for freedom and justice. Once called just “activists”, “revolutionaries”, “democrats” or “community leaders”, among other denominations, we may comprise today all of these categories into the more general concept of Human Rights Defender (HRD). Thus, HRDs are all those people who dedicate their time and efforts to improve the conditions of life of the rest of the human beings, in concrete through the defense and promotion of human rights.

The importance of a study on HRDs relies on the fact that, as acknowledged in recent international documents, HRDs have an increasing and fundamental role in the defense of human rights but face enormous risks because of this activity. These risks include persecution, defamation, criminalization, and even extrajudicial killings, among other threats.<sup>2</sup> Furthermore, normative emanating from intergovernmental institutions (UN,

1 “Cablegate” is the name of the operation started by the organization Wikileaks to make public secret cables written and sent by embassies of the United States of America. More info at <http://cablegatewikileaks.org/> and <http://mirror.wikileaks.info/> (last access 11 April 2011).

2 Sub-Commission on the Promotion and Protection of Human Rights Resolution 1999/3, p.2: “Noting with deep concern that, in many countries, in contradiction of the commitments and obligations of Governments, persons and organizations engaged in promoting and defending human rights are facing threats, harassment and insecurity”. This document also lists cases of several HRDs murdered around the world.

Council of Europe, European Union) has been developed during the last two decades, being the Human Rights Council 13/13 for the Protection of human rights defenders<sup>3</sup> and the UN Declaration on Human Rights Defenders<sup>4</sup> two of the main norms on the subject. Furthermore, the United Nations even appointed a Special Representative on Human Rights Defenders. However, NGOs have their own view on this issue. In the Paris Declaration of The Human Rights Defenders Summit of 10 December 1998<sup>5</sup> NGOs make concrete the abstract references of the UN Declaration and points to those who attack HRDs, namely “multinational companies and international financial institutions”<sup>6</sup> and States.<sup>7</sup>

Until now the focus has been made in measuring the influence of NGOs in the adoption of relevant national or international policies. My research will attempt to, comprehensively (although not exhaustively), analyze a wider range of HRDs (not just NGOs) in international, national and local levels, focusing on their status, protection and influence in defending and promoting human rights as well as the risks they face doing it.

The times we are living these days call upon the safeguard of human rights activists with a stronger passion and commitment, since HRDs face increasing risks<sup>8</sup> and there is

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3 Human Rights Council Resolution 13/13 A/HRC/RES/13/13 (15 April 2010).

4 UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144 [on the report of the Third Committee, A/53/625/Add.2), 1999. We will also mention this document as “UN Declaration on HRDs” from now on.

5 Human Rights Defenders Summit, The Paris Declaration: The Human Rights Defenders Summit, 10 December 1998, AI Index: ACT 30/32/98 (Public).

6 The Paris Declaration: The Human Rights Defenders Summit, 10 December 1998, AI Index: ACT 30/32/98 (Public), Art. 21. We will abbreviate it from now on as “Paris Declaration”.

7 “WE CONDEMN the proliferation of systematic measures and practices used by States to prevent or impede the legitimate work of human rights defenders, -including censorship and seizure or publications, defamation, administrative and police harassment, intimidation, implication in criminal cases, their identification with 'terrorist' groups, restrictions imposed on the creation or registration of associations, the legal and administrative obstacles to the right of access to and dissemination of information, the surveillance and control of access to funding and the use made of such funds, the creation by the authorities of State-controlled non- governmental organizations, reliance on a state of emergency or public order requirements, impunity for the perpetrators of such acts against human rights defenders;” The Paris Declaration: The Human Rights Defenders Summit, 10 December 1998, AI Index: ACT 30/32/98 (Public), art. 17.

8 “WE DEPLORE the fact that the increase in the number and influence of human rights defenders in the world has been accompanied by a development and systematisation of repressive measures and practices used against them .” The Paris Declaration, AI Index: ACT 30/32/98 (Public), art.14

a lack of protection of human rights activists.<sup>9</sup> Despite the undoubted duty of the State to protect the citizens under his jurisdiction,<sup>10</sup> the so-called “War on Terrorism” (including elements as the Patriot Act in the USA and the Area of Security of Freedom, Security and Justice in the European Union, among others) are examples of direct attacks on already recognized liberties<sup>11</sup> that must be stopped by the civil society, action in which HRDs play a crucial role.

It is a common place in all of the late work of the analyzed organizations in this thesis the increasing risks of HRDs after the 9/11 events. The recurrent link between terrorism and exceptional measures is extremely dangerous since these measures tend to stay even after the dangers stop<sup>12</sup> and may affect gravely human rights.<sup>13</sup> The use of war-like legislation instead of regular criminal law<sup>14</sup> is often a source of human rights violations that cannot be tolerated in a democratic society. The Human Rights Council is aware of this and stated in its Resolution for the Protection of Human Rights Defenders that “in some instances, national security and counter- terrorism legislation and other measures have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law”.<sup>15</sup> Even in situations that apparently are not even related to civil disobedience or political movements,

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9 “WE DEPLORE the fact that in some countries, those systematic measures of repression are such that women and men have no means of promoting and protecting human rights and fundamental freedoms at a national level. ”The Paris Declaration, AI Index: ACT 30/32/98 (Public), art.15.

10 See, for example IACtHR: Velasquez Rodriguez v. Honduras, (29 July 1988); Castillo Petruzzi v. Peru (30 May 1999) or ECHR: Osman v. UK (28 Oct 1998), analyzed by Hustad, 2009, p.4.

11 See Brannigan v. United Kingdom, ECHR, Series A, No. 258-B on extension of incommunicate detention, for example. In connection with rights of property see Ayadi v Council (T-253/02) [2006] ECR II-2139 and Hassan v Council (T-49/04) [2006] ECR II-52. On lists of terrorists: Organisation des Modjahedines du peuple d’Iran v. Council of the European Union (T-228/02) [2006] . Also ECtHR: Klass v. Germany, 1971 ECtHR 5029 (6 Sep 1978), p. 49: “The Court, being aware of the danger such a law poses of undermining or even destroying democracy on the ground of defending it, affirms that the Contracting States may not, in the name of the struggle against [...] terrorism, adopt whatever measures they deem appropriate.” Quoted by Hustad, 2009, p.8.

12 On the other hand, the “war on terror”, as other “wars” like the “war on drugs”, is a never-ending process.

13 “We reject the arbitrary and inadmissible extension of the concept of terrorism to include public and democratic activities that fall under the right of expression and the right to a free political and social engagement. ” AED Motion, 19 April 2008.

14 However, rules of criminal law might be affected as well. In Greece, the burden of the proof is inverted in practice when someone is accused of being part of a terrorist group, destroying one of the classic pillars of criminal law and human rights law. Interview with Kostis Papaioannou, 2011.

15 Human Rights Council, A/HRC/RES/13/13 (2010).



intelligence agencies may qualify it as a terrorist threat. This is the case of the movement Reclaim the Streets analyzed on Chapter 2, labeled as a “terrorist threat” by the FBI.<sup>16</sup>

How do HRDs react to this and other threats to human rights? As it will be analyzed during this dissertation the question here relies, first, in acknowledging the fact of the contribution of HRDs to the strengthening of human rights; secondly, we need to study which is the protection given to these activists and to what extent the protection of HRDs is directly linked to the defense and promotion of human rights. A number of concrete questions will arise then: What is a Human Rights Defender and how is their role protected by the International Community? How does the current process of professionalization affect them? How do HRDs perform their activity how are they able make developments in the situation of human rights within the society? Which risks do they face when protecting and defending human rights? This thesis will attempt to clarify these questions and others resulting from them.

We will try to approach the topic from a personal perspective due to my experience in social movements and NGOs. We agree with Bevington and Dixon when they assure that “social movement scholars need not and in fact should not aspire to be detached from movements. Instead, the researcher’s connection to the movement provides important incentives to produce more ‘objective’ research to ensure that the researcher is providing those movements with the best possible information. Indeed, the engaged researcher has more at stake in producing accurate findings than one with no connection to the movement”.<sup>17</sup>

The methodology of this work will be based, first, on the analysis of the normative context and regulations on HRDs in both international and national contexts. Secondary sources used will be journal articles, monographs on NGOs and social movements,<sup>18</sup> reports and articles made by relevant NGOs and SMOs and websites on specific HRDs. Furthermore, interviews with human rights defenders and with relevant institutions will

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<sup>16</sup> Stallman, 2001.

<sup>17</sup> Bevington & Dixon, 2005, p.192.

<sup>18</sup> From this moment we will use the acronym SMO (Social Movement Organisation) when referring to social movements.

be another source of information. These interviews will be especially valuable to have an updated picture from the field of the situation on the field.

We will analyze the concept of HRD in a theoretical and practical way. The main objective of this thesis will be to study whether the safeguard of HRDs affects directly or indirectly the general protection of human rights since the activities of HRDs do have a general impact on the general state of the rights included in the Universal Declaration of Human Rights and other international instruments.

This thesis is divided in two parts: The first one is dedicated to the delimitations of the concept of HRD and the differences and similarities between the categories of HRDs, namely NGOs, social movements and activists. The second part of our research is dedicated to analyze the influence of HRDs on the situation of human rights and finally the risks they face because of their activity and the protection they enjoy, along with some proposals for the improvement of this protection.

First of all, we will try to delimitate the concept of HRDs using the definitions given by different international institutions as the United Nations, the Council of Europe or the European Union. These definitions are widely accepted not just in academic environments but also within national legislations. Once defined, we will analyze the status,<sup>19</sup> rights and duties of HRDs according to international documents.

During the second chapter we will dissert about the different categories of HRDs. Not attempting to be exhaustive, we will focus on three types of HRDs: First, I will define the role NGOs play as a specific group of HRDs, since in most of the occasions they collaborate with government agencies and thus have a specific impact, different from other HRDs. Afterwards we will analyze the role of informal organizations that may be brought together into the categories of “social movements” and “activists”, which may or may not collaborate with the government or with inter-governmental agencies but that may have as a main feature the active role of creation of a “parallel society” added to the general defensive role (common to all HRDs) of acting *against* the system.

Once into the part of the study that focuses on the activities of the HRDs on the field, we will examine in the third chapter the impact of HRDs on different territorial

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<sup>19</sup> I will study not just the legal status but also other mentions to the role and character of HRDs.

frameworks. we will see how in concrete situations (in international and national institutions but also within local communities) HRDs have a direct or indirect impact on the situation of human rights and how that benefits to the general enforcement of the Universal Declaration of Human Rights. In order to better support our arguments we will present examples of the activities of international organizations as Amnesty International or Human Rights Watch but also the actions of not so well known (but not less important) local organizations in Spain.

Finally, we will discuss the risks that HRDs face during their work and, given the actual state of protection given by international and national legislation, see how HRDs can be protected in a more effective way.

The Latin question “Quis custodiet ipsos custodes?”<sup>20</sup> that inspires the name of this dissertation could be answered using three words: Human Rights Defenders. They are the ones watching the watchmen and therefore their work is worth to be protected, since the promotion and protection of human rights depends highly on them.

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20 “Quis custodiet ipsos custodes? is a Latin phrase traditionally attributed to the Roman poet Juvenal from his Satires (Satire VI, lines 347–8), which is literally translated as "Who will guard the guards themselves?" Also sometimes rendered as "Who watches the watchmen?", the phrase has other idiomatic translations and adaptations such as "Who will guard the guards?". Wikipedia, article “Quis custodiet ipsos custodes?” available at <http://bit.ly/3DkmKl>(last access 10 May 2011).

## **PART 1: Human Rights Defenders regime: Legal aspects and definitions.**

### **Chapter 1 - The conceptualization of activism: Human Rights Defenders defined.**

#### **1.1 Concept of Human Rights Defender and delimitations.**

In order to define a Human Rights Defender (HRD) we may use the description included at the EU Guidelines on Human Rights and International Law<sup>21</sup> that states that “(h)uman rights defenders are those individuals, groups and organs of society that promote and protect universally recognized human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as (...) economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities”. It does not cover those groups or individuals who “commit or propagate violence”<sup>22</sup> but it includes the “criticism of government policies and actions”,<sup>23</sup> which in certain countries might be considered a crime itself.<sup>24</sup>

This definition of HRD has the next characteristics:

- they can be either singular citizens or an association of them. They do not need to be necessarily members of NGOs. Members of the government, public workers<sup>25</sup> as well as “community leaders, lawyers, trade unionists, women's or children's rights activists” and any other kind of citizen may be considered HRD.<sup>26</sup>
- their role is limited to “universally recognized human rights and freedoms”. This would include, at least, the Universal Declaration of Human Rights (UDHR), the

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21 EU Guidelines on Human Rights and International Law, March 2009, available at [www.consilium.europa.eu/uedocs/cmsUpload/QC8308123ENC.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/QC8308123ENC.pdf) (last access 4 April 2011).

22 *Ibidem* p. 40.

23 *Ibidem* p. 41.

24 For example, article 301 of the Criminal Code of Turkey condemns criticism of the State of Turkey and its institutions. CoE, Document 11202 of the Parliamentary Assembly, para.39.

25 United Nations Regional Informational Center (UNRIC), Factsheet No. 29 Human Rights Defenders Protecting the Right to Defend Human Rights, 2004, p.6.

26 European Parliament, Defenders take the floor Press Kit, 2008, p. 1.

International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). But, in fact, the list should include also other instruments as the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child (CRC) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), among others.

- HRDs have two main activities in relation to human rights: Protection and Promotion. “Protection” has both a passive and active aspects. The passive means to react to human rights violations using tools as making reports on abuses committed by state or non- state actor or hosting a HRDs at risk. The active aspect could include actions as preparing guidelines for the authorities or doing strategic litigation.

The promotion of human rights may include the organization of seminars or trainings for activists, the dissemination of reports, or the organizations of concentrations or rallies for different purposes.

- this actions may be made in a voluntary basis or professionally.<sup>27</sup>
- they may not choose a list of “acceptable” human rights and act against others they do not like. For example, a person defending workers rights while acting against gay people could not be considered HRD.<sup>28</sup>
- also, they do not need to have the legal right to claim something to be HRD. They are simply HRDs because they claim human rights, whether the legal situation of the country might be able to cover those issues or not. For example, a group of people asking for land rights over a territory may or not be right about who is the legitimate owner but they have the right to claim those rights, and to be considered HRDs for their actions.<sup>29</sup>

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27 UNRIC, 2004, p.6.

28 *Ibidem*, p.9.

29 *Ibidem*, p.9.

- HRDs do not defend just rights or freedoms of individuals but also those of “groups such as indigenous communities”. As it is well known, human rights violations do not occur just to individual human beings. Serious attacks happen as well to entire communities. The case of the Ogoni people in Nigeria or the attempts to privatize water in Bolivia are just two examples of how groups of people need to be protected under International Law.
- Finally, a HRD cannot act using all the means that they believe necessary, such as killing, torturing or committing any other crime. In case HRDs use criminal ways for their purposes or if they “propagate” a crime already committed, those people involved would not be covered by the definition stated above.

A more detailed list of actions that HRDs often do in their regularly work is detailed at the Factsheet No. 29 Human Rights Defenders Protecting the Right to Defend Human Rights made by the Office of the United Nations High Commissioner for Human Rights.<sup>30</sup> This document states that HRDs activity may cover a broad range of issues such as investigating “summary executions, torture, arbitrary arrest and detention, female genital mutilation, discrimination, employment issues, forced evictions, access to health care, and toxic waste and its impact on the environment” as well as pushing to enforce the rights invoked in human rights treaties (“implementation”) or training and educating on human rights issues.<sup>31</sup> Also, seeking remedies for victims of violations, fighting against impunity and “mainstreaming human rights culture and information on human rights defenders” are essential tasks of HRDs.<sup>32</sup>

All civil, political, social, economic and cultural rights are subjects of interest of HRDs.<sup>33</sup> Furthermore, as said before, they may also advocate for the rights of groups such as “women’s rights, children’s rights (...)”<sup>34</sup> and other collectives.

In relation to the question about where HRDs act the answer is simple: Everywhere.

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<sup>30</sup> See *supra* footnote 24.

<sup>31</sup> UN, Factsheet No. 29, 2004, p. 4-5.

<sup>32</sup> Council of the European Union, EU Guidelines on Human Rights and International Law, 2009, p.41.

<sup>33</sup> “Amnesty International’s mission is to conduct research and take action to prevent and end grave abuses of all human rights – civil, political, social, cultural and economic. From freedom of expression and association to physical and mental integrity, from protection from discrimination to the right to housing – these rights are indivisible”. Amnesty International, World Report 2010, iii.

<sup>34</sup> Factsheet No. 29 Human Rights Defenders Protecting the Right to Defend Human Rights, 2004, p.2.

They may act at supranational, national, regional or local level, since human rights violations may happen in any of these contexts.<sup>35</sup> Therefore, a small group of activists in Kenya fighting for the right of access to water lobbying local authorities and Human Rights Watch briefing on police abuse before international institutions are part of the same movement. As we may appreciate in several reports made by the Special Representative of the Secretary-General on human rights defenders there are examples of attacks to HRDs all over the world, from Algeria to Zimbabwe.<sup>36</sup>

## 1.2 Status of HRDs.

In order to analyze the legal context regarding HRDs we will begin analyzing the status they enjoy. Within the international legal framework we can find documents and statements about HRDs made by the General Assembly,<sup>37</sup> the United Nations Commission on Human Rights (UNCHR), today replaced by the United Nations Human Rights Council,<sup>38</sup> and also the Secretary General,<sup>39</sup> as well as other institutions.<sup>40</sup>

The main instruments concerning HRDs are, in a general level, the Universal Declaration of Human Rights (articles 19, 20 and 28 related to freedom of speech, assembly and association) and the International Pact on Civil and Political Rights

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35 *Ibidem*, p.3.

36 For a list of violations all around the world, see E/CN.4/2002/106 , 2002. For specific country based resolutions see, for example, E/CN.4/2004/94/Add.3, 23 March 2004 (violations in Israel) or E/CN.4/2003/104/Add.1 20 February 2003 (Egypt and Israel). Also check E/CN.4/2002/106 and Add.1-2, A/57/182, E/CN.4/2003/104 and Add.1-4, A/58/380, E/CN.4/2004/94 and Add.1-3, A/59/401 and E/CN.4/2005/101 and Add. 1-3 and Add.3/Corr.1 .

37 General Assembly Resolutions 53/144 (9 December 1998), 54/170 (17 December 1999), 56/163 (19 December 2001), 60/161 (28 February 2006), 64/163 (18 December 2009) and Document 55/292 (11 August 2000).

38 UNCHR Resolution 2000/61 (26 April 2000), 2001/64 (25 April 2001); Human Rights Council Resolution 13/13 (15 April 2010).

39 Report for the Promotion and Protection of Human Rights Defenders. 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, E/CN.4/2000/95, 2000.

40 Economic and Social Council Decision 2000/220, 16 June 2000; HRD Commission Resolution 2002/70, E/2002/23- E/CN.4/2002/200, 25 April 2002; Commission on Human Rights Resolutions 2003/64, E/CN.4/2003/L.11/Add.6, 24 April 2003; 2004/68, E/CN.4/2004/127, 21 April 2004; and 2005/67, E/CN.4/2005/L.10/Add.17, 20 April 2005; Economic and Social Council Decision 2000/220; Reports of the Special Rapporteur on the situation of Human Rights Defenders A/65/223, A/HRC/16/44, A/HRC/13/22, among others.

(articles 19, 21 and 22) on the same topics. A more specific approach that concerns the legal status of HRDs are article 2 and 3 of the UN Declaration on Human Rights Defenders.<sup>41</sup> In this last document, article 2 recalls the responsibility and obligation of the State to protect human rights and article 3 makes this obligation more concrete when establishes that the legal framework of the State is the appropriate one to regulate HRDs' activities.

Although not legally binding, the Declaration “establish(es) widely recognized standards” and is “referred to by national and international courts and bodies in their conclusions, recommendations and decisions”.<sup>42</sup> In its first article we find the foundations of the HRDs normative. Article 1 states that “(e)veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”

Within the context of the Council of Europe, the Declaration of the Committee of Ministers on the Protection of Human Rights Defenders and Promotion of their Activities states that the question of the legal registration of HRDs must not be obligatory, aware of bureaucratic measures that some States impose to restrict the activities of HRDs.<sup>43</sup> Therefore, everyone has the right (and the duty)<sup>44</sup> to stand for human rights and the registration in public registers must not be a requirement *sine qua non* for HRDs. In case they decide to acquire a legal personality, the national legislation might request registration in order to make it possible but in that case the Member States must not exercise any discrimination during the process. The legal procedures for registration “must be clear and publicly accessible and any resulting restrictions must be confined to measures that are necessary in a democratic society”.<sup>45</sup> Finally, the

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41 A/RES/53/144 [on the report of the Third Committee, A/53/625/Add.2), 8 March 1999.

42 International Service for Human Rights, 2002, p.10.

43 See for example the impediments in Darfur in *Sudan: Key Facts on Bureaucratic Impediments and the difficulties of working in Darfur*, 13 December 2007, at <http://www.refintl.org/content/sudan-key-facts-bureaucratic-impediments-difficulties-working-darfur> (last access 7 April 2011) or the mention to the new Russian law on registration of NGOs at the Parliamentary Assembly of the CoE Document 11202, para.38.

44 Draft Declaration of the Committee of Ministers on the Protection of Human Rights Defenders and Promotion of their Activities, CM(2008)5, 8 January 2008, art. 3.

45 *Ibidem*, art.12



importance of the role of HRDs was strengthened at the UN level with the designation by the UN of the Special Representative on the situation of human rights defenders in 2000 until the transformation in 2008 by the UN Human Rights Council of the Special Representative into a Special Rapporteur.<sup>46</sup>

The European Union also takes into account the role of HRDs. The creation in 2008 of the EU Guidelines on Human Rights Defenders<sup>47</sup> (later on included in the EU Guidelines on Human Rights and International Law<sup>48</sup>) established a framework inside the EU normative to protect HRDs, as we will mention in the sub-section on “Protection”. Therefore, the European Union has established a clear policy towards them, although it is not clear why the EU focuses with these Guidelines on the protection of HRDs abroad and not inside the territory of the Member States. A reason for this may be, as it happened in the past against Soviet and other communist countries, that Human Rights may also be used “by governments as an instrument of foreign policy”.<sup>49</sup> Nevertheless, the concept of HRDs has been strengthened in the EU context and, to a certain point, protected with practical and supervisable mechanisms.

In relation to Human Rights Field Officers (HRFOs), analyzed in Chapter 3, a Decalogue of statements related to the status of HRFOs may be found in the Guiding Principles.<sup>50</sup> After establishing which legal rules must affect these professionals, the Guiding Principles analyze the objectives they have and establish that these are “to protect individuals by preventing violations from occurring, especially for those facing particular risks, ensuring accountability for violations that have occurred, and empowering persons to protect themselves. HRFOs work usually under a mandate, which establishes the specific role and tasks they need to perform during their activity, which must be followed and, when in doubt, consulted with superiors in order to not to

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46 Mandate of the Special Representative of the Secretary-General on the situation of human rights defenders, Human Rights Council, U.N. Doc. A/HRC/7/L.23, 25 March 2008

47 General Affairs and External Relations Council of the European Union Council, Guidelines on Human Rights Defenders, 8 December 2008, available at

<http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesDefenders.pdf> (last access 7 April 2011).

48 QC-83-08-123-EN-C, March 2009, available at

[www.consilium.europa.eu/uedocs/cmsUpload/QC8308123ENC.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/QC8308123ENC.pdf) (last access 4 April 2011).

49 Baehr, 1996, p.124

50 Human Rights Law Center, 2008.

“jeopardize the mission as a whole” (Guiding Principle 3).

### **1.3 Rights and Duties concerning HRDs.<sup>51</sup>**

As any other individual or group of them, HRDs are obviously covered by all human rights recognized in international and national law. In this section I will mention those rights and duties linked to their specific activity and, in some occasions as in the UN Declaration on HRDs, recognized to them explicitly. Thus, we can acknowledge a number of rights and duties concerning HRDs recognized in international legal instruments:

1- Fundamental Rights: Right to life, liberty, security, fair trial, conscience, and private and family life.<sup>52</sup>

2- Specific rights concerning the activities of HRDs:

- Right to join an organization: In order to make possible the activities of those promoting and defending human rights, it is stated that individuals or groups are free to “form, join and participate in non-governmental organizations, associations or groups” and to be in contact with other NGOs or INGOs.<sup>53</sup>

- Rights related to freedom of information<sup>54</sup> are also part of HRDs' rights and they cover the right to “know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems” and to disseminate that information publishing, imparting or disseminating to others “views, information and knowledge on all human rights and fundamental freedoms”.

- Freedom of expression in this case includes “to study, discuss, form and hold opinions

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51 In order to avoid repetition and since those those rights are covered in the section on “Status of HRDs”, there will be no mention in this section to the UN Declaration of Human Rights and the ICCPR, which are the primary source of the rights contained here.

52 European Convention on Human Rights (ECHR): art. 2, 5, 6, 8, 9; Charter of Fundamental Rights of the European Union (EChHR) art. 2, 6, 7,10, 33, 47.

53 UN Declaration on HRDs, A/RES/53/144, 1999, art.5, ECHR art. 11 and art. 12 EChHR.

54 UN Declaration on HRDs, art. 6 and and EChHR art. 11.

on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters” and to gather information in “public hearings, proceedings and trials” as well as criticize governmental policies and present petitions related to human rights violations.<sup>55</sup>

- Right to participation in public affairs (including explicitly aliens in the ECHR).<sup>56</sup>

- Right to access to funding.<sup>57</sup> HRDs must have a legal access to funding in order to be able to work effectively. The restriction of funds has been a common way for the States to restrict the rights of HRDs as it happens in Egypt with the law that allows to block NGO's funds with just an administrative order or the prohibitions in Belarus for foreign NGOs.<sup>58</sup>

- Another important right is the one to have access to an “effective remedy”<sup>59</sup> in case of a violation of their role as HRD, and includes the right “to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, (...) all without undue delay”.<sup>60</sup>

Regarding the duties that affect HRDs, besides the general one for the States and HRDs not to violate the rights recognized by international law or *ius cogens* is the obligation for the State to perform all the necessary actions in order to protect the rights included in the Universal Declaration of Human Rights and to teach human rights at all levels of education. HRDs have also duties towards the community.<sup>61</sup> The creation of National Institutions for the protection of HRDs is another of the duties of the States resulting as

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55 UN Declaration on HRDs , art. 9.3. Also ECHR *art.10 and and EChHR art. 11.*

56 UN Declaration on HRDs art.8; ECHR art. 16.

57 UN Declaration on HRDs art. 13.

58 International Service for Human Rights, 2005, p.10.

59 UN Declaration on HRDs art.9 ; ECHR art. 13; EChHR art. 46.

60 Other rights and duties included in the UN Declaration on HRDs are:

- The prohibition of the obligation to act against human rights (article 10).
- The right to exercise the occupation of profession of his/her own (art. 11)
- The right to participate in public demonstrations and other “peaceful activities against violations of human rights and fundamental freedoms” (art.12).
- The right to access to documentation that serves for the purpose of dissemination and protection of human rights (art.13)

61 UN Declaration on HRDs art. 14, 15 and 18.

a consequences of the Paris Principles<sup>62</sup> that need to be enforced. Other duties regarding protection to HRDs are included in the section titled “Protection of HRDs” in Chapter 4.

#### **1.4 Conclusions.**

From this Chapter we wanted to expose an overview of the legal and factual aspects surrounding the figure of Human Rights Defenders. After decades of using a variety of terms such as “activists” or “community leaders”, the international community has established the concept of Human Rights Defender as a general categorization that embraces the activity of a vast range of individuals and groups that defend and promote human rights all over the world. The definition, although clear on paper, might be not so evident for those governments that do not see as “appropriate” the critics towards its policies. Suddenly, as we will see during several parts of this dissertation, HRDs will become “terrorists”, “friends of terrorists” or “agitators” that do not deserve the protection of the State.

We have analyzed how the crucial activity they do is recognized in several documents and how the acknowledge of the role of HRDs rose in international contexts the importance of their protection. For example, the HRC mentioned recently that “the level of respect and support for human rights defenders and their work is important to the overall enjoyment of human rights”.<sup>63</sup> Nevertheless, these policies are still “newborns” and need to be implemented and reinforced at both the international and national foras.

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62 UN, Principles Relating to the Status of National Institutions (The Paris Principles) adopted by General Assembly resolution 48/134 of 20 December 1993, 1993.

63 A/HRC/RES/13/13, 15 April 2010, p.1.

## **Chapter 2 - Democracies within Democracies: NGOs, social movements and activists as different types of HRDs.**

*“Left to themselves, laws are no more than abstractions composed of empty words. What brings them to life is the people who make them, and those who apply them (...) That burden has traditionally fallen on others, individually and more fortunate than the victims, who have banded together to give of their time and effort (...) to improve the lot of those who have suffered deprivation, oppression, and persecution”.* P. Sieghart.<sup>64</sup>

*“Where there is power, there is resistance”.* Michel Foucault.<sup>65</sup>

### **2.1 NGOs: Special profile of organizations working with/within the system.**

*“The NGOs have tasted blood. They'll be back for more”.* World Trade Organization official.<sup>66</sup>

Non-Governmental Organizations (NGOs) are the classic paradigm of human rights defenders in the collective imagination.<sup>67</sup> The World Bank defines them<sup>68</sup> as "private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development (...). In wider usage, the term NGO can be applied to any non-profit

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64 Sieghart, 1983, p.442.

65 Quoted by Death, 2010, p.238.

66 Guy de Jobquieres, “Network guerrillas”, Financial Times, 30 April 1998, quoted in Klein, 2000, p.443.

67 “A fairly simple model – the NGO as a unified and nearly uniform entity- has tended to dominate the existing descriptive writings about NGO's(...) The current literature on NGO's presents them as if they were akin to checker pieces moving across a single board. However (...) NGO's display a variety of styles of movement, and are more akin to chess pieces with their different capabilities for action”. Wiseberg & Socble, *Recent Trends in the Expanding Universe of Nongovernmental Organizations Dedicated to the Protection of Human Rights*, Denver Journal of International Law and Polity, Vol. 8, pp. 627-658, quoted by Wiseberg, 1989, p.26.

68 Duke University Library,

[http://library.duke.edu/research/subject/guides/ngo\\_guide/igo\\_ngo\\_coop/ngo\\_wb.html](http://library.duke.edu/research/subject/guides/ngo_guide/igo_ngo_coop/ngo_wb.html) (last access 13 April 2011)

organization which is independent from government”. The attempts to enlarge the concept to NGOs until blurs into the concept of non- State actor (such as transnational corporations or liberation movements)<sup>69</sup> seems not to take in consideration that, despite the professionalization of the NGO sector, “principles of altruism and voluntarism remain key defining characteristics”.<sup>70</sup> <sup>71</sup>Kamminga made a definition in negative terms and stated that NGOs are “not established or controlled by States (...), do not seek to overthrow governments by force (...), do not aim to acquire State power themselves (...), do not seek financial profit for their own sake” and even when “may occasionally engage in civil disobedience, they are generally law-abiding”.<sup>72</sup> P.H. Kooijmans, on the other hand, characterized Human Rights NGOs as “natural opponents of governments since human rights cover that extremely fragile relationship between on the one hand the individual and on the other hand the State in whose jurisdiction that individual finds himself”.<sup>73</sup>

We can mention as the “first NGOs” those created in the 19<sup>th</sup> century as the Anti-Slavery Society for Human Rights (founded in 1838), the International Committee for the Red Cross (1863) and the French League for Human Rights (1898). The birth of the modern Human Rights-NGOs<sup>74</sup> movement, though, may be best settled after the World War II. The oldest HR-NGO is, according to Makau Mutua, the International League for Human Rights (ILHR), founded in 1942 by Roger Nash Baldwin, the same lawyer who founded the American Civil Liberties Union (ACLU).<sup>75</sup> It was in the 1970s, however, when there was a expansion of them until the thousands of NGOs that exist nowadays.<sup>76</sup>

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69 Commented by Menno T. Kamminga at Kamminga, 2005, p. 95.

70 Duke University Library,

[http://library.duke.edu/research/subject/guides/ngo\\_guide/igo\\_ngo\\_coop/ngo\\_wb.html](http://library.duke.edu/research/subject/guides/ngo_guide/igo_ngo_coop/ngo_wb.html) (last access 13 April 2011)

71 Ball, Girouard and Chapman extend the definition of NGOs to 6 different types: “(1) governmental human rights bodies (...);(2) intergovernmental and regional organizations; (3) INGOs (...); (4) regional, national, or local NGOs (...); (5) quasi-governmental truth commissions (...); (6) national or international criminal tribunals” (quoted by Cingranelli and Richards, 2001, p.226.

72 Kamminga, 2005, p. 96.

73 Kooijmans, P.H., 1989, p.15.

74 We will use the abbreviation “HR-NGOs” from now on.

75 Mutua, 2001, p.152.

76 Wiseberg, 1989, p.24.

Since NGOs cover a potentially infinite number of topics, we will consider for this research just those NGOs which main purpose is the defense and promotion of human rights.<sup>77</sup> HR-NGOs may act worldwide (Amnesty International, Human Rights Watch), at a regional level (European Democratic Lawyers, Comité de América Latina para la Defensa de los Derechos de la Mujer, United Against Racism!), at a state level (American Civil Liberties Union, Greek Refugee Council), or at a sub-state level (Eskubideak, Grupo 17 de Marzo). Although most of the HR-NGOs (and institutions)<sup>78</sup> have traditionally focused on civil and political rights, there has been an increase in the last decade of the dissemination of the “indivisibility and interdependence of all human rights and freedoms”, being included in most HR-NGOs objectives the realization of economic, social and cultural rights as noted by Welch<sup>79</sup> and Klein.<sup>80</sup>

The vast majority of international NGOs are of a “elite-type”, meaning with this that cannot be considered grassroots organizations and that might be “serving the masses, but they are not of the masses”.<sup>81</sup> This should not surprise anyone since, according to Makau Mutua, the background of the social support of international NGOs are professionals such as “lawyers, academics at leading universities, the business and entertainment elite and other professionals”.<sup>82</sup> Our intention is to note, as Wiseberg does, that with the notable exception of Amnesty International, which has an active<sup>83</sup> and diverse membership,<sup>84</sup> most of the largest NGOs function as small (non-profit) corporations and not as social movements. This makes them limited since their main

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77 We will use the terms “Human Rights NGOs” or “HR-NGO” along the rest of our work. However, Human Rights NGOs are also diverse themselves, since there are HR-NGOs composed by just a single category of professionals (jurists, doctors or journalists) or those which cover all kinds of professionals (AI, HRW).

78 E/CN.4/Sub.2/2000/SR.6 (1 December 2003), p.4, par.2.: “The subcommission has tended to give more importance to the violations of a certain category, this is, civil and political rights, in detriment of economic, social and cultural rights” (Speech by Alfonso Martínez).

79 Welch, 2001, p.263.

80 Klein, 2000, pp.338-339.

81 Wiseberg, 1989, p.30.

82 Mutua, 2001, p.153.

83 Forsythe notes tactics as writing letter to the authorities, meeting officials, providing information to the mainstream media, *inter alia*. (Forsythe, 2006, p.194).

84 According to their website, “Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories”. <http://www.amnesty.org/en/who-we-are> (last access 14 April 2011).

actions will be those that “preclude mass mobilization” as “appeals to the courts, the media, and international arenas”. On the bright side, not having members allows these NGOs to lead the role of un-popular human rights causes,<sup>85</sup> although their dependency on donors (who do not have the intention to be related to un-popular causes themselves) makes this possibility highly unlikely.<sup>86</sup>

The main norm that regulates the legal status of NGOs was adopted by the Council of Europe and is the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations.<sup>87</sup> Its main contribution is to state that when an NGO acquires legal personality in a State Party, this “shall be recognized” in other Parties<sup>88</sup> as well, leaving the question of the existence or not of “international legal status” unanswered. Therefore, as noted by Kamminga, NGOs that have a legal personality recognized can only enjoy it directly at a national level.<sup>89</sup> The possibility of excluding an NGO remains, however, feasible, if an NGO “contravenes national security, public safety(...), the protection of health or morals (...)” or “jeopardizes (...) the maintenance of international peace and security”.<sup>90</sup> This is, the exclusion might happen if a human rights NGO does its work effectively and questions the status quo at some point.

The functions of HR-NGOs are, according to Wiseberg: “(1) information and/or monitoring; (2) legislation; (3) stopping abuses, securing redress and/or humanitarian assistance to victims (...); (4) education/conscientization; (5) solidarity; (6) delivery of services (...) and (7) keeping open the political system”.<sup>91</sup> If there is to find a common characteristic to all of them, this is that the activity they all perform is the production of knowledge as writing and publishing reports about abuses of human rights.<sup>92</sup> From these

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85 Wiseberg, 1989, p.30.

86 To see some examples of financial resources of well-known NGOs see Welch, 2001, p.11.

87 European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations (ETS No. 124), 24 April 1986, available at

<http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/traiverd%5C140.pdf> (last access 7 April 2011)

88 *Ibidem*, art.2.1.

89 Kamminga, 2005, p.95.

90 ETS No. 124, art. 4.

91 Wiseberg, 1989, p.31.

92 Kooijmans, p.16.



documents, institutions like the Special Rapporteur are able to get information that would be very difficult to get on their own, given the limitation of personnel and budget. Although being of a invaluable importance, it is obvious that even when such institutions analyze a specific country and are benefited by information elaborated by NGOs, they will not rely exclusively on this sources. The Rapporteur will need to contrast it. This will be done, for example, through visits to the country involved in case they are given the permission to do so. On the other hand, in the case of other mechanisms as the thematic procedures, the main part of their information will be obtained from NGOs.<sup>93</sup>

Despite the fact that the activities of HR-NGOs have been acknowledged as principal factors to provoke changes in the society,<sup>94</sup> it is difficult to establish a direct link between their actions and the results obtained.<sup>95</sup> As Laurie S. Wiseberg notes, “(w)hen political prisoners are released from detention, when a state of emergency is lifted, when a military regime falls, when a dictator flees, human rights NGO's never know with any degree of certainty how their actions weighed in the balance of forces”.<sup>96</sup> However, there are certain historical events like the preparation of the UN Charter in San Francisco where the lobbying pressures of several NGOs has been reiteratively acknowledged as of a great importance.<sup>97 98</sup>

The impact of NGOs in the defense of human rights was impulsed when the ICCPR and ICESCR entered into force and there were created “mechanisms whereby parties to the convention were required to submit periodic reports on the extent of their compliance with standards set by the covenants”, where NGOs would have a leading role. The Helsinki Final Act in 1975 and the concession of the Nobel Prize to Amnesty

93 *Ibidem*, p.17.

94 See McCorquodale, 2003, pp. 317-320 for a brief summary of NGOs' contributions.

95 Forsythe states that only the 11 per cent of NGOs surveyed by him had any success in terms of policy changes. (Forsythe, 2006, p.195).

96 Wiseberg, 1989, p.23.

97 Wiseberg, 1989, p.24 .

98 Charles Malik, former Lebanese member of the Commission of Human Rights commented: “The non-governmental organizations, therefore, served as batteries of unofficial advisers to various delegations, supplying them with streams of ideas and suggestions”. Quoted from Bossuyt, Marc J., *Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights*, 1987 in Theo van Boven, 1989, p. 57.

International in 1977 also reinforced the work of this and other HR-NGOs.<sup>99</sup>

There were, according to Weiser, two main manifestations of the growing importance of the role of human rights in the NGOs' agenda:

- 1- Many organizations were created with a specific focus on human rights.
- 2- Other organizations, already functioning, started to use the “language of international human rights standards” including this vocabulary instead of merely using terms as anti-colonialism or anti-imperialism. Also, these organizations<sup>100</sup> started to re-direct part of their funds to “further human rights aims” and to work specifically on these objectives.

The role of NGOs contributing to the strengthening of human rights in conjunction with institutions may be appreciated, along with collaboration with other institutions like the International Labor Organization<sup>101</sup> or the Council of Europe,<sup>102</sup> when NGOs acquire the consultative status before the Economic and Social Council (ECOSOC).<sup>103 104</sup> According to this institution, there are at the moment 3051 NGOs accredited with consultative status,<sup>105</sup> in addition to the 400 in the a subsidiary body of ECOSOC, the Commission on Sustainable Development (CSD).<sup>106</sup> Having consultative status provides NGOs with

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99 Wiseberg, 1989, p.25 .

100 Wiseberg mentions a heterogeneous list of organizations such as trade unions, churches, political parties and women's organizations. (Wiseberg, 1989, p.26).

101 Kamminga, 2005, p.100.

102 See the next section of the website of the Council of Europe for more information:

[http://www.coe.int/t/ngo/overview\\_en.asp](http://www.coe.int/t/ngo/overview_en.asp).

103 The consultative status is regulated on Article 71 of the Charter of the United Nations and on ECOSOC Resolution 1996/31 adopted in 1996. The art. 71 of the Charter states: “The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned”.

104 Menno T. Kamminga notes that, however, NGOs do not have a similar status in the main organs of the UN: the Security Council and the General Assembly, not to mention in other international institutions as the World Trade Organization (WTO) or the International Monetary Fund (IMF). (Kamminga, 2005, p. 109).

105 The consultive status has different qualifications: General Category for those with a wider range of activities and and usually are “large, established international NGOs with a broad geographical reach”. Special Category is granted to NGOs with a more limited focus, and “tend to be smaller and more recently established”. Lastly, we will find in the Roster those organizations with a specific objective and “technical focus” which just can help with "occasional and useful contributions to the work of ECOSOC or its subsidiary bodies". <https://www.un.org/esa/coordination/ngo/faq.htm> (last access 14 April 2011).

106 The last list available of NGOs with consultative status was made in 2008 and may be found at

the chance of “serving as technical experts, advisers and consultants to governments and Secretariat”, attending meetings of the ECOSOC General Assembly special sessions “and other intergovernmental bodies”, and making “oral interventions and written statements on agenda items of those bodies”. Furthermore, in case the organization acquires the General Category consultative status, it “may propose new items for consideration by the ECOSOC”.<sup>107</sup>

Other situations where the role of NGOs contributes to the promotion and protection of human rights may be found in lobbying in standard settings.<sup>108</sup> For example, the International Commission of Jurists was very active in the implementation of the African Charter of Human and Peoples' Rights, the European Convention on Torture and other instruments.<sup>109</sup> Furthermore we cannot forget to mention the important campaign of Amnesty International in 1972 against torture and the actions of many different NGOs to prevent police brutality and arbitrary detentions, from which influence (and also the action of governmental agencies, in the cases of Netherlands and Sweden) we have today the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Code of Conduct of Law Enforcement Officials (1979) and others.<sup>110</sup> Regarding the lobbying of politicians through the massive sending of e-mails and faxes, besides the Urgent Actions organized by AI we must mention the campaigns by other NGOs as Avaaz.Org and MoveOn.org.<sup>111</sup> This massive actions are a important and increasingly popular way of activism that is used by thousands of people every day for a variety of causes. Other contributions of NGOs by raising awareness and influencing the law-makers maybe be found, for example, in the acknowledgment of the rights of the child, the indigenous groups and other collectives.<sup>112</sup>

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[www.un.org/esa/coordination/ngo/pdf/INF\\_List.pdf](http://www.un.org/esa/coordination/ngo/pdf/INF_List.pdf) (last access 14 April 2011)

107 <https://www.un.org/esa/coordination/ngo/faq.htm> (last access 14 April 2011).

108 “There is not a single resolution, declaration, or treaty in this field which does not ultimately owe its very existence (...) to the untiring efforts of NGOs.” in Sieghart, 1982, p.442.

109 MacDermot, 1989, p.47.

110 Van Boven, 1989, p. 59.

111 Carty & Onyett, 2006, p.243.

112 Van Boven, 1989, pp. 60-62 and Kamminga, 2005, pp. 100-105.

Direct action is taken by NGOs, for example, when NGOs exercise their right recognized by the European Convention on Human Rights<sup>113</sup> to present petitions before the European Court of Human Rights or when they collaborate in round tables with the European Commission against Racism and Intolerance.<sup>114</sup> Furthermore, the European Charter also contains a mechanism for collective complaints<sup>115</sup> and to present petitions before the European Parliament.<sup>116</sup>

This may have two different outcomes: On one hand, in all of these cases where NGOs participate with the institutions the role of NGOs seems more likely to reinforce the role of States (this is, legitimizing them since they “accept” the intervention of the civil society) than threaten the institution.<sup>117</sup> In this sense, NGOs have been considered by some authors as “implicated in networks of governmentality” at the same level than governmental organizations<sup>118</sup> and, analyzing their internal organization, they may even have sometimes police-like attitudes towards their own colleagues.<sup>119</sup> However, when NGOs act outside the institutions they might be perceived as dangerous or politically motivated,<sup>120</sup> affecting potentially their influence and increasing risks for themselves.

On the other hand, Tarrow makes a significant contribution to the distinction between NGOs and SMOs recognizing that NGOs are more convenient for those countries where the support of a Western-based organization might be safer than a local movement, they could contribute to construct local social movements, and they might provide them with exchange opportunities with other activists around the world.<sup>121</sup>

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113 The European Convention of Human Rights gives this right to those who have been victims of violations of rights under the Convention. ECHR art. 34.: “The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

114 <http://bit.ly/inpAAS> (last access 30 June 2011).

115 Kamminga, 2005, p. 105-106.

116 Art. 44: “Right to petition : Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament”.

117 Kamminga, 2005, p. 110.

118 Death, 2010, p. 238.

119 Rodgers, 2010, p.282.

120 Welch Jr., Claude E., 2001, p.8.

121 Tarrow, 1998, pp. 189-190.

Another issue to be considered when analyzing the actions of NGOs is the self-attributed “impartiality” of international NGOs. Traditionally most of the work of the most active NGOS (AI, HRW, Transparency International) has been focused on those countries that that did not have a strictly capitalist system or a liberal democracy. This occurred, for example, when NGOs documented during the Cold War human rights violations mainly in those countries that were part of the former Soviet Union and southern countries.<sup>122 123</sup>

Lastly, the work of human rights defenders has led to an increase of their risks and, consequently, to a rise of organizations of HRDs to defend themselves during the last years. To this respect, the work of Front Line, European Democratic Lawyers and other NGOs will be analyzed in the second part of our dissertation.<sup>124</sup>

We can conclude that the role of HR-NGOs to the defense and promotion of human rights is done in the following ways, summarizing and re-modeling what Wiseberg established (see above) :

- 1- Acting as a “watchdog” or “whistle blower” denouncing human rights violations.
- 2- Lobbying on standard settings.
- 3- Promoting a “human rights” culture, what today is called “mainstreaming human rights”, in private and public forums.
- 4- Providing direct help, for example sending food or medical care to those in need.
- 5- Exercising “self-defense” strategies for HRDs.

As we will see during the next section, both the status and the strategies used will

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122 Mutua, 2001, p. 157. He even noted that HR-NGOs may play the “good cop, bad cop” with Western governments, disseminating in this way what he calls “Western liberal values”. This is, the Western concepts of liberal democracy and capitalist system as the ideals to be followed. Therefore, he concluded that “(t)he facade of neutrality, the fiction that INGOs do not seek the establishment of a particular system, in this case, a liberal democracy, must be abandoned immediately” (Mutua, 2001, p.159).

123 The influence of NGOs in the decline and collapse of the Soviet Union and of the apartheid in South Africa has been noted by William Korey (Korey, *NGOs and the Universal Declaration of Human Rights*, p.8, cited by Welch, 2001, p.274).

124 *The Front Line Protection Handbook* (Front Line, 2007) and *Manual de Autodefensa Civil* (Grupo 17 de Marzo, 2011), that will be analyzed later on, are two different examples of these activities.

differentiate NGOs from the other HRDs analyzed here: Social movements and activists.

## **2.2 Social movements and activists: Constructing a “parallel society”.**

*“Courage, fortitude, bravery, and dependability are more easily demonstrated on the streets than in the bargaining room”.*<sup>125</sup>

*“We must consider the revival of civil society as absolutely necessary to avoid a totalitarian world”.*<sup>126</sup>

*“Civil disobedience is, therefore, about being realistic by demanding the impossible”.*<sup>127</sup>

### **Definition and difference from NGOs.**

The History of social movements or social movements organizations (SMOs), starts in the 19<sup>th</sup> century when there was a standardization of this kind of popular mobilization in Western Europe and North America.<sup>128</sup> We may consider SMOs as those groups with a “large-scale political activism that is motivated by such public concerns as the environment, peace, civil rights, women's rights, and other moral and ideological issues”<sup>129</sup> or, in other words, as those who oppose permanently the status quo “in the name of a population living under the jurisdiction of those power holders by means of repeated public displays of that population's worthiness, unity, numbers, and commitment”.<sup>130</sup> Another definition is the one that defines SMOs as “grassroots organizations managed by members on behalf of members”.<sup>131</sup> When considering acts of civil disobedience, which are part of the actions of many SMOs, Friedler states that “civil disobedience is a democratic act carried out by a group of individuals inspired and

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125 Chong, 1991, p.89.

126 Touraine, 2010, p.95.

127 Friedler, 2009, p. 46.

128 Tilly, 1999, p.256.

129 Chong, 1991, p.1. A similar definition is used in Blumberg, 1991, p. 191: “A social movement is a type of behavior in which a large number of participants consciously attempt to change existing institutions and establish a new order of life”.

130 Tilly, 1999, p.257.

131 Edwards and Hulme, quoted at World Bank , 1999, p.111.

radicalized by the possibilities of emancipation expressed in their own collective action. That is the reason why the disobedient is, even if only for a brief moment, already free while fighting for freedom”.

SMOs cannot be considered as a single, unified group. On the contrary, they are composed by a multiplicity of actors. Charles Tilly differentiates three components of any social movement: the “power holders” (the State or any other institution) towards who SMOs direct their action; the activists or “participants” (this is, the activists); and the “subject population”, composed by those affected by the human rights violations claimed by the activists.<sup>132</sup>

SMOs are a special type of HRDs differentiated of NGOs (not necessarily opposed to them) because of their special characteristics. SMOs are generally considered informal structurally speaking (not being registered in many occasions),<sup>133</sup> horizontally organized<sup>134</sup> and with a popular base.<sup>135 136</sup> Although some of these characteristics may be shared with some NGOs, it is the existence of all of them at the same time what makes SMOs distinguishable from other organizations or institutions. Differences in terms of scope, organization, scale, and other topics between NGOs and SMOs were analyzed by Benett.<sup>137</sup>

What are the main characteristics of a efficient and sustainable SMO? The answer is, according to Tarrow, to be based in “domestic social networks” and being interconnected between them.<sup>138 139</sup> Charles Tilly deepens more and states that, in order to be strong, a social movement needs to follow some codes, that he abbreviates as

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132 Tilly, 1999, p.256-257.

133 Tilly, 1999, p.258-259.

134 Martínez, 2001, p.16.

135 Tilly, 1999, p.257.

136 “Advocacy networks”, Tarrow's denomination for transnational NGOs, “lack the categorical basis, the sustained interpersonal relations, and the exposure to similar opportunities and constraints that social movement scholars have found in domestic social networks”. Tarrow, 1998, p.189.

137 Benett, 2004, p.214, Table 9.1, included in the Annex 1 of our thesis.

138 Tarrow, 1998, p.184.

139 Also analyzed similarly in Benett, 2004 p.224. “The three core theoretical issues identified here involve (1) how traditional NGO advocacy networks are embedded with, and relate to network of direct activists; (2) how social technologies may create new organizational dynamics in coordinating and expanding protest; and (3) whether these mutually embedded networks can use their technological resources effectively to extend their political capacities to communicate with larger publics(...)”.

“WUNC”:<sup>140</sup> Worthiness (seriousness of the movement and representativity), Unity (symbols, slogans), Numbers (significant amount of participants)<sup>141</sup> and Commitment (“persistence” and capacity to resist). One clear example of this code is showed in demonstrations,<sup>142</sup> where the presence of certain personalities, wearing group symbols, the occupation of a street by numerous participants<sup>143</sup> and their prolonged presence even in hard conditions (rain, extreme hot) covers the four components of the code.

SMOs do not act alone. The inter-relations in a global level has been analyzed in several social studies and has been considered a source for their strength and effectiveness.<sup>144</sup> Lastly, social movements may act peacefully or not<sup>145</sup> and may be composed by individuals of all races and social classes, although some authors connect the ideas of established and strong activism with rich countries and established democracies.<sup>146</sup>

Regarding to the legal status of social movements, there does not seem to be any specific regulations related to them. Therefore, we may conclude that there does not exist a specific “legal status” of any sort for SMOs, and that they (and those individuals considered “activists”) may be under the general status of HRD when their attitudes, objectives and strategies are covered by the definition provided in Chapter 1. Therefore, those treaties, declarations and any other instruments that recognize and protect the right of freedom of association, assembly, communication, expression and others<sup>147</sup> cover them generally.

This raises another question: Why making a distinction between SMOs and activists? Although there is no appreciable difference when analyzing the work on the field, there

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140 Tilly, 1999, p. 260-261.

141 The difficulties to measure the membership of SMOs because of irregular records and other factors is noted by Norris (Norris, 2002, p.141).

142 Bleiker, 2005, p. 196.

143 For example, the sit-ins during the civil rights movement protests in the U.S.A are described in Blumberg, 1991, pp. 71-72.

144 In Carty & Onyett, 2006, we may find a good amount of related sources and an in-depth analysis on the topic. Bleiker also analyzes this issue in Bleiker, 2005, pp.206-209.

145 The difference between violent and non-violent movements, as well as many imaginative ways of reacting to police abuse (like throwing donuts to police officers) have widely been analyzed in Starr, 2006.

146 Norris, 2002, p.198.

147 On the specific norms affecting each of these rights see International Service for Human Rights, 2002.



are some HRDs who may act alone or not necessarily within a movement. Noam Chomsky, Sami Nair, Allan Nairn and Naomi Klein, among many other artists and intellectuals, may fall under this definition, along with a vast number of anonymous individuals who work in a regular basis on human rights, sometimes not even considering themselves activists.<sup>148</sup> To a certain point we agree with those who assert that “being an activist is a collective identity linked to participation in a social movement/collective action”<sup>149</sup> always that we take into consideration that even when activists do not act under any formal or informal organization they still belong (willingly or not) to a larger, collective movement of resistance (or “resistances” in plural as Foucault would specify)<sup>150</sup> in opposition to the establishment, that we may call “social movements”. This broader concept of activism coincides paradoxically with the denial of such term by some activists, aligned with anarchist movements, who consider that “(a)ctivism is based on this misconception that it is only activists who do social change – whereas of course class struggle is happening all the time”.<sup>151</sup> <sup>152</sup> We agree in part with this assertion since actors who do “social change”, as we are considering through our dissertation, are not just activists but all those who are fall under the denomination of Human Rights Defender. However, “social change” must not be misinterpreted. Although in the majority of situations SMOs are aligned with what we may call the “left” spectrum of politics, there are situations where conservative movements have had an important role in opposing leftist governments, as noted by Friedler.<sup>153</sup>

### **Construction of a parallel society and contribution to human rights.**

The impact of SMOs may be recognized in a multiplicity of situations, but mainly their

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148 See Bobel, 2007.

149 Bobel, 2007, p. 148.

150 Sandberg, 2006.

151 X, Andrew (1999) quoted by Bevington & Dixon, 2005, pp.196-197.

152 Also recognized by Sidney Tarrow: “Movements (...) are part of national struggles for power” (Tarrow, 1998, p.25).

153 Friedler, 2009, p. 43.

functions are three: 1) Influencing the legislative power;<sup>154 155</sup> 2) Raising awareness;<sup>156</sup> and, in some cases, 3) creating an “alternative mechanisms of governance”<sup>157</sup> (what we call a “create a parallel society”). For example, the Zapatistas,<sup>158</sup> the movement Reclaim the Streets,<sup>159</sup> Coop 57,<sup>160</sup> the Mapuches,<sup>161</sup> the Indy Media Centers<sup>162</sup> and others are among those who create “parallel societies” within their communities. Of course not all of these movements are effective in the same way.<sup>163</sup> Still, the most important factor common to all of these movements is the specific way in which they work on the defense, promotion and protection of human rights. A number of methods will be analyzed.

First of all, a clear example of the influence on the legislation may be provided through the rejection by France (thanks to the popular pressure) to the European Constitution.<sup>164</sup> Another example would be the creation of regulations for international companies because of the denounce of the sweatshops under their control. Other examples are the withdrawal of troops from Irak,<sup>165</sup> the enforcement of non- discriminatory policies in the civil rights movement<sup>166</sup> or the international campaign to condone the International Debt.<sup>167 168</sup> The influence of citizens and strengthening of democracy is stated by Norris

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154 Paul Burstein (1999) defines three strategies: “changing legislators' perceptions of the public's preferences or their intensity; by changing the preferences themselves; or by changing the importance of the issue to the public”. Burstein, 1999, p.12.

155 i.e.: Habermas considers civil disobedience as a way of participation of the population in public affairs, as mentioned in Friedler, 2009, p. 44.

156 Rucht & Neidhardt, 2010, p.21 and Eschle & Maignashca, 2005, p.226.

157 Norris, 2002, p. 137.

158 Bevington & Dixon, 2005 and Muñoz, 2006.

159 Klein, 2000.

160. <http://www.coop57.coop/>

161 Touraine, 2002, p.94.

162 Carty & Onyett, 2006; Notes from Nowhere, 2003, pp.228-243.

163 “A critically important task is therefore to interrogate the degree to which acts of resistance destabilize or reinforce existing power relations, and ultimately ‘to enhance the contestability of regimes of authority that seek to govern us in the name of our own good’ (N.Rose, 1999, p. 60 quoted by Death, 2010, p.249).

164 Dufour, 2010.

165 Carty & Onyett, 2006, p.234.

166 See Blumberg, 1991, p.198 on the fight of the National Association for the Advancement of Colored People (NAACP).

167 Josselin, Daphné, 2007.

168 For example, the occupation of factories by Egyptian workers (Beinin, 2009), the Black Power movement (Freeland, 2009) and the seizure of lands by Native Americans (Wetzel, 2009).

when he asserts that “(g)ood government<sup>169</sup> is believed to foster strong linkages between citizens and the states that promote the underlying conditions generating civic engagement and participatory democracy”.<sup>170</sup> This is also reinforced by the fact that, to start with, if there is an absolute lack of democracy there are few (or none) possibilities that social movements even exist. Furthermore, “(b)y questioning political, social and economic privileges and by disturbing the stable foundations upon which these privileges rest, protest actions may contribute to a democratization of global politics”.<sup>171</sup> This is what Eschle and Maignashca call “politics of resistance”.<sup>172</sup>

Secondly, raising awareness may be done in order to mobilize the public on a specific topic without necessarily advocating in favor of a concrete change in the legislation. The protests against poverty and the anti-globalization demonstrations in Seattle, Genoa, Prague, Johannesburg, London, Copenhagen<sup>173</sup> could be placed on the specific field of action considered as “raising awareness”. A relatively new way of activism, transforming the traditional parades, started with the movement Reclaim the Streets that in 1991 organized parties in central avenues and highways in London, giving themselves the freedom of movement denied by the car culture.<sup>174</sup> Similar to this phenomenon is the one of the “protestivals” that “constitute a creative response to the traditional political rituals of the left: those ‘ritual marches from point A to point B, the permits and police escorts, the staged acts of civil disobedience, the verbose rallies and dull speeches by leaders’”.<sup>175</sup> Instead of waiting for the Marxist revolution to come, “the carnival was the revolution realized, lived everyday”,<sup>176</sup> and is able to bring to the streets in this way many youngsters who saw the traditional unions and their demonstrations as boring or old-fashioned. These movements show how the autonomous movements rely on assemblearian methods to prepare their activities, as

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169 Tilly, 2004, p.129.

170 Norris, 2002, p.139.

171 Bleiker, 2005, p.205.

172 Eschle & Maignashca, 2005, p.222.

173 Death, 2009.

174 Klein, 2000, pp. 311 – 323.

175 St John, Graham, 2008, p.168.

176 St John, Graham, 2008, p.175.

studied by Böhm and others.<sup>177</sup>

Lastly, and what we consider as a specific and unique activity from the social movements, is the creation of a “parallel society” within the system. Instead of (or at the same time) than trying to make governments and other power structures change certain policies, a number of SMOs go further and engage in the creation of an alternative way of life that coexists (although threatened in different ways) with the current structured society.<sup>178</sup> Some of these examples have been mentioned above. The Zapatistas, for example, created within the State of Chiapas self-regulated communities that function apart from the Federal State. As the Sub-Commandant Marcos, leader of the EZLN, has stated in several occasions, their intention is not to replace the government (as it has traditionally been the objective of other guerrillas and liberation movements) but empowering the population and fighting against discrimination and poverty of Indians in Mexico.<sup>179</sup> In Europe, the squatters movement counter-act the lack of housing<sup>180 181</sup> and the *de facto* limitations of freedoms of association because of the lack of public spaces in industrialized States. Another example is located in the active neighborhood of Exarhia in Athens, where the action of SMOs paralyzed two years ago the construction of a parking facility and now enjoys a small park that is taking care of directly by the community.<sup>182</sup> Many other examples of self-autonomous movements have been studied by social researchers such as Böhm, Dinerstein, and Spicer.<sup>183</sup> In this sense, civil action aligns we may find Thoreau's concept of disobeying the law as “a duty and a right as a

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177 “(t)he project of autonomy is essentially collective (Katsiaficas, 2006), as it involves a group working together in common to construct alternative ways of living, rather than simply an individual seeking to assert their subjective autonomy against a dominating group”, deconstructs State power (Böhm, Dinerstein, and Spicer, 2010, p.19).

178 For a broad range of autonomous activities, from squatting to landless workers movements, see Notes from Nowhere, 2003, pp.107-171.

179 See, for example, the interviewed to Marcos by Gabriel García Márquez and Roberto Pombo. Published at ‘New Left Review’, London, 2001 and available on line at the Athens Indymedia website

180 “Activists politicized the housing crisis by occupying empty buildings. What began as a symbolic tactic quickly transformed into a viable strategy for thousands of housing-seekers to secure homes, leading to the development of a full-blown squatters’ movement by the end of the 1970s”. (Owens, Lynn, 2008, p.46).

181 See Notes from Nowhere, 2003, pp. 120-121 for more info on the squat movement and even tips on “how to squat”.

182 <http://parkingparko.espivblogs.net/en/>

183 Böhm, Dinerstein, & Spicer, 2010.

form of exercising the freedom of the individual citizen against the corrupting power of government”.<sup>184</sup>

In a very different context, the need to create a ethical bank that could support cooperatives with ethical, social and ecologist targets was what impulsed to create Coop 57 in Catalonia (Spain). This organization is *de iure* one single cooperative but *de facto* is a “cooperative of cooperatives” with autonomous territorial branches all over Spain. Small and medium corporations that follow the criteria established by the general assembly are able to lend money to each other's to finance projects that, in the end, will create benefits not just for the cooperative that receives the loan, but also for Coop 57 and the society as a whole. The impact on economic rights is obvious for the 350 cooperatives and 1.179 individual associates that belong to Coop 57.<sup>185</sup> Despite their legal status, Coop 57 is included in this chapter because their formal and regulated character does not hide the popular base it supports them, added to the fact that no more than 2 or 3 people work full time for the whole territory of Spain. Their internal organization and their effects on the society makes them more likely to be considered a social movement, although we acknowledge that it might be more precise to consider Coop 57 as the “missing link” between NGOs and social movements.

The importance of SMOs, as we have exposed, is their influence and their power as “an important force for social change”<sup>186</sup> and vital actors in processes of democratisation.<sup>187</sup> Either in traditional actions as parades, protestivals or lobbying institutions, SMOs place or bring the attention to items in the agenda of politicians and disseminate and mainstream human rights through the mass and independent media. But, much more important and maybe with more effectiveness, SMOs are able to implement human rights in their daily activities either providing credits to those coops with certain social and ethical values outside the mainstream banking structures (Coop 57), establishing direct democracy in their communities (Zapatista movement) or re-appropriation of

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184 Fiedler, 2009, p. 44.

185 Coop57, 2011, p.2.

186 Burstein, 1999, p.3.

187 Charles Tilly analyzes deeply this fact in Tilly, 2004, pp. 123-143.

spaces for public use (Navarinou Park in Athens). Instead of concentrating the efforts in theoretical discussions or reports, these examples make real the possibility of a culture of human rights in our societies without having to overthrow a government or waiting for the “emancipation of the working class” as Marxists would state. Of course, as we will see in the next Chapter of our dissertation, these actions may be more “dangerous” since shows how people empowered are able to stay put defiant against human rights violations, which makes them more likely to be exposed to risks (not just for themselves but also for the population they claim to represent)<sup>188</sup> than other “formal” actors doing office work in western countries.

### **2.3 Conclusions: The “legality” dilemma: Choosing between a legal or extra- legal status.**

During this second chapter we have distinguished two types of HRDs (or three, if we consider individual activists as a third category) according to their different organizational structures, strategies, impact on authorities and outcomes of it. NGOs have proved to become indispensable actors in the human rights field, assisting governments and inter-governmental agencies with information (reports, public statements, etc.) and victims with direct assistance (legal help, making public their situations, etc.). On the other hand, social movements and activists maintain the same fight (with different intensity) on the “street level” and in some cases are able to make their societies function in a way which is more democratic and according to human rights.

NGOs have a recognized a specific legal status in both international and national jurisdictions, while SMOs may be covered by the general protection given to human rights defenders. The question of either becoming part of the mainstream structure or staying outside of it is what we call the “legality dilemma”, and it is a common debate within SMOs. Some SMOs are reluctant to be inscribed in public registries since that could be dangerous for their existence or simply do not consider it necessary. From our

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<sup>188</sup> “(...) challengers can gain greater or lesser collective benefits, but they also may cause collective bads for the represented group if collective action backfires” (Amenta & Young, 1999, p.40).

research we are not able to decide which way of action is the best, the one instigated by the NGOs or the one promoted by SMOs, neither it is in our interest to do so. On the contrary, we have seen through this chapter that both have a decisive impact in the defense and promotion of human rights and that, as such, all of them must be considered human rights defenders and be protected under national and international law.

As it has been explained, some organizations are good at researching, meeting with politicians, corporations and IGOs as the WB or the IMF and exposing in public all kinds of human rights violations that occur all over the world. Their success may be diverse and includes setting one issue at the international agenda for discussion, achieving institutional changes or establishing a new law. Depending on the situation of human rights in the country, any of these achievements may be more or less valuable.<sup>189</sup> Others have another approach and focus in their territories and in their specific problems, and are not likely to be taken into consideration by the authorities. Either way, human rights are strengthened by the work of all those who do an invaluable job, some times exposing themselves to risks, renouncing to more profiting careers or refusing to spend their free time for other purposes rather than working for human rights. It seems like a matter of justice that, since the Declaration of Human Rights remains protected and promoted by HRDs, it is our responsibility to protect HRDs and acknowledge their contribution to the implementation of human rights.

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<sup>189</sup> Forsythe, 2006, p.201.

**PART 2: Influence of HRDs, the correlative risks they face and protection mechanisms.**

**Chapter 3 - Influence and contribution of HRDs to the protection and defense of Human Rights:**

*“If there is no struggle, there is no progress. Those who profess to favor freedom, and yet deprecate agitation, are people who want rain without thunder and lightning. They want the ocean without the roar of its many waters. Power concedes nothing without a demand. It never did and it never will”.* Frederik Douglas, African-American abolitionist.<sup>190</sup>

As it has been previously stated, HRDs are recognized as principal actors in the protection and promotion of Human Rights in our societies. This activity may be done through institutional or non-institutional action. Institutional activity is basically done by NGOs (most notable by International NGOs (INGOs) such as Amnesty International, Human Rights Watch or Transparency International. The recognized contribution to the society in general and specifically to institutions with their both specific (thematic or country based ones) and world reports is acknowledged by those who benefit from them.

For example, issues have been brought up for public discussions after studies about the mistreatment of foreigners,<sup>191</sup> police brutality,<sup>192</sup> creation of secret lists of activists,<sup>193</sup> arrests of lawyers linked with social movements,<sup>194</sup> among other subjects.

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190 Extracted from Activists Legal Project: <http://www.activistslegalproject.org.uk/> (last access 7 April 2011)

191 Amnesty International, Greece Out of the Spotlight: The Rights of Foreigners and Minorities are Still a Grey Area, AI Index: EUR 25/016/2005,2005.

192 Amnesty International, España: Sal en la Herida. Impunidad Policial Dos Años Después, AI Index: EUR 41/010/2009 (Public), 2009.

193 Diario 20 Minutos, 2011.

194 European Democratic Lawyers (AED), Motion of 19 April 2008.



Human Rights Defenders may also participate with institutions and they have seen their work recognized in a number of official declarations and statements. Thus, the Declaration of the Committee of Ministers on Council of Europe Action to Improve the Protection of Human Rights Defenders and Promote their Activities states that HRDs make an “invaluable contribution in promoting and protecting human rights and fundamental freedoms”.<sup>195</sup> Furthermore, the UN Declaration on HRDs also acknowledges the role of “(i)ndividuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental”.<sup>196</sup> This role is not stated as a right but as a duty “towards and within the community, in which alone the free and full development of his or her personality is possible” and where both individuals and associations of them “have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes”.<sup>197</sup>

As mentioned before, HRDs may act outside the institutions (sometimes outside and “against”) or within them. In many occasions NGOs, community leaders and other activists interact with institutions, whether at local, national or international level. Between those institutions that accept and require the work of HRDs we have to mention the Human Rights Council (HRC),<sup>198</sup> where NGOs have an active role. The HRC was created in 2006 by the General Assembly<sup>199</sup> and had its first session on 18 June 2007. Created as an inter-governmental body, the HRC is composed of 47 States<sup>200</sup> and is responsible for the reinforcement, promotion and protection of human rights

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195 Committee of Ministers of the Council of Europe, Declaration of the Committee of Ministers on Council of Europe Action to Improve the Protection of Human Rights Defenders and Promote their Activities, 2008.

196 UN Declaration on HRDs, 1999, art. 16.

197 *Ibidem*, art. 18

198 See the website of the HRC for more information: <http://www2.ohchr.org/english/bodies/hrcouncil/>.

199 GA Resolution 60/251 establishing the Human Rights Council, available at <http://www2.ohchr.org/english/bodies/hrcouncil/ngo.htm>, (last access 6 April 2011).

200 See updated list of Member States at <http://www2.ohchr.org/english/bodies/hrcouncil/membership.htm>, (last access 6 April 2011).

within the UN system.

The framework in which the HRC operates is based on the text named “United Nations Human Rights Council: Institution-Building”.<sup>201</sup> This document establishes different mechanisms and guidelines such as the Universal Periodic Reviews, the Special Procedures, the Human Rights Council Advisory Committee, the Complaint Procedure, the Agenda and Framework for its work, the Methods of Work as well as the Rules of Procedure and other organizational norms. HRDs may participate in a regular basis in the next mechanisms:

1- The Universal Periodic Reviews (UPRs) requires the participation not just of the State under review, but also of “non-governmental organizations and national human rights institutions”.<sup>202</sup> Therefore, studies made by HRDs and their experience may be, in case the information provided is relevant, credible and reliable, used by the Office of the High Commissioner for Human Rights in its reports.<sup>203</sup> A UPR has been realized recently HRDs.<sup>204</sup>

2- Another mechanism within the HRC where human rights defenders participate is the Special Procedures.<sup>205</sup> Once selected according to criteria of “(a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity”,<sup>206</sup> individuals and organizations from the civil society<sup>207</sup> may be selected to work as mandate-holders that will act “in their personal capacity”.<sup>208</sup> Examples of procedures may be those related to lack of adequate housing<sup>209</sup> or arbitrary

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201 Text available at [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_5\\_1.doc](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc) , (last access 6 April 2011).

202 UN, United Nations Human Rights Council: Institution-Building, 18 June 2007, art.3 (m).

203 *Ibidem*, art. 15 c).

204 Universal Periodic Review Info, Analysis of the issue looking into how it has been raised at the UPR by analysing both advance questions and recommendations, available at [http://www.upr-info.org/IMG/pdf/IA\\_Human\\_Rights\\_Defenders\\_FactSheet\\_S1-5.pdf](http://www.upr-info.org/IMG/pdf/IA_Human_Rights_Defenders_FactSheet_S1-5.pdf) (last access 29 April 2011).

205 *Ibidem*, arts. 39-64.

206 *Ibidem*, art. 39.

207 *Ibidem*, art. 42.

208 *Ibidem* art. 46.

209 OHCHR, Right to housing in Argentina: violations despite State commitment, 20 April 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10956&LangID=E> (last access 29 April 2011).

detention.<sup>210</sup>

3- HRDs may be selected by the Member States they belong to become part of the Human Rights Council Advisory Committee<sup>211</sup> in order to “to provide expertise to the Council in the manner and form requested by the Council, focusing mainly on studies and research-based advice”.<sup>212</sup>

4- Finally, the last mechanism within the UN system where HRDs act in the promotion and defense of human rights is the complaints procedure.<sup>213</sup> NGOs (for example, the common actions of NGOs working on child issues)<sup>214</sup> and individuals, either direct victims themselves or working on human rights issues, may raise complaints about violations of human rights before the Human Rights Council in Geneva, once that domestic remedies have been exhausted.<sup>215</sup>

The UN FactSheet 29 lists the contributions of HRDs and mentions, besides the functions already stated (collecting and disseminating information on violations, supporting victims of human rights violations...) the vital “contribution to the implementation of human rights treaties”.<sup>216</sup> For example, the importance of NGOs for the creation of the International Criminal Court<sup>217</sup> as well as in the implementation of specific norms as the ban on landmines<sup>218</sup> has been accredited by different actors.

A recent mention by the European Union to the role of HRDs in the protection of human rights is stated in the document “Defenders take the Floor”.<sup>219</sup> In this document

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210 OHCHR, Joint study on secret detention of the Special Rapporteur on torture & other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of human rights & fundamental freedoms while countering terrorism, the Working Group on Arbitrary Detention & the Working Group on Enforced or Involuntary Disappearances – A/HRC/13/42, available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/13/42&Lang=E> (last access 29 April 2011).

211 *Ibidem* art. 65-84.

212 *Ibidem* art. 75.

213 *Ibidem* arts. 85-109

214 <http://www.crin.org/NGOGroup/childrightsissues/ComplaintsMechanism/>

215 For more info about the Complaints Procedure visit

<http://www2.ohchr.org/english/bodies/chr/complaints.htm> (last access 8 April 2011)

216 UNRIC, 2004, pp.2-5.

217 Welch, 2001, p.264.

218 Brown, 2001, p.82.

219 European Parliament, Defenders take the Floor Press Kit, 2008.

issued by the European Parliament, which celebrates the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights, recognizes the role of HRDs as main actors in the defense of human rights.<sup>220</sup> Furthermore, the European Parliament resolution of 17 June 2010 on EU policies in favor of human rights defenders (2009/2199(INI))<sup>221</sup> is another recent action by the EU that recognizes the role of HRDs as “crucial actors” in the defense of human rights.<sup>222</sup>

### **3.1 Globalizing Human Rights: Influence of HRDs in international contexts: Focus on the work of INGOs in the defense of civil liberties and prevention of torture.**

If NGOs are the paradigm of human rights defenders in the collective imagination, Amnesty International (AI) and Human Rights Watch (HRW) are the paradigm of those NGOs working on human rights issues. There is no doubt that States are the main sovereign entities in the international stage, although the influence of NGOs has risen in the last 30 years. As mentioned by Welch, the intention to highlight other entities rather than States has “never masked the reality of governmental powers”. NGOs, despite their influence in some occasions, have been secondary actors in a movie where States perform the main characters.<sup>223</sup>

Nevertheless, NGOs have an important impact in both national and international stages. In the international context NGOs tend to “globalize” human rights, this is, expand and install in the media, academy and governments certain issues that need to be in consideration or, as it has been also called, “mainstream human rights”. We will choose

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220 “(I)t is particularly in the hands of human rights defenders, an extraordinary and very diverse group of courageous and non-violent people (community leaders, lawyers, journalists, trade unionists, women’s or children’s rights activists, etc.) who advocate, mobilize and often put their life at risk to defend the most fundamental freedoms of their fellow citizens.”. Defenders Take the Floor Press Kit, 2008, p.1.

221 <http://www.protectionline.org/European-Parliament-resolution-of-9887.html>

222 *Ibidem*: “C.whereas human rights defenders all over the world are crucial actors when it comes to the protection and promotion of basic human rights, often at the risk of their own lives, and whereas human rights defenders are also key players for the consolidation of democratic principles in their countries”.

223 Welch, 2001, pp. 85-86.

the expression “globalize human rights”<sup>224</sup> in this dissertation in order to contrast it with the “glocalization”<sup>225</sup> process made by NGOs, SMOs and activists at local levels. As noted in Chapter 2 and reaffirmed by Smith, Pagnucco and Lopez<sup>226</sup> the work of INGOs is more the work of a “insider” than “outsider”. This is, their work is based more in interaction with political institutions (directly in briefings before international institutions or indirectly through reports made public) than working on the field in rallies or sit-ins. It is to be noted, however, that these two dynamics do not exclude each other and that individual activists may become part of the NGOs (sometimes at the same time than working domestically), as noted by Della Porta and Tarrow.<sup>227</sup>

When talking of “globalized” networks of Human Rights Defenders, Amnesty International and Human Rights Watch are probably the best known and the most influential worldwide. In addition to HRW and AI, the role of the European Democratic Lawyers<sup>228</sup> (AED, abbreviation from its name in French) and Front Line will be analyzed as well although these last two NGOs have a minor impact if compared with HRW and AI.

Despite their difference in membership (large in the case of AI, almost non-existent in the case of HRW), resources (AI has a larger budget than HRW),<sup>229</sup> and impact on international organizations (again AI is the leader in this topic),<sup>230</sup> both organizations have become a referent because of their “impartiality in publicity and accuracy” (AI)<sup>231</sup> and the “solid foundation” (HRW)<sup>232</sup> in their research. This hard work has had different focuses. For example, Amnesty International<sup>233</sup> has had a huge effect in the imposition

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224 The expression has been used in this sense by activists in many occasions. For example, Francisca Casina, leader of the movement Via Campesina, finished her speech at the American Social Forum in 2010 with the expression “globalize the struggle, globalize hope” (Bequer, 2010).

225 Glocalization is, according to professor Roudometof, “responsible for the transformation of people’s everyday lives irrespective of whether they are transnational or not”. Roudometof, 2005, p.113.

226 Smith, Pagnucco and Lopez, 1998, p.394.

227 Della Porta and Tarrow, 2004, p.240.

228 <http://www.aeud.org/>

229 Welch, 2001, p. 86.

230 Welch, 2001, p. 86.

231 Welch, 2001, p. 87 ; also affirmed in Forsythe, 2006, p.193 as “reliable reporting”.

232 Welch, 2001, p. 101.

233 A specific study on Amnesty International may be found in Winston, 2001, pp-25-54.

of international standards in the traditional topics studied by this organization, namely “torture, disappearances and extrajudicial executions”.<sup>234</sup> HRW, on the other hand, has traditionally focused and probably being more effective in lobbying the Government and Media in the United States than lobbying internationally.<sup>235</sup> However, both AI and HRW have the same goals: “influencing the public opinion and governmental actions”.<sup>236</sup>

During this section we will just focus in the actions of these organizations covering cases of restriction of civil liberties (mainly counter-terrorism policies), prevention of torture and protection of HRDs during the last five years (2006-2010, both inclusive). The excuse of fighting terrorism provokes that laws of exception are approved in democratic societies and also that exceptional tribunals are created and continue to operate even after drastic changes within the State.<sup>237</sup> As Didier Bigo stated, “they install at the heart of our present time the idea that we are living in a “permanent state of emergency” or in a permanent state of exception” in order to be able to make acceptable for the general population highly un- democratic norms.<sup>238</sup> Anastassia Tsoukala analyzes this discourse and establishes as one of the ways to sell the fight against terrorism the inclusion of it in a “warlike context” where concepts as “extraordinary, limitless, long-lasting” and the moral and cultural inferiority of the other appear frequently.<sup>239</sup> The dangers of these discourses and policies is that they tend to affect not just those who commit “terrorist acts” but the general population. For example, “the police twice used powers under the Anti-Terrorism, Crime and Security Act 2001 against protesters” in the United Kingdom.<sup>240</sup> As stated by some authors, there is nothing more terrorizing

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234 Welch, 2001, p. 88.

235 This is evident in the fact that most of its staff is based either in Washington D.C. or New York as noted in Welch, 2001, p.105. However, HRW has also offices in Amsterdam, Beirut, Berlin, Brussels, Cairo, Chicago, Geneva, Johannesburg, London, Los Angeles, Moscow, Paris, San Francisco, Tokyo, Toronto, and Zurich .

236 Welch, 2001, p. 109.

237 The case of the National Court (Audiencia Nacional) in Spain is a good example of this. Created by the dictator Francisco Franco as a Court of Public Order, it survived the transition to democracy and it is deeply installed in the actual Constitution.

238 Bigo, 2008, p.34.

239 Tsoukala, 2008, p.51.

240 Tsoukala, 2008, p.53.

than some State's actions against terrorism.<sup>241</sup>

One example of study of NGOs on torture is the recent report by Amnesty International titled “USA: See no evil. Government turns the other way as judges make findings about torture and other abuse”.<sup>242</sup> As any other of AI's reports, this one is an example of accurate, well-documented analysis that in this occasion covers the (in)actions of lawyers, prosecutors and the USA Administration<sup>243</sup> in cases of torture. AI uses a variety of sources such as case law, international treaties (mostly the CAT, in this case), interviews with relevant actors and their own previous reports on the subject. With a straight although diplomatic language,<sup>244</sup> AI exposes the reiterated failures of the Government of the United States to comply with international law, starting from just 6 days after the 9/11 events until recent statements by President Obama (State of the Union address of 25 January 2011). As all other reports, it is available for free in their website,<sup>245</sup> although despite this availability just a small selection of all the reports made by AI ever appear on the mainstream media.<sup>246</sup>

Besides reporting, AI collaborates with the United Nations submitting reports in different organisms. As an example, the briefing before the Committee Against Torture about existence of torture in Mongolia.<sup>247</sup> In this document AI examines carefully both Mongolian and international law, exposes concrete cases of allegations of torture and concludes with the lack of ratification of the Optional Protocol of the Convention Against Torture by Mongolia and the lack of monitoring processes in the country

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241“(…) (T)his presence of American imperial bases, dotted, not just in Iraq and Afghanistan, but in Kuwait, Saudi Arabia, Doha—is one that has done more to engender hatred and acts of terror than anything ever orchestrated by Osama bin Laden.” Hedges, Chris, *Chris Hedges Speaks on Osama Bin Laden's Death*, 1 May 2011, available at <http://bit.ly/jLBlq3> (last access 3 May 2011).

242 AI Index AMR 51/005/2011.

243 This well-documented reports are the product of endless work hours of hard-worker researchers that have a strong commitment to human rights. However, this culture of “selflessness”, as described by Rodgers (Rodgers, 2010, pp. 280-288), leads in some occasions to psychological problems, which are exarcebated when doing research under difficult conditions as those in missions on the field.

244 For example: “Former President Bush’s unapologetic defence of the indefensible – enforced disappearance, torture and other ill-treatment – continues a pattern set even before his administration left office”, AI Index AMR 51/005/2011, 2011, p.2.

245 Another relevant report on the topic is AMR 51/016/2011 .

246 Winston, 2001, p.37.

247 ASA 30/007/2010.

regarding torture and ill-treatment.<sup>248</sup> The role of intergovernmental institutions like the Human Rights Council<sup>249</sup> or the Council of Europe<sup>250</sup> has also been reviewed by AI. Lastly, within the European context, AI has also researched on the disturbances on the rule of law caused by the “war on terror”, in this case with the famous cases of the CIA planes under European jurisdiction that secretly carried “detainees”.<sup>251</sup> AI mentions attacks on civil liberties because of “counter-terrorist” measures and cases of torture in all of the reports analyzed, sometimes regarding cases in those countries analyzed or the actions of some of the countries against others, as in the case of accusations of torture and arrest warrant issued against the former President of Chad Hissène Habré by Belgian authorities.<sup>252</sup> The situation of HRDs and the monitoring on the implementation of a wide range of national and international human rights standards were also a common object of study in all of the annual reports elaborated during the last five years.<sup>253</sup> Furthermore, several briefings are also issued by AI regularly about different countries on the situation of human rights activists, such as the one on the Republic Democratic of Congo in 2010 containing the detention of HRDs<sup>254</sup> or the study about election observers in Sudan,<sup>255</sup> just to name two of them.

Human Rights Watch also plays a major role in the dissemination of information and lobbying institutions and has seen his work recognized by international organizations as BBB,<sup>256</sup> that awarded them as recipients of public confidence. Its World Reports are a

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248 EU Countries are not exempted from critics by AI, as we can see in the briefing about France before the Committee in 2010 (EUR 21/002/2010) and Spain EUR 41/011/2009. Also relevant is the briefing about United Kingdom before the Joint Committee on the Draft Detention of Terrorist Suspects (Temporary Extension) Bills (the Joint Committee) , EUR 45/004/2011.

249 IOR 41/001/2011.

250 IOR 61/004/2011.

251 The word detainees is used with caution since most of them had a character of kidnapped than detainees. On this topic: <http://www.elmundo.es/elmundo/2006/06/12/espana/1150137230.html> (last access 18 May 2011) and AI's report EUR 01/013/2008.

252 AI World Report 2006, p.69.

253 As recognized at the motion adopted by the German Bundestag on 23 November 2003, p.3.

254 AI Briefing: Human Rights Defenders under attack in the Democratic Republic of Congo, AI Index: AFR 62/001/2010, 17 February 2010.

255 Amnesty International, Soudan. Informations Et Instructions À L'Attention des Observateurs Internationaux des Élections , AI Index: AFR 54/009/2010, March 2010.

256 Better Business Bureau (BBB) is a organization that studies, among other organizations, charities in order to see if they are reliable towards donors and funders. For information about their standards see <http://www.bbb.org/us/Charity-Standards/> (last access 3 May 2011).



indispensable source for anyone interested in the state of Human Rights around the world. For obvious reasons, World Reports do not cover all the existent countries, which has been subject of critics by Matua and Korey as explained in chapter 2. Regarding our selected topics, torture is analyzed in every World Report in the last five years, including articles in the introduction on this issue.<sup>257</sup> The restriction of civil liberties because of counter-terrorist policies is also found in all of them, which shows us the exponential danger of the “war on terror” and its use as a “war on citizens”. The attacks on human rights defenders (in many occasions in conjunction with journalists) appears as well in every report from 2006 to 2011.

The report “Fighting Terrorism Effectively: Recommendations President-Elect Barack Obama”<sup>258</sup> is just one of the 464 that mention torture, along with 4236 news and 335 mentions in World Report's Chapters.<sup>259</sup> HRW, as AI and other NGOs, also contributes with briefings before international institutions<sup>260</sup> or national ones abroad.<sup>261</sup>

Therefore these reports, exposing human rights violation all over the world, cover the functions regarding mainstreaming human rights culture, lobbying for the implementation of norms and acting as “whistle blowers”, this is, three of the five functions noted in the previous chapter that are a vital part of the defense and promotion of human rights made by HRDs. The European Parliament appreciates this effort when using for their work these reports or briefings.<sup>262</sup>

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257 See World Report 2008: Mind the Gap: Diplomatic Assurances and the Erosion of the Global Ban on Torture (by Julia Hall) and World Report 2010: Abusing Patients: Health Providers' Complicity in Torture and Cruel, Inhuman or Degrading Treatment (by Joseph Amon ).

258 HRW, 2008, “Fighting Terrorism Fairly and Effectively: Recommendations for President-Elect Barack Obama ”.

259 Index research with the topic “torture” on HRW's website on 2 May 2011.

260 For example, see “On Torture: Human Rights Watch, Human Rights Watch Briefing Paper for the 37th Session UN Committee against Torture”, 13 November 2006.

261 On HRDs: Human Rights Watch, Human Rights Watch Briefing before the United States Embassy in Uganda, <http://bit.ly/iw6dDM> (last access 3 May 2011).

262 Some examples of this influence may are: On tortures in Egypt: <http://bit.ly/iETd0T>(last access 13 May 2011); Tortures in Belarus: <http://bit.ly/ihk8dS> (last access 13 May 2011); Violations of human rights in Iraq: <http://bit.ly/IQFOJU> (last access 13 May 2011); Tortures in Quantico: <http://bit.ly/jUgE6w> last access 13 May 2011) and many others available at the European Parliament's website.

A different type of organization is the European Democratic Lawyers association<sup>263</sup> (AED). Created in October 1987, it has focused from its initial activities in defending lawyer's corporative interests to become an organization for the "self-defense" of HRDs.<sup>264</sup> In the moment of writing these lines, it is composed of eleven associations with full-membership status and two with observer-status from 6 different States. These associations are composed mainly of lawyers, although some of them admit other professionals from the law field.

Besides their role as HRD trainer,<sup>265</sup> the most important role of the AED has been pressing States and international institutions for the implementation of mechanisms to protect lawyers. Furthermore, AED has had a major role in creating the Legal Team Europe, described as "an international network of lawyers working on defense of the right of circulation and demonstration and in defense of the freedom of speech of social movements",<sup>266</sup> which had an important role during the G8 Summits in Genoa, Thesaloniki and others. Another network where AED has participated actively is the International Inquiry Workgroup for the Safeguard of Fundamental Rights in Globalization.<sup>267</sup>

The main modus operandi of the AED is not writing reports but the submission of statements and direct communications with European institutions, States and other sub-state institutions, as well as Bars of lawyers associations. Since their creation AED has presented 59 resolutions and motions on a wide range of subjects from protections for demonstrators to callings for the ratification of the UN protocol on torture.<sup>268</sup>

Lastly, and in connection with AED, we cannot forget the role of Front Line,<sup>269</sup> a well-

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263 <http://www.aeud.org/>.

264 Article 2 of AED statutes: "Objectives (...) 3) Defending and extending the rights and prerogatives of the defence, and in particular the physical integrity and political, economic, social and individual freedom of lawyers at the international level. 4) Ensuring, for citizens and especially the most disadvantaged citizens or victims of human rights infringements, access to the law and to a democratic, modern and humane justice". AED, 2009, p.5.

265 See the list of 31 conferences and workshops organized since their foundation. AED, 2009, pp. 8-9.

266 AED, 2009, p.13.

267 AED, 2009, p.13.

268 AED, 2009, pp.10-13.

269 <http://www.frontlinedefenders.org/>

known NGO based in Ireland created in 2001 which main activity is the defense of human rights with a specific focus on the defense of HRDs. This organization understands that HRDs make a considerable contribution to the strengthening of human rights and that because of that may be subject to persecution in different ways. As they note in their 2010 Report: “HRDs know that, if they go too far, they will in one way or another suffer the consequences”.<sup>270</sup>

Front Line works basically in 3 areas:<sup>271</sup>

- 1- Providing direct help to HRDs in risk, including seminars on protection and temporary relocation.
- 2- Writing reports about the situation of HRDs around the world.
- 3- Lobbying for the implementation of “international and regional measures to protect human rights defenders including through support for the work of the UN Special Representative on Human Rights Defenders”.

The important role in globalizing human rights may be found in the fact that during the last 5 years Front Line has helped directly more than 900 individuals, provided grants up to 1.5 million euros, did research missions in 53 occasions, provided trainings for HRDs and continued providing interns to the Special Rapporteur on Human Rights Defenders in Geneva.<sup>272</sup> The work of Front Line has reached an international acknowledgement when they were given the Special Consultative Status with the Economic and Social Council of the United Nations and Observer Status with the African Commission on Human and Peoples' Rights.<sup>273</sup> Furthermore, they also make advocacy work within the European Union, the Council of Europe, and national governments.<sup>274</sup> Front Line encourages the implementation of the UN Declaration on Human Rights Defenders but also elaborates its own materials that are useful tools as

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270 Front Line, 2010, p.6.

271 Front Line, 2007, p.i.

272 Source: Front Line Reports 2006-2010, available at <http://www.frontlinedefenders.org/about/financial> (last access 9 May 2011).

273 <http://www.frontlinedefenders.org/about/frontline>

274 <http://www.frontlinedefenders.org/advocacy>

the Protection Manual for Human Rights Defenders, the Protection Handbook for Human Rights Defenders and the Digital Security pack.<sup>275</sup> All of these materials and advocacy work, besides the direct help to HRDs in risk, make an invaluable contribution to the defense of Human Rights and make out of Front Line a basic organization to be taken into consideration.

### **Conclusions.**

All of the four NGOs analyzed here make a significant contribution on the issues covered here, namely the prevention of torture, the defense of civil liberties and the protection of HRDs. Their role either on advocacy or direct protection of HRDs and their commitment to the defense of human rights has been acknowledged by different governmental and non-governmental institutions either with prizes,<sup>276</sup> acquiring consultative status, or simply being accepted to meet political representatives to whom expose their research and ask for the implementation of certain regulations. In every case their actions increase significantly the protection of human rights and HRDs but, also, increases the knowledge of the international instruments and mechanisms of human rights among the general population. This is, the Dalit outcasted by their fellow citizens in India, the lawyer incarcerated in China, the journalist labeled as terrorist in Spain, and the trade unionist in Colombia suffering persecution have, on one hand, organizations to whom communicate their situations and make them public; on the other hand, these organizations also make available for them documents and other tools that helps them during their daily work. This is, they mainstream and globalize Human Rights across the planet.

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<sup>275</sup> <http://www.frontlinedefenders.org/manuals>

<sup>276</sup> Among others prizes and recognitions, AI got the Nobel Peace Prize in 1977, Human RightsWatch got in 2008 the United Nations Prize for Human Rights and Front Line was granted the 2007 King Baudouin International Prize for Development. AED, however, has not been awarded despite their work during these years, perhaps because of their more limited objectives, budget, and impact.

### 3.2 “Glocalising” Human Rights: Influence of HRDs in national and local levels.

#### 3.2.1 Escaping from a Kafkian situation: “Socialization of Law” thanks to NGOs/SMOs work.

*“Since we created the association in March 2006 we always appreciated as a serious problem of the System we live in the ignorance on the part of citizens without a Law education of the rules that apply to them daily. As in Kafka's novel "The Trial", most of our fellow citizens are unaware of the reasons of the legal issues that affect them every day, they do not know how to react to them in case they are personally affected, and feel that the State and the Government are aliens to them to which they can only obey. We understand this darkness of the Rule of Law as another direct aggression to the public (...).”*

Grupo 17 de Marzo, Manual de Autodefensa Civil, 2<sup>nd</sup> edition.<sup>277</sup>

*“4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms.”* (United Nations, Basic Principles on the Role of Lawyers).<sup>278</sup>

As Grupo 17 de Marzo eloquently stated, there is a huge proportion of Joseph K's<sup>279</sup> around the world. The majority of the citizens in every society, even in the most democratic ones, are unaware of their most basic rights. Although the knowledge of basic Law topics may vary significantly between people with different educational backgrounds, this difference decreases when those same people are faced with more complex issues (as tax regulations or prison rules).

<sup>277</sup> Grupo 17 de Marzo – Sociedad Andaluza de Juristas para la Defensa de los Derechos Humanos Individuales y Colectivos, *Manual de Autodefensa Civil*. Sevilla: Atrapasueños SCA & Grupo 17 de Marzo, 2010, p.8.

<sup>278</sup> United Nations, Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>279</sup> Joseph K. is the main character in the novel Franz Kafka's novel “The Trial”. In this novel Joseph K. is prosecuted by unidentified agents for an unknown reasons and finally executed by the authorities.

This problem of ignorance of Law is also a component of another Kafka's novel, "The Castle". As Banakar comments in his study on the Czech writer, in the village surrounding the Castle "(t)he "rule" is the rule of the Castle, which is in turn the village's source of authority and social order. It is important to note that the Castle is as inaccessible and incomprehensible to ordinary villagers as it is to K. Unlike K., however, the villagers have learned to take the legitimacy and authority of the Castle for granted".<sup>280</sup> This concept of accepting the Law just because it is Law (whatever the Law is, however it works) is connected to the ignorance of it, as Kafka expressed in these two novels.

It is, therefore, the duty of those promoting democracy and human rights to disseminate knowledge on those topics among the population. The work of NGOs and SMOs seems to increase the knowledge of at least a number of basic elements of the Rule of Law, mostly in the field of human rights. This may be done directly or indirectly.

It is done directly, for example, when a NGO refers in a report to international treaties, declarations or State or sub-state law. Not even a human rights-trained person is able to cover in his life all the normative of every country, and these reports provide information to those with no previous knowledge of Law through practical cases, as shown in the previous section of this Chapter. In some occasions non-state actors of social change even elaborate new concepts in international law, as Amnesty International did creating the term "prisoner of conscience".<sup>281</sup>

Indirectly, NGOs may produce manuals, handbooks, tool-kits or any other kind of instrument directly to inform on certain subjects. The above quoted "Manual de Autodefensa Civil" is a clear example of this last strategy. The idea for this handbook came up when Grupo 17 de Marzo<sup>282</sup> was asked by the Sevillian Social Forum (a network of local SMOs) to become the Legal Team<sup>283</sup> during the rally opposing the NATO meeting held in Seville in 2007. Inspired in the previous handbook elaborated by

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280 Banakar, 2010, p.15.

281 Winston, 2001, p.25.

282 [www.17demarzo.org](http://www.17demarzo.org) (web accesible but under construction on 9 May 2011).

283 For more information on Legal Teams see the Charter of the Legal Team Europe at <http://www.aeud.org/file/LegalTeamEurope.pdf> (last access 18 May 2011).

ALA<sup>284</sup> and thought for its distribution among the protesters attending the rally, the Manual became unexpectedly popular. The first edition was sold out in a few weeks and downloaded dozens of times from their website. The Manual contains notions about the right to participate in demonstrations, rights in case of detention, basic procedural and practical advices when someone is brought before the courts and a special chapter on tips for migrants.

Front Line's "Handbook for Human Rights Defenders: What protection can EU and Norwegian Diplomatic Missions offer?"<sup>285</sup> is another good example and provides an insight to the European (and also the Norwegian) Guidelines on Human Rights Defenders, therefore educating on those innovative instruments for the protection of HRDs. Fontline's Handbook includes tips on a variety of issues such as how to do public statements, physical protection and trial monitoring. Other two useful manuals elaborated by this NGO are the Front Line Economic, Social and Cultural Rights Online Manual<sup>286</sup> and the Front Line Civil and Political Rights Online Manual,<sup>287</sup> which offer a basic review of both the ICESCR and ICCPR which may be useful for those working on those topics or, more widely, affected by the violations of those covenants.

There are other similar initiatives around the world. In the USA the National Lawyers Guild published their book "You Have the Right to Remain Silent"<sup>288</sup> with tips on detention, similarly to what Special Law Collective does in their reports<sup>289</sup>, while Just Law Collective prefers using a more didactic approach and explains civil rights through comic trips.<sup>290</sup> Another USA-based collective, the People's Law Collective, does not provide materials but with a hotline to be called in case of detention,<sup>291</sup> which is another way to provide information. In the UK, the role of the Activists' Legal Project is focused

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284 Even sharing the same name. ALA's handbook is available on line at <http://www.nodo50.org/ala/spip/spip.php?article992> (last access 10 May 2011).

285 Front Line, Handbook for Human Rights Defenders: What protection can EU and Norwegian Diplomatic Missions offer?, 2007, available at <http://bit.ly/iOn9C2> (last access 9 May 2011).

286 <http://www.frontlinedefenders.org/manuals/eco-soc-cul> .

287 <http://www.frontlinedefenders.org/manuals/frontline-civil-political-rights> .

288 National Lawyers Guild, You Have the Right to Remain Silent, 2010, available at [http://www.nlg.org/wp-content/files\\_flutter/1290534630final.pdf](http://www.nlg.org/wp-content/files_flutter/1290534630final.pdf) (last access 10 May 2011).

289 <http://www.midnightspecial.net/materials/kyr.html> (last access 10 May 2011).

290 <http://www.lawcollective.org/article.php?id=112> (last access 10 May 2011).

291 <http://www.nycplc.info/node/8> (last access 10 May 2011).

in offering workshops and information sheets on several subjects<sup>292</sup> while Liberty has a website<sup>293</sup> on a number of fundamental rights. In other parts of Europe we find organizations like International Bridges of Justice, based in Geneva, which also provides with information on criminal procedures (in developing countries),<sup>294</sup> while in France the Syndicate des Avocats de France offers information on a variety of subjects.<sup>295</sup>

Knowing about the existence of the EU Guidelines on HR Defenders, the rights during a arrest or learning about the possibility of asking for an Habeas Corpus procedure in case of illegal detention share a common characteristic: All of them are means of empowerment and strenghtening of democratic values. Without these contributions, Law and Human Rights will be left just to Lawyers, Judges, Prosecutors and other Law professionals. With at least a little bit of knowledge in their hands, people are able to escape (at least symbolically) from the kafkian situation where they were before acquiring that knowledge. Providing this information liberates people from arbitrary governments and pushes clerks from the Justice Department to do their work. This empowerment, this knowledge of their rights, is without a doubt a highly valuable contribution from HRDs to the public.<sup>296</sup> As Martin Lee, Rector for the University of peace, stated: “Widespread human rights education and the direct promotion of human rights are essential to strengthen human rights protection throughout society”.<sup>297</sup>

### **3.2.2 Actions against restriction of civil liberties in the Spanish State. Special mention to Critical Lawyers: Grupo 17 de Marzo (Andalusia), A.L.A. (Madrid), Behatokia/Eskubideak (Basque Country) and Esulca (Galiza).**

*“Unjust laws exist: shall we be content to obey them, or shall we endeavor to amend*

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292<http://www.activistslegalproject.org.uk/resources.html> (last access 10 May 2011).

293<http://www.yourrights.org.uk/> (last access 10 May 2011).

294<http://www.ibj.org/about-us/publications/> (last access 10 May 2011).

295 Information for migrants: <http://bit.ly/mOmim4> (last access 10 May 2011).

296 As noted by Forsythe : “Today's education may become the context of tomorrow's policy making”. Forsythe, 2006, p.196.

297Banning, Theo Van et alt., 2004, p.iii.



*them, and obey them until we have succeeded, or shall we transgress them at once? Men generally, under such a government as this, think that they ought to wait until they have persuaded the majority to alter them (...) If the injustice is part of the necessary friction of the machine of government, let it go, let it go(...) If the injustice has a spring, or a pulley, or a rope, or a crank, exclusively for itself, then perhaps you may consider whether the remedy will not be worse than the evil; but if it is of such a nature that it requires you to be the agent of injustice to another, then, I say, break the law. Let your life be a counter friction to stop the machine”.*

Henry Thoreau

***Civil disobedience, 1866***

The protection of HRDs in Spain is far from ideal. The delay of the Spanish Government but also of many NGOs to answer the request of the Special Representative on HRDs to send information is a matter of concern since without a proper review of the situation is more difficult to propose amendments and improvements.<sup>298</sup> The Spanish associations analyzed here share 2 main characteristics: They are formed exclusively or mainly by lawyers and they work (not exclusively) on civil liberties, prevention of torture and protection of HRDs. The reason to choose these specific collectives with a Law background is due to two reasons: the importance of the work of lawyers in this field because their specialized knowledge and their special implications towards those affected by human rights violations. As noted by Foucault, Law is an instrument of power.<sup>299</sup> Therefore, those who master the use and origins of this instrument have a better access to change or modify the power structures and consequently achieve a greater impact in the practice of the defense of human rights. However, because of their special impact they might suffer a higher level of repression.<sup>300</sup>

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298 On the lack of collaboration of NGOs and the Central Government see E/CN.4/2006/95/Add.5 , 6 March 2006 , pp.255-256. For review of the general situation of HRDs in the European Union in 2006 see same document, pp.109-111.

299 Foucault, 1980, p.141.

300 “Because lawyers often play a prominent role in defending rights, they frequently face special attack”. HRW, World Report 2010, p.15.

The role of jurists has been acknowledged as crucial in the creation of international law,<sup>301</sup> along with the work of individuals, peoples and NGOs.<sup>302</sup> However, this importance also reveals higher risks.<sup>303</sup> Their influence has been either specific (focused on certain topics) or general (related to general rules of International Law). McCorquodale notes the importance of jurists within the ICJ since the work of the “most qualified” are a subsidiary source of international law for the Court.<sup>304</sup> Bromley also acknowledges the role of jurists stating that, besides the role of the work of INGOs with reports on abuses and briefings in international organizations, “local NGOs, progressive lawyers and other dynamic local professionals must decisively challenge their own government's human rights policies”.<sup>305</sup> In other words, the “glocalization” of HRDs' work in the field of Law is different from that done by INGOs and is an essential role within the defense and protection of human rights.

The organizations selected are based in infra-state level with the exception of the State-based Coordinadora para la Prevención de la Tortura – Network for the Prevention of Torture (henceforth “Coordinadora” or “CPT-Spain”)<sup>306</sup> that in fact is formed by the organizations analyzed plus others not mentioned here. The historical weight of nationalities over the central State within Spain explains the fact of this territorial organization. As said above, all of them have a important number of lawyers between their members or even the membership is excluded to non-lawyers (as in the case of ALA).<sup>307</sup> Furthermore, none of them accepts funding from any other source than their

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301 “Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest” (United Nations, Basic Principles on the Role of Lawyers).

302 McCorquodale, 2003, pp. 320-321.

303 As established by UN Special Representative Hina Jilani’s Report of 3 January 2003 (UN-DOC E/CN.4/2003/104 ). For recent examples of repression of lawyers, see the Report made by the Union Internationale des Advocats on the arrest of Syrian lawyers, 3 February 2011, available at [http://dlh.uianet.org/uploads/tx\\_hhuiadlh/UIA\\_Mission\\_Report\\_Syria\\_110214\\_eng\\_01.pdf](http://dlh.uianet.org/uploads/tx_hhuiadlh/UIA_Mission_Report_Syria_110214_eng_01.pdf) (last access 13 May 2011) or the tortures on a Iranian human rights lawyer: <http://www.protectionline.org/Houtan-Kian-human-rights-lawyer.html> (last access 13 May 2011).

304 McCorquodale, 2003, p.320.

305 Bromley, 2001, p.141.

306 <http://www.prevenciontortura.org/> .

307 Article 6 of ALA statutes.

members.

In terms of restriction of civil liberties, the organizations studied here have worked on very different topics. Eskubideak and Behatokia<sup>308</sup> have worked on cases of counter-terrorism policies, torture, information on prison rules, the law on political parties and freedom of expression and opinion. Eskubideak is an active member of AED and presented on 21 April 2007 in the Seminar organized by the European organization in Munich the report on the Basque country.<sup>309</sup> In this report they document the special situation of Basque prisoners who are prosecuted in a “special court”,<sup>310</sup> the Audiencia Nacional (“National Court”), and violations of rights of Basque prisoners rights staying in jails far from their place of residence, among other topics. A much more comprehensive study is the one done by both Basque organizations on the freedom of expression, opinion and association with a extensive report on the Law on Political Parties.<sup>311</sup> Their activities are based on direct support to victims of abuses, reports, press conferences, and participation in international foras as the Sub-commission for the Promotion and Protection of Human Rights of the United Nations.<sup>312</sup>

ALA<sup>313</sup> was established in 1989 as a organization for the defense of corporative interests (seven out of the eight objectives contained in their statutes refer to this objective) but keeping in mind a progressive attitude towards the society.<sup>314</sup> Their work methods is through the realization of seminars, conferences, collaboration with other entities,<sup>315</sup>

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308 Eskubideak (<http://www.eskubideak.com/>) is a lawyers organization based in the Basque Country.

Behatokia (<http://www.behatokia.info>) is a group of four different organizations (including Eskubideak) working on the defense of human rights in the same territory.

309 Eskubideak: Arzuaga, Julen, “National Report Basque Country (Spanish Version)”, 2007.

310 Eskubideak, 2007, p.4.

311 Eskubideak/Behatokia, “Libertad de Expresión y Opinión y Derecho de Asociación en Euskal Herria”, 2002.

312 Intervention of Iratxe Urizar at the 57th session period of the Sub-commission for the Promotion and Protection of Human Rights, held in Geneva , August 2005, available at <http://www.behatokia.info/docs/Info/naciones/eng/nacioneng.zip> (last access 12 May 2011).

313 <http://www.nodo50.org/ala/> (last access 12 May 2011).

314 “Defend and promote the rights and freedoms against those activities (...) that violate, restrict or suppress those rights and freedoms, and especially for those in a less favourable position (unemployed, migrants, (...))” Art.2.b) of ALA statutes.

315 ALA, Letter to the CGAE, highest organ representing lawyers in Spain on the changes in access to free legal aid for migrants, 2009.

letters to the authorities,<sup>316</sup> as well as other less traditional means as sit-ins.<sup>317</sup> Besides these activities, their load of work will be analyzed under the review of the Coordinadora (CPT-Spain).

Grupo 17 de Marzo<sup>318</sup> (henceforth G17), the newest of these organizations<sup>319</sup> has also a broad curriculum of activities on restriction of civil liberties. Besides the activities already mentioned, G17 has also worked against the restriction of several civil liberties derived from different norms, from those banning drinking on the streets (but affecting to basically all those standing at night who may be just chatting)<sup>320</sup> to the Municipality norms that regulate “the civic way of living together”.<sup>321</sup> G17 has acted as a legal team in several occasions, being the last one in January 2010 at the Conference of Ministers of the EU. The participation of Grupo 17 de Marzo as observers in the last general strike in Spain, their participation in the Network Against Migrant Arbitrary Detentions, the petition before the authorities asking for the proper identification of police officers, conferences and several *actio popularis* have been the activities of this association for the last five years.

Another organization to be considered is Esculca-Xustiza, founded in 2006 from the lawyers participating in the organization Esculca,<sup>322</sup> the Observatory of Human Rights in the territory of Galicia. Esculca-Xustiza is a non-profit organization with a specific focus on civil liberties, “understood in the broadest sense”.<sup>323</sup> Among the activities undertaken by Esculca are Summer Courses on the restriction of civil liberties, edition

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316 ALA, Letter to the Spanish Minister of Internal Affairs on the misbehave of Police officers, 2009.

317 As the one thy did on 16 February 2009 in the instalations of the Madrid Bar of Lawyers: [http://www.nodo50.org/ala/spip/IMG/pdf\\_comunicado\\_al\\_ICAM\\_del\\_encierro.pdf](http://www.nodo50.org/ala/spip/IMG/pdf_comunicado_al_ICAM_del_encierro.pdf) (last access 12 May 2011).

318 [www.17demarzo.org](http://www.17demarzo.org) (last access 16 May 2011).

319 It was founded on 17 March 2006, day from which it took its name.

320 As it hapened to a group of citizens who were fined for chatting “in the silent night”:

<http://www.publico.es/160953/el-ayuntamiento-de-sevilla-multa-con-cien-euros-el-charlar-en-la-calle-en-el-silencio-de-la-noche> (last access 16 May 2011).

321 “Ordenanzas Cívicas” are the spanish term for a number of initiatives by different municipalities that, in opinion of G17, exceed their municipalities' competences and violate fundamental rights.

322 <http://esculca.net/index.php> (last access 13 May 2011). Esculca itself has around 35 with a Law background out of its 180 members. However, 7 out of the 10 members of the Board of Director has a Law-background, including 6 lawyers and a University professor. Source: Email exchange on 16 May 2011.

323 <http://esculca.net/quensomos.php> (last access 13 May 2011).

of bulletins with reports and articles on several topics,<sup>324</sup> appeals to the Ombudsman or the Judiciary about people being held in prison and denounces on police brutality. Esculca-Xustiza has “sent petitions to public entities to implement human rights in police stations and jails, (and) worked on the restrictive legislation of the Spanish state concerning the activities of political parties”.<sup>325</sup> As their president stated, the defense of human rights lawyers prosecuted because of their professional activities is one of the main goals of the association.<sup>326</sup>

In terms of prevention of torture we will just analyze the CPT since this platform is where 44 organizations (including the ones mentioned above) collaborate regularly. Their relevance at a State-level may be noted on the fact of the analysis made on 1139 cases from 2551 victims from 2006 to 2009 in Spain.<sup>327</sup> Among their activities are: studies on the mechanisms on the prevention of torture, annual reports containing the cases of torture in Spain, monitoring the National Human Rights Plan,<sup>328</sup> meeting the Spanish Ombudsman, organization of specific reports to be submitted to the Rapporteur on the Prevention of Torture for his visits to Spain and campaigns for the installation of security cameras inside police stations and centers of detention to prevent torture and ill-treatment.

### **3.3 Professionalization of HRDs: Human Rights Officers on the Field.**

The job of a Human Rights worker has been professionalized in the recent years. Michael O'Flaherty and George Ulrich have studied this subject in the article “The Professionalization of Human Rights Job”.<sup>329</sup> They focus on the role of Human Rights Field Officers (HRFOs) saying that the main components of a profession are also

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324 <http://esculca.net/boletin.php> (last access 16 May 2011).

325 AED Guide, 2009, p.20.

326 [http://www.lavozdegalicia.es/vigo/2011/03/07/0003\\_201103V7C8991.htm](http://www.lavozdegalicia.es/vigo/2011/03/07/0003_201103V7C8991.htm) (last access 16 May 2011).

327 Source: CPT Reports. Available at <http://www.prevenciontortura.org/documentos/> (last access 16 May 2011).

328 Plan de Derechos Humanos, approved by the Council of Ministers of Spain on 12 December 2008 .

329 O'Flaherty & Ulrich, 2010, pp. 1-27.

included in this one according to their historical analysis, which starts from the first mission where HRFOs were sent in El Salvador in 1991 to the last ones in Nepal and Rwanda (established in 2005). Furthermore, they perceive a great development in the last decade. Thus, they state that the “Report of the Panel on United Nations Peace Operations”, the so-called ‘Brahimi Report’ (Brahimi Report, 2000), triggered a process of the mainstreaming of attention to human rights in peace-keeping operations with a concomitant raising of the profile of the discreet human rights units of such missions”. For this purposes, the authors think that professionalization stimulates workers to do a better job and that a professional career on Human Rights would require more dedication and would be more valuable than that one on a voluntary basis. However, there is also of the risk that HRFOs face becoming professionals and not necessarily activists and that “activism becomes less a calling and more a viable and rewarding career”.<sup>330</sup>

Leaving this dilemma aside, there is the need of analyzing what a professional HRFO needs. O’Flaherty & Ulrich state that a minimum would be “a basic understanding of all subject categories of human rights law and, in particular, of treaty provisions for the protection of economic, social, cultural, civil, and political rights” but also other ones as the Refugee or the Geneva Conventions. As another attribute necessary for the profession “cultural /political/gender sensitivity and teamwork were described as the most essential attributes” but they emphasize in the necessity of education and training. They also mention the document called “Consolidating the Profession” in which the main challenges of the profession are analyzed and contrasted with a number of different outcomes, being the most important ones seen which of the jobs done by HRFOs are more supported, being the labor of monitoring the most supported one. Finally, they consider that the Guiding Principles and the Statement of Ethical Commitments<sup>331</sup> are “the first attempts to articulate a comprehensive framework for the HRFO profession”.

The practical functions of HRFOs are, according to these guidelines, reporting,

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<sup>330</sup> Rodgers, 2010, p.287.

<sup>331</sup> Both documents are available at [www.humanrightspersonals.org](http://www.humanrightspersonals.org) (last access 8 April 2011).

monitoring, doing advocacy, enhancing capacity-building mechanisms and cooperating with international and national actors. Two ethical commitments, acting with integrity (Guiding Principle 9) and not to “harm”<sup>332</sup> (Guiding Principle 10) are also included in the list.

The Statement of Ethical Commitments,<sup>333</sup> on the other hand, states that HRFOs “shall at all times uphold the highest ethical standards”<sup>334</sup> and comprises 18 statements that define (in a non-exhaustive list) basic moral and ethical norms for the HRDs working on the field. Between these norms we find “respect the principle of participation that empowers individuals, communities and peoples” (art.7), “demonstrate respect for all individuals, irrespective of their cultural, religious and other values” (art.8), impartiality (art.9), obligation to “to react to actual and impending human rights violations that they confront” (10) and stay updated about changes and improvements of human rights legislation (17).

The professional work of Human Rights Defenders is more necessary than ever. These legal initiatives may be an interesting tool and starting point to alleviate the burden of the defenders and to provide them with the security they need in order to keep doing what needs to be done: the defense of human rights on the field.

### **3.4 Conclusions.**

INGOs have a tremendous impact specifically in terms of providing access to a wide range of reports on different topics with accuracy and attention to detail. Their action “globalizes” and mainstreams the concept of human rights both as values and norms, and provide a first-approach to those whose source of information are the Mass Media. Because of their reputation and international presence, INGOs are able to acquire a better presence than smaller organizations. In addition to the impact on the creation of certain specific norms (ban of land mines, protection of HRDs) their role as advocates and “whistle-blowers” seems to have a major role compared to more specific actions,

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332 “The ‘do no harm’ principle guides human rights work. ‘Harm’ of both direct and indirect nature can take many forms, including killing, torture, disappearance or threats, but also mental trauma from having to recount for a HRFO a traumatic experience”. Human Rights Law Center, 2008, p.20.

333 *Ibidem*, pp.22-23.

334 *Ibidem*, p.22.

with the exception noted of the Urgent Actions that Amnesty International carry out with a variable success.

On the other hand, the case study of Spain covered a variety of actors with similar characteristics that have a local approach and, therefore, tend to focus on specific cases within their territories and give a lesser importance to reports.<sup>335</sup> With a different history and work-load, which for reasons of space we cannot analyze here, all of them seem to be a referent for Social Movements (when acting as Legal Teams or providing information to activists in seminars or conferences), they provide defense tools (or legal assistance) to HRDs, are considered into consideration by authorities and institutions (as noted above, for example, in the role of CPT-Spain in the occasion of the country-visits of the Rapporteur on the Prevention on Torture) and have a wider or lesser impact on local/national media depending on the topic they are covering.

Lastly, we wanted to close the chapter with a special section for the human rights professionals that work on the field (HRFOs) and how their activity is delimited by guidelines and ethical commitments that should be monitored in order to not dismiss the overall exceptional role of HRFOs because of the denigrating behavior of some “rotten apples”.

All of these actors (NGOS, SMOS, activists and HRFOs) have a very important role for the strengthening, protection and promotion of human rights and HRDs. However, as we will see throughout the next chapter, they also may face risks affecting their public image, their freedom or their financial resources and must be protected through efficient means, as we will suggest on the final conclusions of our thesis.

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<sup>335</sup> With the exception of Grupo 17 de Marzo, CPT and Esculca, we have not been able to access to reports from any of the other organizations mentioned despite having contacted them. In some occasions (A.L.A.) requested us to check their impact on other reports (CPT-Spain ones) or in others (Eskubideak) we were not able to receive any feedback from them.



## **Chapter 4 - Risks faced by HRDs and protection mechanisms.**

*“The civilization and justice of bourgeois order comes out in its lurid light whenever the slaves and drudges of that order rise against their masters”.*

Karl Marx, *The Civil War in France*.<sup>336</sup>

*“The FBI is dangerously targeting Americans who are engaged in nothing more than lawful protest and dissent.... What the FBI regards as potential terrorism strikes me as civil disobedience”.* Herman Schwartz, professor of Constitutional law at American University.<sup>337</sup>

### **4.1 Risks faced by HRDs.**

#### **4.1.1 Damages on the on the Public Opinion and the Media: Defamation and Criminalization of HRDs.**

*“The population immediately [becomes] the internal enemy. Any sign of life, of protest, or even mere doubt, is a dangerous challenge from the standpoint of military doctrine and national security. So complicated mechanisms of prevention and punishment have been developed (..) To operate effectively, the repression must appear arbitrary. Apart from breathing, any human activity can constitute a crime (...) State terrorism aims to paralyze the population with fear.”*

Eduardo Galeano.<sup>338</sup>

Because of their challenging activity towards the status quo, the action of HRDs face a

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<sup>336</sup> Marx, Karl, *The Civil War in France*, quoted by Wolfe, 1973, p. vii.

<sup>337</sup> Quoted by Frontline USA, 2004, p.54.

<sup>338</sup> Galeano, Eduardo, *Open Veins of Latin America – Five Centuries of the Pillage of a Continent*, quoted by Notes from Nowhere, 2003, p. 306.

variety of risks that will be separated in this thesis between the damages on their public image and the damages on their personal freedom or physical integrity.

Regarding the first kind of risks, the press may have a positive impact for HRDs<sup>339</sup> or it might serve as well to the purpose explained by Galeano of terrorizing the population and keeping others from becoming HRDs. The power of the media in relation to the action of the civil society has been studied by Todd Gitlin.<sup>340</sup> Gitlin denies the supposed neutrality of the media since “the owners and managers of the major media are committed to the maintenance of the going system in its main outlines”,<sup>341</sup> an affirmation supported with his description of the intricate links between the the media and the establishment (media, corporations, and the State).<sup>342</sup> Furthermore, Gitlin affirms that the power exercised by the media is extremely subtle and it operates by making the audience “believe that what they are viewing is not only interesting but *true*”<sup>343</sup> and by choosing reporters and editors from a specific class (“upper-middle class”) rewarded with high salaries and reputed political jobs, which makes them unlikely to trespass the “boundaries of the permissible”<sup>344</sup> (this is, the real challenge of the status quo) and that, “once hired (...) reporters absorb the views of the powerful”.<sup>345</sup> Gitlin also reminds us that the real product sold by the Mass Media is not the newspaper itself or the TV program, but the audience, since the media obtain most of its incomes from the advertisers. In his opinion, the fact that social actors appear in the media may have a positive impact (as a “reward” for their hard work) but they will also face the risk of being manipulated by the establishment in order to reduce its effect<sup>346</sup> or, even

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339 “For instance, the media can publicize the often sensitive issues raised by human rights defenders. More generally the media can increase awareness and understanding of the important role played by human rights defenders in society”. Conclusions of Council of Europe Commissioner for Human Rights, CommDH(2006)19, para.13. On para.22 they propose, for this purpose, the Steering Committee on the Media and New Communication Services.

340 Gitlin, 1980.base

341 Gitlin, 1980, p.258.

342 Gitlin, 1980, p.280. Furthermore, as reported by Steketee at the Symposium organized by the ICJ, “(i)ncreasingly, media are being owned by large multirnational conglomerates with a conservative, right-wing look”.(Baehr, 1996, p. 76).

343 The remark is mine.

344 Gitlin, 1980, 259-261.

345 Gitlin, 1980, 262.

346 “Opposition movements emerge, but their radical identities weaken. The political system has so far proved capable of respnding with reforms sufficient to absorb and divert much of the movement's

more, reinforce the role of the State when, after a situation of crisis (protests, sit-ins...) the police re-states the normality.<sup>347</sup> The defamation occurs not just in the Mass Media but also on Facebook, Twitter and other social networks, as the FIDH has denounced in Bahrain.<sup>348</sup>

The European Union acknowledges the power of defamation and counts it between those issues affecting HRDs and to be considered for their protection.<sup>349</sup> Amnesty International has also noted that “media often collude in spreading slanderous accusations and attacks on their personal integrity and political independence”.<sup>350</sup> The United Nations also states that HRDs “have been the victims of defamation campaigns, with slanderous allegations appearing in State-controlled media attacking their integrity and morals. Complaints have been fabricated to discredit independent non-governmental organizations and journalists exposing human rights abuses. Defenders and their work have been publicly misrepresented, being described as, among other things, terrorists, rebels, subversives, or actors for opposition political parties”,<sup>351</sup> as well as anti-patriots.<sup>352</sup> This defamation and criminalization campaigns happen all over the world: Chechnya, Afghanistan, Brazil, Indonesia, Belarus, Thailand, Nigeria, Guatemala, Mexico, Serbia and many others.<sup>353</sup> The Special Rapporteur on HRDs also has made statements referring to the use of media stigmatizing HRDs as “troublemakers” and consequently legitimiz(ing) attacks against them” by making public their activities (even provoking them to go into hiding in one case) and giving

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energy”. Gitlin, 1980, p.291.

347 Gitlin, 1980, 266.

348 <http://bahrainrights.hopto.org/en/node/3794> (last access 20 May 2011).

349 “I. whereas human rights defenders face human rights violations themselves in the course of their work and whereas these violations include killings, death threats, (...) and other actions of harassment and intimidation, for example through defamation campaigns”. European Parliament resolution of 17 June 2010, para.I; also, in similar terms, International Service for Human Rights, 2005, p.3.

350 <http://www.amnesty.org/en/human-rights-defenders/issues/challenges> (last access 18 May 2011).

351 OHCHR, FactSheet No.29, p.12. Defamation is also mentioned along with “hate speech, (...),stigmatization, and lack of recognition of the work of human rights defenders ” in Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, A/HRC/10/12 , 12 February 2009, para.61.

352 Rupert, 2005, p.49 and Doc. 11202 of the PA of the CoE para.35.

353 See <http://bit.ly/krKo5B> (Brazil); <http://bit.ly/lQc4vG> (Malaysia); GHRC,Who Will Defend the Defenders? Criminalization of Human Rights Defenders and Chronic Impunity in Guatemala , (Guatemala); <http://bit.ly/kvLzsp> (Mexico); Front Line, Annual Reports 2006-2010 (rest of countries mentioned).

stereotypical images of women HRDs.<sup>354</sup>

Europe is not an exception to this. For example, regarding the G8 protests in Scotland, Rosie and Gorringe highlight the conscious confusion made by the media of the terms “anticapitalists” and “anarchists”, along with the “militarized language”.<sup>355</sup> These tactics were helpful to mask the majority of peaceful protesters and the ideological factor under a sensationalist “rioter” image. After the protests in September 2000 in Genoa and before the ones announced in Prague, Czech newspapers wrote in terms of “civil war” and potential killings in occasions of the announced protests which led to an alarming situation that made one-fifth of the population of the city flee during the week of the protests.<sup>356</sup> In other occasions the media accepts the version of the facts given by the Police without contrasting it, as when activists are arrested under terrorist charges that are finally dropped or dismissed.<sup>357</sup> In Eastern Europe the situation follows somehow the same pattern. A number of cases containing media smears (Sanja Sarnavka, Croatia), accusations of helping foreign powers (Voice of Beslan NGO, Russian Federation), and the recurrent indictments for “destabilizing” the order (Dosta and Grozd in Bosnia and Herzegovina) are just some examples of these tactics compiled by OSCE and the Council of Europe.<sup>358</sup>

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354 Report of the Special Rapporteur on the situation of Human Rights Defenders A/65/223, para.17-20.

355 For example, using the word “wounded” instead of “injured”. Rosie & Gorringe, 2009, p.45.

356 Notes from Nowhere, 2003, p. 307.

357 For example, the cases of Bari and Charney, environmentalists in the USA (Boykoff, 2007, p.282) or Egunkaria, a Basque newspaper accused of being part of terrorist networks and was dismantled for that reason, just to be found innocent years later, when the damage had already been done and it was very difficult for the members of those media to start working again. The dismissal of the case may be read at <http://bit.ly/lPFjyu> (last access 4 April 2011).

358 Cases compiled at OSCE, Human Rights Defenders in the OSCE Region: Challenges and Good Practices – April 2007-April 2008, 2008, pp. 21-22; also Doc. 11202 of the Parliamentary Assembly of the Council of Europe “State of democracy and human rights in Europe”, 28 March 2007.

#### **4.1.2 Physical, administrative and legal risks: Violence, prosecutions, surveillance, and other measures against HRDs.**

*“(…) the Hensons have documented over 100 hate crimes committed against them because of their advocacy. They have been shot at and run off the road. They’ve received bomb threats, hate mail, and harassing phone calls. They’ve been refused service by local businesses and had their checks returned with Bible verses scrawled on them. They found their dog hanging from the mailbox.”*

Frontline USA Report 2004.<sup>359</sup>

As it has been stated in the already commented international instruments, reports and statements regarding HRDs, the promotion and defense of human rights is rarely a safe activity. The introduction chapter of the HRW Report 2010 is dedicated to this issue and shows that defenders might face the repression of governments and corporations that are not willing to allow the activities of those who “speak too loud”<sup>360</sup> on certain issues. After all, according to Gramsci one of the functions of social hegemony is “the apparatus of the state coercive power which “legally” enforces discipline on those groups who do not “consent” either actively or passively”.<sup>361</sup>

One of these strategies consists in the use of the Rule of Law to dismantle organizations. This has been defined by Wolfe as a “form of violence, even if no physical harm actually takes place”.<sup>362</sup> Furthermore, in some occasions the legal repression is intended to provoke a violent reaction from the oppressed group, providing then with a excuse for the security forces to use violence against activists. In other situations it is paradoxically thought to keep the groups functioning in order to be able to control them.<sup>363</sup>

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359 Frontline USA, 2004, p.57.

360 Declarations of Prime Minister of Cambodia Hun Sen in November 2009. HRW World Report 2010, p.14.

361 Hodgkinson, 2003, p. 190.

362 Wolfe, 1973, p.95.

363 Wolfe, 1973, p.108.

The most direct way to harm activists is attacking their physical integrity, either with beatings, torture or killings. Russia is one of the countries with a higher level of HRDs killings,<sup>364</sup> specially linked with the conflict in Chechnya, but other countries like Kenya, Burundi, Sri-Lanka, Afghanistan, Malaysia, India, or Uzbekistan are also mentioned between those accused of committing violent actions.<sup>365</sup>

Prosecutions and other “legally based” harassment practices are common measures against HRDs. Wolfe distinguishes the following categories of laws that may be used in a repressive way: Harassment laws, obligatory laws, inclusion laws, process laws, public order laws, preventive law and political laws.<sup>366</sup> These legal repressive acts attract normally a wider attention in countries like Vietnam, Saudi Arabia or Colombia,<sup>367</sup> but as may see if we keep our eyes opened, western countries like Spain,<sup>368</sup> Greece<sup>369</sup> or the United Kingdom<sup>370</sup> are also “prominent students” in this subject. Sometimes charges do not even have any basis or relation with the actions since “it is up to those doing the repressing to make the punishment fit the noncrime”.<sup>371</sup>

The perpetrators display a high level of imagination: Some governments deny some NGOs the right to intervene or limit their activity because of doubts about their donors and “real intentions”, as it happens in Vietnam or Iran.<sup>372</sup> Some others link HRDs with violent groups (Iraq,<sup>373</sup> Turkey<sup>374</sup>) or for any other alleged reason (as in Spain)<sup>375</sup> and

364 The cases of Alisher Saipov (Kyrgyzstan), Farid Babaev (Russian Federation) or Oleg Orlov (Russian Federation) and others are between the cases studied by OSCE (OSCE, Human Rights Defenders in the OSCE Region, pp. 11-12)

365 Examples from HRW World Report 2010. Nevertheless, the AI Annual Reports also cover many situations as the ones described by HRW.

366 Wolfe, 1973, p.95.

367 HRW World Report 2010, pp. 8-15.

368 AI World Report 2011, p.299.

369 According to Kostis Papaioannou, President of the Greek National Commission for Human Rights, the main threats to HRDs in Greece are police abuse and violence from extreme right groups. Interview with Kostis Papaioannou, 21 June 2011.

370 McArthur, 2003.

371 Wolfe, 1973, p.96.

372 The fact that, as explained in previous chapters, human rights are instrumentalized by Western countries helps to maintain this excuse.

373 AI Report on Iraq: Broken bodies, tortured minds: Abuse and neglect of detainees in Iraq MDE 14/001/2011.

374 Amnesty International, Turkey: All Children Have Rights, 19 November 2010.

375 In Spain, the Reports made by the *Coordinadora para la Prevención de la Tortura* on the prosecution of professionals that denounce cases of torture during the last 3 years compile more than 50 cases affecting dozens of people who have been subject to aggressions, fines and accusations of terrorism and

incarcerate them with the acquiescence of the judicial power. In other occasions, the use of restrictive measures is “designed not to provide a framework to facilitate the creation and operation of NGOs, but to control and muffle them” as it occurs in Russia, Ethiopia, Israel, Egypt and others.<sup>376</sup>

Regarding surveillance, since the creation of the “panopticon surveillance” as a “soul training” mechanism to control factory workers,<sup>377</sup> the role of surveillance mechanisms has improved in order to control citizens, specially HRDs. The investigation on the surveillance society has been widely discussed by Lyon, Mayer, Bigo, Tosukala and others. Lyon remembers that not just security cameras or IDs are part of the panopticon society but also other means more “subtle” and “discreet” that are assumed by the population as routinary and acceptable. The “resistance” by groups like the Global Internet Liberty Campaign, Privacy International and Adbusters bring to the debate such practices,<sup>378</sup> while from the academia Bigo<sup>379</sup> unveils the fake sensation of security provided with these “imperative” of surveillance technics, which have been “intensified and globalized” after the end of the Cold War.

This surveillance has a specific target, since the surveillance of the society as a whole is almost impossible even in the most repressive regimes.<sup>380</sup> The surveillance, thus, focuses on those not fully assimilated. For example, the use of Europol as a database of possible witnesses or informants might be considered as a direct attack on the privacy of that “specific minority” or “abnormal group” that must be “identified, categorized and checked”.<sup>381</sup> Although mostly directed to informants, this instrument might be also used to monitor HRDs during their routinely work since the trust we delegate on intelligent agencies “in the name of security”<sup>382</sup> makes us more vulnerable to any kind of

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other offenses because of their activity. See Coordinadora para la Prevención de la Tortura, 2009 and Coordinadora para la Prevención de la Tortura, 2011.

376 HRW World Report 2010, pp.11-15; AI World Report 2011; OSCE, Human Rights Defenders in the OSCE Region, 2008, pp.11-15; OSCE, Human Rights Defenders in the OSCE Region : Our Collective Conscience , 2007; AED Report 2010.

377 Haggerty, 2009, p.27 and Ogura, 2009, pp.272-273.

378 Lyon, 2002, p.126-140.

379 Bigo, 2009, pp.46-68.

380 As stated about the surveillance in East Germany made in Los, 2009, p.74.

381 Bigo, 2009, pp.46-68.

382 Elmer, 2009, p.145.

totalitarian surveillance.<sup>383</sup> For example, a recent case of HRDs vigilance is the one noted above that was brought up by a group of activists in Spain that filed a suit since they stated they had evidences regarding the creation by the National Police of “lists of activists” and that there were prosecutions of activists according to those files and not to their real implication on specific events.<sup>384</sup> This possibility, unlawful under Spanish Law<sup>385</sup> but accepted in European Law,<sup>386</sup> had already been alerted by the NGO Statewatch in their studies on the article 99 of the Schengen agreement<sup>387</sup> and others.<sup>388</sup> In order to counter-act vigilance measures, tools as the “Security-in-a-box” project established by Front Line<sup>389</sup> are used by HRDs to protect themselves when using the Internet in case of suspicions of being under observation.

Freezing funding is another way that it could be done against HRDs in case they are accused of terrorism. The Council of the European Union, in its Presidency Conclusions of the Brussels European Council (16/17 December 2004) analyzes the EU response to terrorism.<sup>390</sup> The document, after assuring that “(d)emocracy and respect for fundamental rights must not be allowed to be undermined by terrorism” and that “(e)fforts to combat terrorism must respect human rights and fundamental freedoms” (p.25) comprises several conclusions from the work started by the EU Action Plan. For example, it states that the Action Plan contributed to “the reinforcement of practical and operational cooperation”, improvement of exchange of information, the inclusion of biometric data in passports, the reinforcement of the EU Situation Center, controls on terrorist funding and agreements with third countries to combat terrorism. As shown in many cases mentioned above, the ongoing trend to label activists as terrorists makes us to keep an eye open on possible freezing of associations or personal assets as a possible

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383 For example, the surveillance on Martin Luther King Jr.'s sexual life in the attempt to lead him to commit suicide. Mayer, 2008, p.57.

384 See the news at: <http://bit.ly/j7K4mi> (last access 23 May 2011).

385 The Ley Orgánica de Protección de Datos (LOPD) in its article 7.4 prohibits “files done with the exclusive intentionality of storing personal data that reveal the ideology, affiliation to trade unions, religion, beliefs, racial or ethnic origin or sexual life”.

386 Council of the European Union, 8570/10, 16 April 2010.

387 <http://www.statewatch.org/news/2008/feb/08SISart99.htm> (last access 23 May 2011).

388 Statewatch, Protests in the EU: “Troublemakers” and “travelling violent offenders [undefined] to be recorded on database and targeted”, available at <http://bit.ly/9twJ5X> (last access 23 May 2011).

389 <https://security.ngoinabox.org/> (last access 23 May 2011).

390 Council of the European Union, 16238/1/04 REV 1, 2004.



threat to HRDs.

## **4.2 Protection of HRDs.**

### **4.2.1 Existing mechanisms.**

HRDs are protected under a different number of intergovernmental norms and institutions: At the international level, the references are the UN Declaration of Human Rights Defenders and the Special Rapporteur on Human Rights Defenders; at regional levels, we have the Special Rapporteur on Human Rights Defenders of the African Commission on Human and Peoples' Rights, the Unit for Human Rights Defenders within the secretariat of the Inter-American Commission for Human Rights, the Council of Europe and its Commissioner for Human Rights, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE) and the European Union Guidelines on Human Rights Defenders.<sup>391</sup>

This section will analyze the protection given by the United Nations, the Council of Europe and the European Union to human rights activists. Despite the fact that the protection in all of the European Union Member States is bound by many of these documents, we will mention those specific mechanisms available in specific EU Member States.<sup>392</sup>

#### **- Protection under the United Nations.**

The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms establishes certain means of protection for HRDs. The State has the obligation, apart from not interfering in the rights already mentioned, to protect “all human rights and fundamental freedoms” (art.2.1) and establish the necessary means for these rights to be implemented (art.2.2). The article 9.5 imposes the obligation for the

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<sup>391</sup> <http://www2.ohchr.org/english/issues/defenders/regionalmechanisms.htm>

<sup>392</sup> The possibilities of examine the protection in all Member States remains, however, important in future research studies.

State to “conduct a prompt and impartial investigation” within its jurisdiction when a human rights violation might have occurred, to protect HRDs that are attacked in any ways because of their activity (art. 12.2), to make effective through all available means “civil, political, economic, social and cultural rights” for their citizens, including access to documents related to human rights and the development of Ombudsman offices or similar institutions (art.14), and, lastly, to “promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education” and especially to lawyers and state officers (art.15).

This UN Declaration was reviewed in the Report for the Promotion and Protection of Human Rights Defenders for the 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.<sup>393</sup> In this report, the Secretary General “reviews the comments and proposals of Governments, specialized agencies and relevant intergovernmental and non-governmental organizations on the implementation of the Declaration”<sup>394</sup> and calls for the monitoring of the Declaration and training of state officers and the judiciary to act in accordance with this document.<sup>395</sup> The last paragraph reminds us that States have the duty to implement the Declaration and its dissemination, as well as “make every effort to sign, ratify and implement the main international human rights treaties and abide by other international human rights instruments in order to ensure that their domestic law and practice conforms with international human rights standards”.<sup>396</sup>

The Resolution adopted in April 2010 by the Human Rights Council 13/13 for the Protection of human rights defenders<sup>397</sup> is another document to be considered. The HRC declares to be extremely worried about the dangers faced by HRDs, especially in the after 9/11 framework<sup>398</sup> and calls upon the Member States to:

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393 United Nations Secretary General, E/CN.4/2000/95, 2000.

394 *Ibidem*, para.2.

395 *Ibidem*, para.23.

396 *Ibidem*, para.24.

397 Human Rights Council, A/HRC/RES/13/13 (2010).

398 “Gravely concerned also that, in some instances, national security and counter- terrorism legislation and other measures have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law”, *Ibidem*, p.1 in fine.

- Create a “safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity”<sup>399</sup>
- Recognize publicly the essential and “legitimate role of human rights defenders” as “an essential component of ensuring their protection”<sup>400</sup>
- Establish and reinforce of cooperation with HRDs<sup>401</sup>
- Prevent attacks and discrimination on HRDs<sup>402</sup>
- Reinforce the role of National Human Rights Institutions (NHRs)<sup>403</sup>
- Train HRDs and relatives in human rights issues and “protection-related needs”<sup>404</sup>and, finally,
- Receive and investigate “in a prompt, effective, independent and accountable manner, complaints and allegations regarding threats or human rights violations perpetrated against human rights defenders or their relatives and to initiate, when appropriate, proceedings against the perpetrators so as to ensure that impunity for such acts is eliminated”<sup>405</sup>.

A specific tool enforced is the Submission of allegations to the Special Rapporteur of the Secretary-General on Human Rights Defenders<sup>406</sup> who, when receiving an allegation of attack on a HRD, would react to prevent any damage as soon as possible.

#### **- Protection under the Council of Europe.**

The Council of Europe also promotes the defense of HRDs. The Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities<sup>407</sup> adopted by the Committee of

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399 *Ibidem*, p.2, para.2.

400 *Ibidem*, p.2, para.4.

401 *Ibidem*, p.2, para.5.

402 *Ibidem*, p.2, paras.6 and 7; also E/CN.4/Sub.2/2000/SR.6 (1 December 2003), p. 6, par.14: “In some countries the armed forces, paramilitary groups and armed civilians oppress the population, persecute human rights defenders and torture people.”

403 *Ibidem*, p.9.

404 *Ibidem*, p.10.

405 *Ibidem*, p.12.

406 <http://www2.ohchr.org/english/issues/defenders/complaints.htm> (last access 13 May 2011).

407 Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities. Adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers’ Deputies.

Ministers on 6 February 2008 acknowledges the role of the Council to create “an enabling environment for human rights defenders and protect them and their work in defending human rights”.

Besides calling upon the Member States to establish the same measures already mentioned at the Resolution of the HRC, the Declaration of the Council adds the need of an “effective access of human rights defenders to the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures”<sup>408</sup> as well as cooperating with the Commissioner for Human Rights<sup>409</sup> and other international institutions.<sup>410</sup> It also adds some petitions related to sign and ratify certain international legal instruments.

Lastly, the Declaration asks the Commissioner for Human Rights to keep acting when receives complaints about possible human rights violations from HRDs or “other relevant sources”.<sup>411</sup> It also calls to get in touch with HRDs when realizing country visits, “to report publicly on the situation of human rights defenders”,<sup>412</sup> cooperating with the “competent authorities” in relation to the protection of HRDs<sup>413</sup> and supporting and defending when necessary HRDs in third countries.<sup>414</sup>

The Recommendation 1866 (2009) of the Parliamentary Assembly on the situation of human rights defenders in Council of Europe Member States also approaches the subject when it calls upon the Member States to “play a dynamic role in protecting the

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408 *Ibidem*, art. 2 vii).

409 By “facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested” *Ibidem*, art. 2 viii).

410 The institutions mentioned are, besides the already mentioned ECtHR and the Commissioner for Human Rights, the OSCE/ODHIR, the European Union, the UN Secretary General’s Special Representative on Human Rights Defenders “and other existing mechanisms” (*Ibidem*, art. 4 iii).

411 “continuing to act upon information received from human rights defenders and other relevant sources, including ombudsmen or national human rights institutions;(…)” *Ibidem*, art. 4 i).

412 *Ibidem*, art. 4 ii).

413 *Ibidem*, art. 4 iii).

414 “ix) consider signing and ratifying the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations (ETS No. 124); x) consider signing and ratifying the 1995 Additional Protocol to the European Social Charter and to consider recognizing the right of national NGOs fulfilling the criteria mentioned therein to lodge collective complaints before the European Committee of Social Rights; xi) provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas(…)” *Ibidem*, art. 2.

right of individuals and promoting the invaluable engagement of non-governmental organizations to actively defend human rights”<sup>415</sup> and states that, despite the efforts of the international community, HRDs continue suffering persecution, discrimination and criminalization. If this protection was not enough, the Council of Europe appointed a Rapporteur on the situation of HRDs to work in the territory of the Member States and its Parliamentary Assembly inaugurated in 2007 an annual award for those contributing to the defense of human rights, including HRDs.<sup>416</sup> Lastly, the Council of Europe also commented<sup>417</sup> the EU guidelines on HRDs and stated, after recalling on the relevance of the work of HRDs, the importance of strengthening the role of the Special Rapporteur and implementing fully the EU Guidelines “to ensure the safety and protection of the rights of human rights defenders and calls particular attention to the situation of women human rights defenders”.

– **Protection under the European Union.**

The EU Guidelines on Human Rights Defenders<sup>418</sup> provide, within the framework of the Common Foreign and Security Policy, a series of operational guidelines including obligations for the EU Heads of Missions of reporting about the situation of HRDs, supporting and protecting HRDs working cooperatively with them, making their work visible<sup>419</sup> and also “encouraging the establishment of NGOs that promote HRDs activities”,<sup>420</sup> promoting the protection of HRDs in third countries and working closely with the Special Rapporteur on Human Rights Defenders. However, the European Parliament resolution of 17 June 2010<sup>421</sup> commented above also provokes the doubts on the selection of cases since it explicitly acknowledges that the protection of HRDs is

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415 Recommendation 1866, 2009, para.1.

416 Council of Europe Parliamentary Assembly, 'State of human rights and democracy in Europe', PACE Res. 1547 (2007), 18 April 2007, available at <http://bit.ly/iSe9dV> (last access 12 April 2011).

417 Council Conclusions on EU guidelines on human rights defenders (2736th GENERAL AFFAIRS Council meeting, Luxembourg, 12 June 2006), available at <http://bit.ly/IFX6kF> (last access 13 May 2011).

418 General Affairs and External Relations Council of the European Union Council, Guidelines on Human Rights Defenders, 8 December 2008, available at <http://bit.ly/a4bQKm> (last access 7 April 2011).

419 *Ibidem*, para.11

420 *Ibidem*, para.14

421 European Parliament resolution of 17 June 2010, para.C.

one of the roles of EU's "external relations policy" and that "EU support varies depending on the countries concerned". The double standards of Western countries commented before in this dissertation reappears with this surprisingly honest declaration of intentions where the *selective* defense of human rights violations becomes a European policy.

In terms of specific national legislation on the topic, only Germany, Belgium and Spain have some kind of legislations or declaration to protect HRDs.<sup>422</sup> From the reports made by AI<sup>423</sup> and the European Parliament<sup>424</sup> on the implementation of the EU Guidelines, we can conclude that full implementation is far from happening in the short-term unless some changes are made and more efforts are increased to achieve this goal.

– **Protection under the OSCE.**

The OSCE also has a role on the defense of HRDs. The Office for Democratic Institutions and Human Right and the "focal point" are, respectively, a source of information and a network for human rights defenders and national institutions. The main role of the focal point would be "to monitor the situation of human rights defenders in the region, to identify their concerns, promote and protect their interests and provide training".<sup>425</sup>

#### **4.2.2 Proposals to strengthen the protection of HRDs.**

Inspired in the number of proposals to reinforce the protection of HRDs have been

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422 E/CN.4/2006/95/Add.5 page 111; Belgium: Resolution on Human Rights Defenders adopted by the Belgium Parliament on February 13, 2003, <http://bit.ly/mBStgF>, (last access 13 May 2011) and Resolution adopted by the belgian Senat on July 3, 2003, <http://bit.ly/j4SaMg> (last access 13 May 2011); Germany: Motion adopted by the German Bundestag on November 23, 2003, <http://bit.ly/lxU3DN> (last access 13 May 2011); Spain: Non-legislative motion by the Spanish Congress about the protection of the HRD (19 June 2007), <http://bit.ly/iOQA4U> (last access 13 May 2011).

423 Amnesty International, Discussion Paper: 'Towards the Full and Effective Implementation of the EU Guidelines on Human Rights Defenders - A study of experiences to date', 31 March 2006; see also Amnesty International, Ensuring protection? The European Union and human rights defenders, EUR 01/007/2007, 2007, pp.1-3.

424 European Parliament resolution of 17 June 2010, para.P.5 and 9.

425 Protection International, Protection of human rights defenders: Best practices and lessons learnt (Volume I), 2009, p.10.

suggested by UN, OSCE, AI and other institutions,<sup>426</sup> we will try so summarize a number of initiatives that could be implemented and protect more effectively HRDs:

1) At the United Nations level:

- Use the situation of HRDs as an indicator during the Universal Periodic Reviews.
- During the Special Procedures of the Human Rights Council: Routinary control of laws that regulate NGOs and associations since these norms are often the source of subtle repression and restriction of civil liberties; also arrange meetings with HRDs in every country visit.
- Protecting the Internet from governmental and corporate abuses.

2) Within the European Union:

- The High Representative and the Special Representatives of the European Union should meet HRDs in every country they visit and be accountable for their inactions regarding claims made by HRDs and not responded adequately and on time.
- Implement the EU Guidelines including deadlines for specific goals and reports on the improvements achieved during a certain period of time. This could be done, for example, during the Council's Annual Human Rights Report.
- Increase the efforts in contacting HRDs and obtaining feedback from them.
- Implement the measures proposed by Parliament in its resolution on EU policies in favor of human rights defenders of June 2010,<sup>427</sup> with special

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426 UN Factsheet No.29, pp.28-37; OSCE, HRDs in the OSCE Region, pp. 26-48; Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities ( 6 February 2008); International Service for Human Rights, 2007, p.9; Report on the Annual Report on Human Rights in the World 2009 and the European Union's policy on the matter (2010/2202(INI)), pp.23-25; Directorate General of Human Rights of the Council of Europe, 2007; Council of the European Union, First Review of the Implementation of the EU Guidelines on HRDs, 10111/06, 2006; Amnesty International, Discussion Paper: 'Towards the Full and Effective Implementation of the EU Guidelines on Human Rights Defenders - A study of experiences to date', 31 March 2006.

427 European Parliament resolution of 17 June 2010 on EU policies in favour of human rights defenders (2009/2199(INI)).

attention to HRDs facing risks. The measures would include providing emergency visas, shelter and measures to acknowledge publicly their work and making them visible.

- Establish clear procedures in case of attacks to HRDs: Public statements, condemnations and suggestions for indictments of perpetrators could be included in the procedure.
  - Accountability for inactions by the EU missions that receive briefings or complaints by HRDs: suspensions, temporary salary reductions and indictments when required.
  - Improve monitoring and the overall fulfillment of the EU Guidelines.
  - Increase awareness of the Guidelines informing all EU Missions and its staff.
  - Facilitate the contact between EU Missions and HRDs.
  - Include systematically the situation of HRDs in political dialogues between EU and third countries.
  - Insist on those measures that have been shown to be effective: Visits to detention centers where HRDs are being held and monitoring official investigations and trials regarding attacks against HRDs.
  - Establish focal points for HRDs in all EU missions, with staff dedicated to this topic exclusively in those regions with higher indicators of violations against HRDs.
  - Involve HRDs when discussing political and human rights issues and consult them in order to set priorities in political dialogues.
  - Increase funds, trainings, and scholarships for HRDs.
- 3) Actions by the States:
- Increase protection of detainees, asylum seekers and other persons under custody of State agents.<sup>428</sup>

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<sup>428</sup> European Court of Human Rights cases (provided at Directorate General of Human Rights of the CoE, 2007): *Dougoz v. Greece*, 6 March 2001; *Peers v. Greece*, 19 April 2001; *Price v. the United Kingdom*, 10 July 2001; *Mayzit v. Russia*, 20 January 2005; *Nezmerzhitsky v. Ukraine*, 5 April 2005 and others.



- Protection of relatives of HRDs who have been “disappeared”.<sup>429</sup>
- Investigate effectively cases of violations against HRDs,<sup>430</sup> take judicial action<sup>431</sup> and achieve an effective remedy.<sup>432</sup>

These measures could constitute just a starting point, although nevertheless the process should be constantly reviewed by HRDs, national governments and the UN in order to keep the protection up to date and being fully effective.

### 4.3 Conclusions.

*“(...) when defenders are silenced and prevented from undertaking their activities, the goals of protecting peace, security and human rights are seriously undermined.”*

Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, 7 September 2005.<sup>433</sup>

As stated by international organisms like the UN, OSCE and INGOs as AI, HRW, or AED, HRDs are subject to a variety of attacks from insults or defamation to executions or forced “disappearances” because of their their activities regarding promotion and protection of human rights. Although the worst aggressions to HRDs occur in those countries where the Rule of Law is not fully strengthened (Russian Federation, Iran, Sri Lanka...), those countries with a tradition of relative respect to democratic values at home (i.e.: western democracies) also have a curriculum vitae of abuses to human rights

429 *Ibidem*, Kurt v. Turkey, 25 May 1998; Akdeniz judgment of 31 May 2001; Cyprus v. Turkey, 10 May 2001; the Ohran judgment of 18 June 2002; the Ülkü Ekinci judgment of 16 July 2002; the Tahsin Acar judgment of 8 April 2004; the Akdeniz judgment of 31 May 2005; and the Tanis judgment of 2 August 2005 .

430 *Ibidem*, Mastromatteo v. Italy, 24 October 2000; Makaratzis v. Greece, 20 December 2004; Akdoğan v. Turkey judgment, 18 October 2005; Nachova and others v. Bulgaria, 26 February 2004; Indelicato v. Italy, 18 October 2001.

431 *Ibidem*, Öneriyıldız v. Turkey [GC], 30 November 2004; Krastanov v. Bulgaria, 30 September 2004 ; Calvelli and Ciglio, 17 January 2002; Vo v. France, 8 July 2004; X and Y v. the United Kingdom, 27 February 1985; Stubbings, and M.C. v. Bulgaria, 4 December 2003.

432 *Ibidem*, Bati and others v. Turkey, 3 June 2004; Smith and Grady v. the United Kingdom, 27 September 1999; Conka v. Belgium, 5 February 2002; Iatrides v. Greece, 25 March 1999.

433 Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, A/60/339, 7 September 2005, quoted by International Service for Human Rights, 2007, p.3.

activists.<sup>434</sup>

The authors of these actions are State authorities (at all levels: judiciary, police officers, army officials, etc.) or non-State actors (transnational corporations, paramilitary groups, etc.).<sup>435</sup> As any other social organization, both kind of perpetrators (State and non-State actors) are subject to national and international law and therefore these violations should be prevented and, if occur, the State and other authorities should provide with a effective remedy. Otherwise, HRDs will be increasingly at risk and at some point the fear of reprisals might effectively slow down or paralyze temporarily the work of human rights activists around the world.

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434 Quigley, 2011.

435 UN, Factsheet No. 29, pp. 15-18.

## FINAL CONCLUSIONS

*“You make choices. You live your life in a certain way and you know there could be consequences, especially when you’ve been fighting the Government as long as I have”.*

Lynne Stewart, civil liberties attorney.<sup>436</sup>

Laws and norms that merely exist in books but are not implemented become at some point part of the History of Law. Human Rights are not an exception to this. Rights and freedoms do not exist per se or because they have been proclaimed in solemn ceremonies and written down in text books. Human rights exist and are enforced through their defense and promotion in a never-ending process, with its regressions and fight backs. The action of a HRD in a small community protecting collective land rights contributes in a more effective way on the implementation of human rights than 1,000 speeches. As lawyer David Bravo stated, “(f)reedom (of expression), like muscles, is strengthened when exercised”.<sup>437</sup>

Human Rights Defenders have become main actors for the promotion, defense and implementation of human rights. During this research we have attempted, first of all, to provide an insight to the definition, status, rights and protection of HRDs, with a special mention to human rights professionals working on the field. The purpose was to review the main instruments in relation to HRDs, define them, see which is the HRDs' contribution to the promotion and protection of human rights and see the risks they suffer and what protection mechanisms they enjoy. Although there were already studies by UN, Protection International, OSCE and others, the information was fragmented and we opted for the most comprehensive approach possible within the European framework as well as including some documents that have appeared during the last years.

During the first chapter we analyzed the UN Declaration on HRDs (General Assembly

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436 Quoted by Frontline USA, 2004, p.118.

437 Interview at <http://www.20minutos.es/entrevistas/david-bravo/44/6/> (last access 24 May 2011).

Resolution 53/144, 1998) and the EU Guidelines on HRDs as those instruments that have summarized in two single norms the rights, duties, status and protection of HRDs. During the first chapter we offered an insight into the international (UN, EU) norms that defined the concept of HRD and installed it as a new subject of rights and duties in International Law. This concept includes, as said before, all those who peacefully defend all internationally recognized human rights and freedoms.

When defining HRDs we opted for differentiating between those who represent the paradigm of human rights activists: NGOs, SMOs and individual activists. Later on we acknowledged that, as stated by several authors, the influence of NGOs and SMOs in the defense and promotion of human rights, although difficult to measure, is accepted to a certain extent by both the academia and the institutions. HRDs represent a “continue challenge to the sovereignty of the State”,<sup>438</sup> a challenge that is channeled mainly through organization of HRDs and not through political parties.

NGOs play a major role in raising awareness, mainstreaming human rights and making advocacy work. Through their actions many new policies are set into the agenda of political institutions and many HRDs get support for their daily activities. On the other hand, SMOs have a major impact in creating new spaces where the society can be constructed in an alternative way to that imposed by the financial and extra-State institutions. Human rights become “visible” in the “glocalization” process, this is, in the reconstruction of the civil society in local levels. Instead of using the slogan “think globally, act locally”, SMOs think and act locally in order to be able to achieve changes at a global level.

Both SMOs and NGOs are at the frontline of the defense of human rights, although with different particularities and outcomes. The difference between being a legal association or not registering it, being open to all kinds of donors or being self-funded, choosing a specific internal structure of participation (horizontal or vertical, democratic or hierarchical) and many other factors derive in different achievements of SMOs and NGOs and makes them two distinct groups of HRDs.

During the second part of this dissertation it was analyzed the influence of HRDs, what

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<sup>438</sup> Interview with Anthony Reeler.

risks they face because of it and the protection they enjoy. The influence was studied based on the work of international NGOs acting worldwide and local ones in Spain. The INGOs chosen for Chapter 3 are widely recognized because of their hard work and commitment, being HRW and AI two of the most recognized NGOs in the human rights field. Their reports provide with invaluable information to both the general population and international institutions. Apart from AI and HRW, AED and Front Line were chosen because their specific role defending human rights defenders. Front Line has a wider population target and works in collaboration with governments or international agencies when needed. It has a solid organization and different kind of publications and tools available for HRDs on the Internet. AED, on the other hand, has a more professional focus and a lesser impact on specific policies, although it is recognized as a useful lobbyist network for human rights lawyers (and jurists) working in Europe.

Later on we explored the notion of “socialization of law” exercised by HRDs since with their work they directly or indirectly provide technical information to the general population, who would not be able to obtain it otherwise. Manuals on basic rights, Legal Teams and conferences are some of the activities that contribute to disseminate knowledge and reinforce HRDs' work. The bulk of this education work is carried out by associations formed mainly by lawyers, which had a specific analysis on our case study of Spain in the last section of Chapter 3. The associations from the case study are located all around the Spanish territory and have common focus on civil liberties and are a reference for HRDs working in those territories.

Finally, the last chapter was dedicated to the risks HRDs face because of their activities and the protection they enjoy. As it has been admitted from international organisms (UN, OSCE, EU) as well as NGOs (AI, HRW, Protection International) HRDs are having a wider effect and impact of their actions defending and promoting human rights but at the same time the risks are also increasing: murders, tortures, “disappearances”, beatings, defamations, prosecutions and other means are used by State and non-State actors in order to stop “troublemakers” and refrain others from joining their cause. The repression has harder consequences in those countries with a weaker Rule of Law, although from our study we saw that countries with a history of democracy (USA, UK)

also attack in more subtle forms the work of HRDs.

Regarding the protection of HRDs, the UN Declaration on HRDs (General Assembly Resolution 53/144, 1998) and the EU Guidelines on HRDs have been analyzed as the main instruments of recognition and protection of HRDs' work, along with other norms regarding NGOs and more general laws that include rights and freedoms. Despite the proliferation of legal tools that should have enforced the role of HRDs, documents made by activists and NGOs, specially the Paris Declaration, have declared that the risks for human rights activists keep increasing.<sup>439</sup> Therefore, the role of HRDs has grown to include the defense of HRDs themselves. A relatively new kind of HRD, those who dedicate their professional career to the human rights cause, has been noted as a phenomenon to be taken into consideration and which development is still uncertain.

This thesis has presented how HRDs have emerged as a unifying categorization of all those who, throughout History, have worked in the search of justice and equality. This is, there has been a conceptualization of human rights activists and a delimitation in order to provide a legal framework and protect their role. Different actors have acknowledged this role as a vital contribution to the human rights cause.

The tools that have been deployed at both UN, EU and State level are a good starting point to defend HRDs' work but the implementation must be speeded up since, as we have seen in the recent protests in the Middle East and Europe, the repression by both tyrannies and democratic societies keeps threatening the challenges that societies demand.<sup>440</sup>

This thesis is only a small contribution to the HRDs' discussion and regular updates and deeper research studies are still needed. Suggestions for further investigations could include other national case studies and, perhaps, a more comprehensive European study based on those new cases. More NGOs should be included and an insight from

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439 Paris Declaration, AI Index: ACT 30/32/98: "14. WE DEPLORE the fact that the increase in the number and influence of human rights defenders in the world has been accompanied by a development and systematisation of repressive measures and practices used against them;"

440 The case of the Democracia Real Ya movement in Spain (<http://bit.ly/iLjdVe>, last acces 27 May 2011) and the equivalent protests in Greece and other countries (<http://www.demotix.com/democracia-real-protests>, last acces 27 May 2011) are a clear example of the increasing indignation within the European society.

anthropologists and sociologists would be helpful to understand the internal structures and the dynamics occurring within these movements.

As a final observation, it seems clear that insofar the Rule of Law is not fully enforced, those who may see their political privileges or economic benefits under threat by HRDs will act against them. And they are doing it, right now, through different means. But this is not surprising to anyone since it has often happened throughout History. However, the good news is that, while the “watchmen” (the establishment) watch the citizens and commit human rights violations, they are also being watched by human rights defenders. They, we, are watching the watchmen.

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## ANNEXES

### ANNEX 1: Table comparing NGOs Advocay work and Direct activism.<sup>441</sup>

|              | NGO Advocacy Order   | Direct Activism  |
|--------------|--|--|
| Scope        | Policy-issue-advocacy.   | Diverse social justice agenda.   |
| Organization | NGO-centered issue networks.   | Mass activism-multi-issue.   |
| Scale        | Limited by brokered coalitions.  | Expanded by technology networks.   |
| Targets      | Government (all levels), some corporations.  | Corporations, industrial sectors, econ blocs (G7, WEF, IMF, WTO).  |
| Tactics      | Strategic campaigns – limited political agenda –turned on &off by lead orgs                                    | Permanent campaigns – diverse political goals – difficult to turn on & off                                       |
| Goals        | Gov't (nat & international) regulation.<br>Establish information regimes.<br>Maintain orgnizational identitiy. | Personal involmente in direct action.<br>Establish communication networks.<br>Hyper-orgs to empower individuals. |
| Capacity     | Reform & Crisis intervention.  | Mass protest, value change.  |

<sup>441</sup> Extracted from Bennett, 2004, p. 214.

## **ANNEX 2: United Nations Declaration on Human Rights Defenders.**

### **United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**

#### **General Assembly resolution 53/144**

The General Assembly,

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

Taking note of Commission on Human Rights resolution 1998/7 of 3 April 1998, See Official Records of the Economic and Social Council, 1998, Supplement No. 3 (E/1998/23), chap. II, sect. A. in which the Commission approved the text of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms,

Taking note also of Economic and Social Council resolution 1998/33 of 30 July 1998, in which the Council recommended the draft declaration to the General Assembly for adoption,

Conscious of the importance of the adoption of the draft declaration in the context of the fiftieth anniversary of the Universal Declaration of Human Rights, Resolution 217 A (III).

1. Adopts 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, annexed to the present resolution;

2. Invites Governments, agencies and organizations of the United Nations system and intergovernmental and non-governmental organizations to intensify their efforts to disseminate the Declaration and to promote universal respect and understanding thereof, and requests the Secretary- General to include the text of the Declaration in the next edition of Human Rights: A Compilation of International Instruments.

85th plenary meeting

9 December 1998

#### ANNEX

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

The General Assembly,

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

Reaffirming also the importance of the Universal Declaration of Human Rights<sup>2</sup> and the International Covenants on Human Rights Resolution 2200 A (XXI), annex. As basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and

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

Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

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

Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

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

the national and international levels,

Declares:

#### Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

#### Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

#### Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

#### Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the

purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

#### Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations.

#### Article 6

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

#### Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

## Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

## Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration; everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.
3. To the same end, everyone has the right, individually and in association with others, inter alia:
  - (a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;
  - (b) To attend public hearings, proceedings and trials so as to form an opinion on their



compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

#### Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

#### Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

#### Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any

violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

#### Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

#### Article 14

1. The State has the responsibility to take legislative, judicial, and administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, inter alia:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be

ombudsmen, human rights commissions or any other form of national institution.

#### Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

#### Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

#### Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

#### Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental organizations have an

important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

#### Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

#### Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.

## **ANNEX 3: European Union Guidelines on Human Rights Defenders.**

### **ENSURING PROTECTION - EUROPEAN UNION GUIDELINES ON HUMAN RIGHTS DEFENDERS**

#### **I. PURPOSE**

1. Support for human rights defenders is already a long established element of the European Union's human rights external relations policy. The purpose of these Guidelines is to provide practical suggestions for enhancing EU action in relation to this issue. The Guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the Union to promote and encourage respect for the right to defend human rights. The Guidelines also provide for interventions by the Union for human rights defenders at risk and suggest practical means to support and assist human rights defenders. An important element of the Guidelines is support for the Special Procedures of the UN Commission on Human Rights, including the UN Special Representative on Human Rights Defenders and appropriate regional mechanisms to protect human rights defenders. The Guidelines will assist EU Missions (Embassies and Consulates of EU Member States and European Commission Delegations) in their approach to human rights defenders. While addressing specific concerns regarding human rights defenders is their primary purpose, the Guidelines also contribute to reinforcing the EU's human rights policy in general.

#### **II. DEFINITION**

2. For the purpose of defining human rights defenders for these Guidelines operative paragraph 1 of the "UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally recognized Human Rights and Fundamental Freedoms" (see Annexe I), which states that "Everyone has the right, individually and in association with others, to promote and to strive for the

protection and realisation of human rights and fundamental freedoms at the national and international levels” is drawn upon.

3. Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognized human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.

### **III. INTRODUCTION**

4. The EU supports the principles contained in 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. Although the primary responsibility for the promotion and protection of human rights lies with states, the EU recognises that individuals, groups and organs of society all play important parts in furthering the cause of human rights.

The activities of human rights defenders include:

- documenting violations;
- seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support; and combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms.

5. The work of human rights defenders often involves criticism of government’s policies and actions. However, governments should not see this as a negative. The principle of allowing room for independence of mind and free debate on a government’s policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights defenders can assist governments in

promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognized and supported.

6. The EU acknowledges that the activities of Human Rights Defenders have over the years become more recognized. They have increasingly come to ensure greater protection for the victims of violations. However, this progress has been achieved at a high price: the defenders themselves have increasingly become targets of attacks and their rights are violated in many countries. The EU believes it is important to ensure the safety and protect the rights of human rights defenders. In this regard it is important to apply a gender perspective when approaching the issue of human rights defenders.

#### **IV. OPERATIONAL GUIDELINES**

7. The operational part of the Guideline is meant to identify ways and means to effectively work towards the promotion and protection of human rights defenders in third countries, within the context of the Common Foreign and Security Policy.

##### Monitoring, reporting and assessment

8. EU Heads of Mission are already requested to provide periodic reports on the human rights situation in their countries of accreditation. The Council Working Party on Human Rights (COHOM) has recently approved the outline of fact sheets to facilitate this task. In line with these fact sheets Missions should address the situation of human rights defenders in their reporting, noting in particular the occurrence of any threats or attacks against human rights defenders. In this contexts HoMs should be aware that the institutional framework can have a major impact on the ability of human rights defenders to undertake their work in safety. Issues such as legislative, judicial, administrative or other appropriate measures, undertaken by States to protect persons against any violence, threats retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of any of the rights referred to the UN Declaration on Human Rights Defenders are all

relevant in this regard. Where it is called for, HoMs should make recommendations to COHOM for possible EU actions, including condemnation of threats and attacks against human rights defenders, as well as for demarches and public statements where human rights defenders are at immediate or serious risk. HoMs should also report on the effectiveness of EU actions in their reports.

9. The HoMs reports and other relevant information, such as reports and recommendations from the Special Representative of the Secretary General for Human Rights Defenders, UN Special Rapporteurs and Treaty Bodies as well as non-governmental organizations, will enable COHOM and other relevant working parties, to identify situations where EU actions are called upon and decide actions to be taken or, where appropriate, make recommendations for such action to PSC / Council.

#### **Role of EU Missions in supporting and protecting human rights defenders**

10. In many third countries EU Missions (Embassies of EU Member States and European Commission Delegations) are the primary interface between the Union and its Member States and human rights defenders on the ground. They therefore have an important role to play in putting into practice the EU's policy towards human rights defenders. EU Missions should therefore seek to adopt a proactive policy towards human rights defenders. They should at the same time be aware that in certain cases EU action could lead to threats or attacks against human rights defenders. They should therefore where appropriate consult with human rights defenders in relation to actions which might be contemplated. Measures that EU Missions could take include:

- co-ordinating closely and sharing 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, consideration could be given to appointing specific liaison officers, where necessary on a burden sharing basis, for this purpose;
- providing, as and where appropriate, visible recognition to human rights



defenders, through the use of appropriate publicity, visits or invitations;

- attending and observing, where appropriate, trials of human rights defenders.

**Promotion of respect for human rights defenders in relations with third countries and in multilateral fora**

**11.** The EU's objective is to influence third countries to carry out their obligations to respect the rights of human rights defenders and to protect them from attacks and threats from non-state actors. In its contacts with third countries, the EU will, when deemed necessary, express the need for all countries to adhere to and comply with the relevant international norms and standards, in particular the UN Declaration. The overall objective should be to bring about an environment where human rights defenders can operate freely. The EU will make its objectives known as an integral part of its human rights policy and will stress the importance it attaches to the protection of human rights defenders. Actions in support of these objectives will include:

- where the Presidency, or the High Representative for the CFSP or EU Special Representatives and Envoys, or European Commission are making country visits they will, where appropriate, include meetings with, and raising individual cases of, human rights defenders as an integral part of their visits to third countries;
- the human rights component of political dialogues between the EU and third countries and regional organizations, will, where relevant, include the situation of human rights defenders. The EU will underline its support for human rights defenders and their work, and raise individual cases of concern whenever necessary;
- working closely with other like minded countries with similar views notably in the UN Commission on Human Rights and the UN General Assembly;
- promoting the strengthening of existing regional mechanisms for the protection of human rights defenders, such as the focal point on human rights defenders of the African Commission on Human and Peoples' Rights and the special Human Rights Defenders Unit within the Inter-American Commission on Human Rights, and the creation of appropriate mechanisms in regions where they do not exist.

## **Support for Special Procedures of the UN Commission on Human Rights, including the Special Representative on Human Rights Defenders**

12. The EU recognises that the Special Procedures of the UN Commission on Human Rights (Special Rapporteurs, Special Representatives, Independent Experts and Working Groups) are vital to international efforts to protect human rights defenders because of their independence and impartiality; their ability to act and speak out on violations against human rights defenders worldwide and undertake country visits. While the Special Representative for Human Rights Defenders has a particular role in this regard the mandates of other Special Procedures are also of relevance to human rights defenders. The EU's actions in support of the Special Procedures will include:

- encouraging states to accept as a matter of principle requests for country visits by UN Special Procedures;
- promoting via EU Missions, the use of UN thematic mechanisms by local human rights communities and human rights defenders including, but not limited to facilitating the establishment of contacts with, and exchange information between, thematic mechanisms and human rights defenders;
- since the Special Procedures are unable to carry out their mandate in the absence of adequate resources, EU Member States will support the allocation of sufficient funds from the general budget to the Office of the High Commissioner for Human Rights

## **Practical supports for Human Rights Defenders including through Development Policy**

13. Programmes of the European Community and Member States aimed at assisting in the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries are among a wide range of practical supports for assisting human rights defenders. These can include but are not necessarily limited to the development co-operation programmes of Member States. Practical supports can include the following:

- bi-lateral human rights and democratisation programmes of the European Community and Member States should take further account of the need to assist the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries by, inter alia, supporting human rights defenders through such activities as capacity building and public awareness campaigns;
- by encouraging and supporting the establishment, and work, of national bodies for the promotion and protection of human rights, established in accordance with the Paris Principles, including, National Human Rights Institutions, Ombudsman's Offices and Human Rights Commissions.
- assisting in the establishment of networks of human rights defenders at an international level, including by facilitating meetings of human rights defenders;
- seeking to ensure that human rights defenders in third countries can access resources, including financial, from abroad;
- by ensuring that human rights education programmes promote, inter alia, the UN Declaration on Human Rights Defenders.

### **Role of Council Working Parties**

**14.** In accordance with its mandate COHOM will keep under review the implementation and follow-up to the Guidelines on Human Rights Defenders in close co-ordination and co-operation with other relevant Council Working Parties. This will include:

- Promoting the integration of the issue of human rights defenders into relevant EU policies and actions;
- Undertaking reviews of the implementation of the Guidelines at appropriate intervals; continuing to examine, as appropriate, further ways of co-operating with UN and other international and regional mechanisms in support of human rights defenders.
- Reporting to Council, via PSC and COREPER, as appropriate on an annual basis on progress made towards implementing the Guidelines.

2011

# Watching the watchmen : the defense and promotion of human rights by human rights defenders in local, national and international contexts and the protection of their activity

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