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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Situation of human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, submitted in accordance with Human Rights Council resolution [43/16](#).

* [A/77/150](#).



Report of the Special Rapporteur on the situation of human rights defenders

Refusing to turn away: human rights defenders working on the rights of refugees, migrants and asylum-seekers

Summary

In the present report, the Special Rapporteur on the situation of human rights defenders, Mary Lawlor, analyses the situation of human rights defenders working on the rights of migrants, asylum-seekers and refugees. In her report, the Special Rapporteur draws attention to the often vulnerable situation of defenders supporting migrants, refugees and asylum-seekers and the particular administrative, legal, practical and societal barriers they face. The report contains examples of individual cases of human rights defenders working in this area. The Special Rapporteur makes recommendations to States and other relevant stakeholders on providing a safe, accessible and supportive environment for individuals and organizations that work to promote and protect the human rights of migrants, asylum-seekers and refugees.

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I. Introduction

1. Zehida Bihorac is a woman human rights defender and teacher in Bosnia and Herzegovina. In 2018, she began providing humanitarian assistance to refugees and migrants around her hometown of Velika Kladuša, close to the border with Croatia. In June and July 2020, as she drove near the border, the police reportedly followed and stopped her, filmed her visiting a refugee camp, accused her of aiding illegal immigration and implied she would be arrested.¹

2. In August 2020, online attacks against her intensified. A newly-created Facebook group featured sexual smears, claims that she was an “immoral woman” and unfit to teach children, a detailed description of how refugees and those providing them with aid should be killed, and threats of physical violence against those providing them with assistance.

3. When she filed a complaint at her local police station against those making the statements, no action was taken. She was told that she was lucky the police on duty had even listened to her.

4. What Ms. Bihorac chose to do, and the consequences she faced, are representative of the experiences of many human rights defenders working on the issue of migration, refugees and asylum. Many become human rights defenders when they decide to respond to local human rights violations. Many take great personal risks and are accused of being people smugglers, foreign agents, traffickers and terrorists. Government authorities, violent extremists and organized criminal gangs attack them. Defenders advocating on these issues are often imprisoned, smeared, deported, kidnapped, physically attacked or killed for their work.

5. Despite this, human rights defenders continue to offer legal advice and lifesaving medical and humanitarian aid to those in desperate need. The Special Rapporteur has heard from many people living close to sea and land borders all over the world who have decided, at great risk to themselves, to defend the rights of others. She applauds their work and urges States to promote and celebrate human rights defenders working in their localities and not to vilify, smear or criminalize them.

6. The Special Rapporteur notes that she identified this issue of defenders working on migration and related issues as a priority in her first report.² The first communication she issued, on her first day as Special Rapporteur, 1 May 2020, was to the Government of Greece, raising concerns about the detention of human rights defender Salam Kamal-Aldeen, who had been ordered to leave the country after providing aid to migrants. The communication also raised the issue of the intimidation and criminalization of non-governmental organizations (NGOs) defending the human rights of migrants on the islands of Lesbos and Chios.³

7. The Special Rapporteur notes that many defenders are forced to protect the rights of others in secret. She further notes that there is a wide range of people asserting the right to defend rights in the context of migration and asylum. Some of those refusing to turn away from the violations of people’s rights in these areas fit the traditional profile of defenders, including lawyers and journalists. Others are themselves drawn from the community of migrants, refugees or asylum-seekers, motivated by human rights and helping others in similar situations. Some are

¹ See communication BIH 2/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25641>.

² A/75/165.

³ See communication GRC 2/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25189>.

individuals reacting to what is happening locally and become defenders in their neighbourhood communities.

8. The Special Rapporteur notes that many human rights defenders helping migrants, refugees and those seeking asylum come to this work not because they intended to establish a career in human rights, but decided to act when confronted with families, including children, dying in their localities. They are rescuing people from drowning in seas, saving those making desperate attempts to cross mountains, those freezing in forests or trekking across deserts. Some defenders are bringing food and clothes to those in need, or providing shelter, sometimes in their own homes, to those making dangerous journeys.

9. Some States have laws requiring persons to assist those in danger, but then target and prosecute human rights defenders for doing precisely that.⁴ The Special Rapporteur also acknowledges the contribution made by judges and lawyers in standing up for the rights of those helping migrants, refugees and asylum-seekers and notes that some legal cases brought against defenders by authorities have been dismissed by the courts.

10. Much of the literature on the work of these defenders – including the present report – focuses on the challenges, threats and intimidation they face and the attacks to which they are subjected.

11. But the Special Rapporteur also wants to applaud the significant success defenders have achieved across the world in helping to protect the rights of others in this context, saving countless lives at sea and on land and ensuring access to asylum where it would otherwise have been denied.

12. She notes that many States have introduced restrictions on those working on migration, refugees or asylum, including onerous new requirements of NGOs. Some organizations working on these issues have been dissolved or deregistered.

13. The Special Rapporteur understands that some of these issues have previously been addressed by her colleagues, including by the Special Rapporteur on the human rights of migrants,⁵ the Special Rapporteur on extrajudicial, summary or arbitrary executions⁶ and by her predecessor in her current mandate.⁷ Human rights NGOs have also focused on this issue in recent reports and advocacy.⁸

14. However, despite the attention afforded to this issue, and despite States having regular access to detailed information on the problems and suggestions for solutions, the targeting of human right defenders working on migration, asylum and the rights of refugees continues. In many parts of the world, this targeting appears to have intensified, with States ignoring their obligations to protect human rights defenders, and so this issue needs to be raised once again.

15. As the Special Rapporteur on the human rights of migrants noted in his 2021 report on pushbacks,⁹ “threats, intimidation and harassment and restrictive policies

⁴ See Observatory for the Protection of Human Rights Defenders, *Europe: open season on solidarity* (2021), p. 53. Available at www.omct.org/site-resources/legacy/Europe-Open-Season-on-Solidarity_2021-11-15-150546_kuut.pdf.

⁵ A/HRC/44/42.

⁶ A/HRC/41/36.

⁷ A/HRC/37/51.

⁸ See Observatory for the Protection of Human Rights Defenders, *Europe: open season on solidarity* and <https://ishr.ch/latest-updates/hrc45-criminalisation-defenders-europe-must-end/>; see also www.frontlinedefenders.org/en/statement-report/defenders-beyond-borders-migrant-rights-defenders-under-attack-central-america and www.civicus.org/index.php/freedoms-on-the-move.

⁹ A/HRC/47/30.

and practices against human rights defenders, including women human rights defenders, working to protect the rights of migrants, have not subsided”.

16. The successive Special Rapporteurs on the situation of human rights defenders have consistently raised these concerns with States and recommended greater action to protect defenders. More than 20 years ago, the first mandate holder told States that “Defenders seeking to protect the political, civil, economic, social or cultural rights of marginalized groups and persons face stronger resistance to their work, are more vulnerable and, therefore, more threatened. They include leaders of indigenous and other minority communities, leaders of movements of the poor, and defenders of the rights of women, sexual minorities, displaced persons, migrants and refugees.”¹⁰

17. Despite these issues and recommendations being regularly raised with States, including reminders of their obligations to protect defenders peacefully advocating for the rights of migrants, refugees and asylum-seekers, attacks on defenders and their work continue, including from State actors, resulting in the necessity for the present report.

18. Attacking human rights defenders for peacefully assisting those in need exposes States’ lack of resolve to fulfil the international standards they have committed to uphold and raises significant concerns about States’ intentions to abide by the international instruments they have ratified. Solidarity should never be punished, and compassion is not a crime.

II. Data and methodology

19. During the period from 1 January 2020 to 11 June 2022 alone, the Special Rapporteur sent 36 communications concerning the situation of human rights defenders working to support migrants, asylum-seekers and refugees. These communications have been addressed to 21 countries in total. The top recipients were Mexico (6 communications); Italy (5 communications); Malaysia (3 communication) and Greece (3 communications). Most communications were sent to the Western European and Other Group (12 communications); to the Latin-American Group (8 communications) and to the Asia-Pacific region (7 communications).

20. The Special Rapporteur carried out an official country visit to Greece in June 2022, where she met many human rights defenders working with migrants, refugees and asylum-seekers. She will be presenting a report on her visit to the Human Rights Council at its fifty-second session, in March 2023. Most of the information she received during her visit will be included in that report, and not duplicated in the present report.

21. The Special Rapporteur also notes there is a significant amount of recent literature available detailing the experiences of defenders working on these issues, particularly in Europe, including that produced by United Nations independent experts and NGOs. The Special Rapporteur extends her appreciation to those documenting such work, and in the present report has drawn on much of that research available in the public domain.¹¹

22. For the preparation of the present report, the Special Rapporteur has also consulted with hundreds of defenders, academics, legal experts and others from across

¹⁰ E/CN.4/2002/106, para. 115.

¹¹ See Observatory for the Protection of Human Rights Defenders, *Europe: open season on solidarity*; www.frontlinedefenders.org/en/statement-report/defenders-beyond-borders-migrant-rights-defenders-under-attack-central-america; and www.amnesty.org/en/latest/news/2020/03/europe-people-helping-refugees-and-migrants-risk-jail-as-authorities-misuse-anti-smuggling-laws/.

the world working in this area, as well as previous reports under the mandate and reports of regional bodies for the protection of human rights. She has also drawn on information received in response to her call for submissions from States, national human rights institutions, NGOs and human rights defenders. Available literature and research materials on the work of defenders working on migration and related issues were also consulted. Many cases the Special Rapporteur is familiar with cannot be featured in the report, for reasons of security and limitations on space.

23. Despite many academic and other rigorously researched studies focusing on human rights defenders helping migrants, refugees and those seeking asylum, she understands it is impossible to know exactly how many people are responding to this international crisis, or how many people they are trying to help.

24. Data on the numbers of people helped or saved, and the number of those dying on their journeys, is also difficult to establish. The Missing Migrants Project of the International Organization for Migration (IOM) records the number of people since 2014 who have died in the process of migration towards an international destination, regardless of their legal status. For 2021, that number stood at 5,880, but the Project noted that “As collecting information is challenging, all figures remain undercounts.”¹²

25. The regional breakdown for 2021 is 1,564 for Africa, 1,248 in the Americas, 788 in Asia, 133 in Europe, 2,048 in the Mediterranean and 99 in Western Asia.¹³

26. In a study by the NGO Euro-Mediterranean Human Rights Monitor, it is reported that, in 2021, 1,838 migrants died or disappeared in the Mediterranean Sea, a rate of five deaths per day. The number represents an increase of about 20 per cent compared to 2020, when the number was 1,448 deaths recorded.¹⁴ According to local human rights defenders and journalists, at least 21 people have died in the freezing forests along the Poland-Belarus border.¹⁵

III. Applicable legal framework

27. Human rights defenders and other civil society actors and organizations have a crucial role to play in upholding migrants’ rights, providing services to vulnerable groups and working with Governments to address the refugee policy crisis. They should be supported and not restricted in this vital work.

28. 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 (the Declaration on Human Rights Defenders) does not exempt migrants, refugees or asylum-seekers from its protection, nor those who defend their rights.

29. The Declaration states that “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.”

30. The term “human rights defender” refers to individuals or groups who, in their personal or professional capacities and in a peaceful manner, strive to protect and promote human rights. Defenders are above all identified by what they do and are characterized through their actions to protect human rights.

¹² See <https://missingmigrants.iom.int/>.

¹³ Ibid.

¹⁴ See www.euromedmonitor.org/en/article/4831/Renewed-Tragedy:-The-rise-of-drowned-&-missing-migrants-&-asylum-seekers-toll-in-2021.

¹⁵ See www.itv.com/news/2022-04-09/the-refugees-freezing-to-death-a-few-miles-from-where-others-get-a-warm-welcome.

31. Their right to exercise such fundamental rights and freedoms as those to peaceful assembly and association, participation in the affairs of society and freedom of expression and opinion, are firmly anchored in the international system of human rights, including in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other key international and regional instruments.

32. Being a human rights defender is not dependent on one's profession. Defenders include lawyers, judges, journalists, academics, those from a range of other careers or jobs, or people not in formal employment. Human rights defenders can be migrants, refugees or asylum-seekers.

33. While States have the sovereign right to determine their migration policies, this right is constrained by the obligations voluntarily assumed by States under international human rights law. Although a diverse array of international agreements apply to certain, widely recognized groups, such as refugees and migrant workers, all of them and their allies share the same universal human rights articulated in the Universal Declaration of Human Rights. International human rights law prohibits discrimination on the basis of nationality; the treaty bodies responsible for the interpretation and supervision of the core instruments of the international human rights regime have issued clear guidance that the rights articulated in the treaties apply without discrimination between citizens and non-citizens and, by extension, should be enjoyed by all migrants, refugees and asylum-seekers.

34. The Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations reaffirm the provisions of the Universal Declaration of Human Rights and the Declaration on Human Rights Defenders. Principle 18 of the Principles and Guidelines states that Governments should "provide, in law and in practice, a safe, accessible and enabling environment for individuals and organizations that work to promote or protect the human rights of migrants. Do not criminalize or otherwise penalize the provision of support and assistance to migrants. Ensure that the rights of human rights defenders are not violated or curtailed because of the work they do. Specifically protect human rights defenders who work to defend the rights of migrant women, and migrants who defend the rights of other migrants".¹⁶ Additional provisions call upon States to establish public policies and programmes that support and protect human rights defenders in all stages of their work. Any limitations placed on their activities must be in accordance with international standards.

IV. Trends

35. The Special Rapporteur notes that defenders who refuse to turn away from those needing help have achieved notable success in their work, saving lives and helping thousands of people.

36. She also notes that those defenders who work on these issues face a range of attacks, including vilification, smear campaigns, imprisonment, deportation, threats, kidnap and murder.

¹⁶ See OHCHR and Global Migration Group, "Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations" (Geneva), principle 18. Available at www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf.

37. In a submission for the present report, the Commission nationale consultative des droits de l'homme in France reported several cases of physical attacks against defenders working to help migrants.¹⁷

38. The Special Rapporteur notes that some laws enable the prosecution and criminalization of defenders advocating for the rights of migrants. Defenders are brought before courts for protecting the rights of others as solidarity is criminalized and often conflated with people smuggling. A number of these domestic laws stem from the European Union Facilitation Directive.

39. In a research paper published in 2019, the organization Research Social Platform on Migration and Asylum (ReSOMA) noted that national laws under which human rights defenders have been prosecuted include those which “fall within the remit of European Union law – namely the European Union Facilitation Directive”. The organization criticizes the Directive for “the ‘vague and ambiguous’ definition of facilitation-related crimes and offences and lack of fundamental rights standards within the Facilitation Directive. It opens the gates for misinterpretations and misuses”.¹⁸ In 2020, research by ReSOMA detailed cases of 171 individuals in 13 European Union member States criminalized for acting in solidarity with migrants.¹⁹

40. Academic research published in May 2020²⁰ and June 2021²¹ from EU-CITZEN, a network of academics focusing on European citizenship rights, noted that the European Union Facilitation Directive does not require “financial or other material benefit” for facilitation of irregular entry or transit to qualify as a crime, and only four European Union countries require a profit motive to be shown for helping migrants in this way to be a crime. The study notes that many European Union countries “continue to criminalize not-for-profit behaviour, like giving free food, shelter or a lift with a car for undocumented migrants” despite the directive containing an optional “humanitarian exemption clause”, and suggests that these “so called ‘criminalization of solidarity’ cases, entail serious chilling effects for civil society, in particular, the freedom of association and freedom of speech”. The organization also detailed many attacks on those defending migrant and related rights by the use of strategic lawsuits against public participation in the European Union.

41. Defenders are vulnerable to attack partly because of the lack of protections at the national and regional levels. A study commissioned by the European Parliament and published in October 2020 noted that while many “migrant rights’ defenders were subject to smear campaigns, verbal and physical attacks, administrative fines and even criminal prosecutions ... no regional mechanism is developed to protect human rights defenders in Europe”.²²

42. The Platform for International Cooperation on Undocumented Migrants (PICUM) represents a network of 164 organizations working with undocumented migrants in 31 countries. In a submission for the present report, it also provided information that, between January 2021 and March 2022, at least 89 people were criminalized in the European Union, according to media monitoring of different national news.²³ Four of them were migrants themselves. People have been

¹⁷ Submission from Commission nationale consultative des droits de l'homme.

¹⁸ See <https://migrationresearch.com/storage/app/uploads/public/5efb3c62ed04f608791146.pdf>.

¹⁹ See www.migpolgroup.com/wp-content/uploads/2020/03/ReSoma-criminalisation-.pdf.

²⁰ See https://ec.europa.eu/info/sites/default/files/ad-hoc-literature-review-analysis-key-elements-slapp_en.pdf.

²¹ See https://ec.europa.eu/info/sites/default/files/slapp_comparative_study.pdf.

²² See [www.europarl.europa.eu/RegData/etudes/STUD/2020/659660/IPOL_STU\(2020\)659660_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2020/659660/IPOL_STU(2020)659660_EN.pdf).

²³ See M. Gionco and J. Kanics, “Resilience and Resistance in defiance of the criminalization of solidarity across Europe” (Greens/EFA, Brussels, 2022), annex 3.

criminalized for actions including: providing food, shelter, medical assistance, transportation and other humanitarian aid for people who crossed a border and were in dire conditions; assisting with asylum applications; and rescuing migrants at sea. In the vast majority of cases (88 per cent), human rights defenders were charged with facilitation of entry, transit or stay or migrant smuggling, depending on how the crime is defined in the national legislation.²⁴ In 28 per cent of these cases, in addition to the offence of smuggling, people were also accused of money-laundering, espionage and membership of a criminal organization.²⁵

43. According to PICUM, other charges used to criminalize human right defenders include: disturbing the peace;²⁶ conspiracy, abuse of office, fraud, extortion, embezzlement and abetting irregular immigration;²⁷ being in an emergency zone (i.e., at the Lithuanian and Polish borders with Belarus);²⁸ illegally obtaining State secrets;²⁹ hijacking a vessel and engaging in an act of terrorism;³⁰ resistance and violence against a warship;³¹ and complicity in trafficking in human beings.³² However, it is reported that these numbers are likely to only represent a very minimal percentage of the people who are criminalized in the European Union for solidarity towards migrants.³³

44. In a submission for the present report, the Polish Commissioner for Human Rights noted that the Government of Poland “has done little to support and protect human rights defenders involved in response to this crisis. In fact, legislative and material actions taken by the Government suggest that the aim was to discourage them from involvement in assistance to irregular migrants”.³⁴

45. In addition to cases of individual targeting of defenders mentioned above, in September 2021 a state of emergency was declared in the area along the Poland-Belarus border that effectively barred access of activists and journalists to the established “exclusion zone”. This prevented human rights defenders from monitoring actions of the authorities in the zone and from providing humanitarian relief to asylum-seekers.³⁵

²⁴ W. Strzyżyńska, “Poland detains activists accused of smuggling migrants over Belarus border”, *The Guardian*, 25 March 2022; Iuventa, “Italian prosecutor presses charges against the Iuventa crew”, 4 March 2021; *swissinfo.ch*, “Un juez italiano archiva la investigación contra ONG por tráfico de migrantes”, 28 January 2022; B. Rumieńczyk, “Aktywistka przesłuchana w kajdankach. KIK: ‘Dlaczego są dwie kategorie uchodźców i pomagających?’”, *Oko.press*, 29 March 2022; Memesita, “Criticism of church asylum verdict against religious sister”, 6 June 2021; E. Wallis, “Greece: Migrant accused of smuggling sentenced to 146 years in prison”, *InfoMigrants*, 14 May 2021; P. Myers, “French judges clear farmer who offered humanitarian solidarity to migrants”, *RFI*, 31 March 2021.

²⁵ T.M. Issa, “Greece to put Syrian swimmer, aid workers who helped migrants on trial for espionage”, *Alarabia News*, 18 November 2021.

²⁶ J. Plucinska, “Locals helping migrants on Poland-Belarus border fear backlash”, *swissinfo.ch*, 15 November 2021.

²⁷ Deutsche Welle, “Migrant-friendly Italian ex-mayor sentenced to 13 years in prison”, *InfoMigrants*, 1 October 2021.

²⁸ European Council on Refugees and Exiles, “EU Eastern Borders: Belarus and Poland Enact Brutal Violence and Block Aid Workers, Lithuania Lifts State of Emergency”, 14 January 2022.

²⁹ Associated Press, “Greece: Norwegian photographer held on spy charge released”, 21 March 2022.

³⁰ S. Sanderson, “Calls to release three young asylum seekers in Malta grow, as EU countries face criticism for jailing migrants”, *Info Migrants*, 26 October 2021.

³¹ “Niente processo per Carola Rackete, ‘suo dovere portare migranti in porto’”, *huffingtonpost.it*, 19 May 2021.

³² Solidarity is not a crime, “Communiqué 26 Mai Verdicts Procès de la Solidarité et de la migration en appel”, 26 May 2021.

³³ Submission and sources from PICUM.

³⁴ Submission from the Polish Commissioner for Human Rights.

³⁵ *Ibid.*

46. Defenders who work on these rights are targeted on every continent. Migrante International, an NGO in the Philippines working on migrant rights, noted in a submission for the present report that “we have witnessed heightened red-tagging of Filipino migrant leaders from Migrante International and its affiliate groups”, and that the group and its affiliates had been attacked on social media for their work with migrants.³⁶

47. Defenders working on these issues in the Dominican Republic also report social media attacks, smears and threats.³⁷

48. Faleh Hammoudi is a human rights defender in Algeria and national secretary of the Migration Department at the National Autonomous Union of Public Administration Personnel (SNAPAP). According to information received, he has been repeatedly arrested in recent years for his human rights work.³⁸

49. In June 2021, two police officers reportedly took Mr. Hammoudi from his house to the general intelligence police headquarters in Tlemcen, where he was interviewed by three other police officers on his involvement as a SNAPAP trade unionist in the defence of migrants, and its participation in discussions on social networks with international NGOs. The police reportedly told him that this work constituted an attack on national sovereignty.³⁹

50. Organizations that help migrants, and where human rights defenders often work, are also targeted by authorities. In Nicaragua, the 2022 General Law on the Regulation and Control of Non-Profit Organizations is being introduced that includes a section attempting to regulate the proportion of non-Nicaraguans permitted to be members of NGOs. As noted in a communication to the Nicaraguan authorities “article 12 of the Law, regarding the constitution of Associations, establishes a maximum of 25 per cent of members ‘from other nationalities resident in Nicaragua.’ This would impede, for example, migrants from creating an association to defend their rights in the country”.⁴⁰

51. In December 2020 in Cyprus, the NGO Action for Support, Equality and Antiracism (KISA) was included on a list of associations published by the Ministry of the Interior that were to be dissolved. For the 12 months before, KISA and other NGOs working on issues of migration and asylum-seekers in Cyprus were the targets of comments made by the Ministry of the Interior that could be considered defamatory. The organizations have been accused of cooperation with terrorist organizations, corruption and being involved in money-laundering. It appears that KISA has been targeted for its work providing support to migrants and combating racial discrimination and xenophobia.⁴¹

52. A series of laws in Greece in recent years has also sought to restrict and prohibit the work of defenders helping migrants.⁴² In September 2020, French authorities in

³⁶ Submission from Migrante International.

³⁷ Submission to report from Observatorio Migrantes del Caribe (OBMICA) and Centro de Desarrollo Sostenible (CEDES).

³⁸ See communication DZA 2/2022, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=270666>.

³⁹ Ibid.

⁴⁰ See communication NIC 1/2022, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27262>.

⁴¹ See communication CYP 1/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26312>.

⁴² See Observatory for the Protection of Human Rights Defenders, *Europe: open season on solidarity*, pp. 44–46; submission from Commission nationale consultative des droits de l’homme.

the Pas de Calais department issued measures preventing the distribution of free food.⁴³

V. Secret defenders

53. The Special Rapporteur has received detailed information from many countries about defenders who are forced to work in secret for fear of attacks for their work helping migrants, refugees or asylum-seekers. This defence of the rights of others is often hidden from authorities, from their families, communities and neighbours.

54. The Special Rapporteur recognizes the particular pressures on defenders forced to assert their right to defend others' rights in secret, including defenders who bring food and medicine to migrants and others, sometimes under the cover of darkness. Some defenders secretly shelter people in their homes or provide medical assistance in underground, makeshift clinics.

55. Faced with the threat of being prosecuted for facilitating illegal immigration, their work often goes unrecognized and unprotected.

56. Some meetings the Special Rapporteur conducts with defenders working on these issues have to be organized confidentially, for fear of reprisals against the defenders. For instance, the Special Rapporteur heard that a number of defenders in Libya had been attacked for their work in helping migrants. They reported being tortured and smeared with sexual allegations, but feared their names being made public in case it led to further attacks. They said human rights defenders defending migrants' rights are accused of conspiring against the stability of Libya and of trying to colonize the country with migrants, and that they feel under attack from militias. Others said the Government had prevented them from visiting detained migrants and that they are exposed to abuse at detention centres and threats by human trafficking gangs.

57. She also heard about the difficulties some defenders experience in providing medical assistance to migrants.⁴⁴

58. The Special Rapporteur notes that various regional and national protection mechanisms for human rights defenders, including government guidelines on engaging with defenders to support and promote their work, rarely address how States can support defenders working in secret. Protection mechanisms are often designed to assist defenders by offering them greater visibility, by naming them publicly and by drawing attention to their work. Defenders consulted in the preparation of the present report also noted that existing protection mechanisms are often underresourced and fail to protect defenders working on issues related to migration, refugees and asylum.

59. For those defenders forced to work in secret, other methods need to be explored to protect them and their work. Third-country States can promote and applaud their work by publicly commending efforts generally, by making supportive declarations of those working underground, by calling on authorities to stop targeting them and by recognizing the contribution such defenders make without naming them.

60. In 2022, the Polish Commissioner for Human Rights gave the annual Award of Paweł Włodkowic, given in recognition of human rights defence, to the local

⁴³ See www.infomigrants.net/fr/post/27209/calais--un-arrete-interdit-aux-associations-de-distribuer-de-la-nourriture-aux-migrants-les-humanitaires-sinsurgent (available in French only).

⁴⁴ Interview with defenders from Tunisia.

community of Michałowo, an area near the Belarus border that became an informal hub for humanitarian aid provided along the border.⁴⁵

61. States should engage with defenders working in secret by inviting them to confidential consultations to hear how best they want to be supported and helped.

62. In a March 2020 report, Amnesty International reported cases of people being targeted for helping migrants in Croatia, France, Greece, Italy, Malta, Spain, Switzerland and the United Kingdom of Great Britain and Northern Ireland.⁴⁶

63. Human rights defenders working on issues of migration, refugees and asylum face a range of threats and attacks, including death threats and murder. In September 2021, human rights defender and refugee Mohib Ullah was shot dead in Bangladesh. He was known for his work documenting rights violations against the Rohingya minority in the country.⁴⁷ Prior to his death, he had received threats that he had reported to the authorities, as have so many human rights defenders in various parts of the world, before being killed – an issue the Special Rapporteur addressed in a 2020 report.⁴⁸

64. Following the death of Mr. Ullah, human rights defender Abdul Ghani received death threats on social media saying he should take Mr. Ullah's place in the refugee camp. Mr. Ghani is President of the Myanmar Ethnic Rohingya Human Rights Organization Malaysia, based in Kuala Lumpur. As part of this work, he advocates for the rights of refugees and asylum-seekers and has been subjected to years of abuse and threats on social media.⁴⁹

65. Lorenzo Ortiz is a Baptist pastor and human rights defender who has been working for the past five years assisting migrants on the Mexico-United States of America border, providing them with food and shelter. Leading a network of shelters in the cities of Nuevo Laredo and Monterrey in Mexico, as well as Texas in the United States, over the last number of years he has become the target of local cartels who profit from transporting migrants across the border.

66. On 2 June 2022, Mr. Ortiz was kidnapped by members of one local cartel, who considered his voluntary human rights activities as a threat to their people-smuggling profits.⁵⁰ Members of the cartel threatened to kill him and his family and held him for a ransom of \$40,000. Following a strong reaction from local communities and the deployment of the Mexican National Guard and members of the army, Mr. Ortiz was released on 4 June 2022 without ransom. He continues to be in a situation of extreme risk and fears violent retaliation for continuing to defend the rights of migrants.

67. The United States-based NGO Human Rights First notes there has been a series of attacks by cartels, including abductions of religious leaders offering assistance to migrants and asylum-seekers, along the border.⁵¹

68. Engelbert Habumuremyi, known as “Angelo”, is a refugee from Rwanda and lives in Goma, Democratic Republic of the Congo. Since 2016, he has worked with the Global Refugee Leaders Forum, an organization that reports on refugee issues and provides support to communities that have been forcibly displaced. In May 2021, he

⁴⁵ See <https://bip.brpo.gov.pl/pl/content/przedstawiciele-wladz-michalowa-odebrali-nagrode-im-pawla-wlodkowica> (available in Polish only).

⁴⁶ See www.amnesty.org/en/documents/eur01/1828/2020/en/.

⁴⁷ See communication BGD 5/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26778>.

⁴⁸ A/HRC/46/35.

⁴⁹ See communication MYS 8/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26865>.

⁵⁰ See communication MEX 8/2022.

⁵¹ Submission from Human Rights First.

left his home and headed to the office of the organization Actions et interventions pour le développement et l'encadrement social, a partner of the Office of the United Nations High Representative for Refugees (UNHCR) in the city.⁵²

69. He never arrived, and there are fears that he has been the subject of an enforced disappearance. Colleagues believe that his disappearance could be linked to the threats, including death threats, that he and other members of the Global Refugee Leaders Forum had been receiving since April 2021 from members of the security forces and armed groups, as well as other unidentified individuals.⁵³

70. The threats reportedly had been received before and in the context of the planned visit of the United Nations High Commissioner for Refugees to Goma on 23 April 2021. Two representatives of the Global Refugee Leaders Forum had been due to meet with the High Commissioner, and the NGO also planned to issue an open letter during the visit. On 14 April 2021, the Forum's office was broken into by unknown persons and a laptop computer was stolen on which the draft of the letter had been saved, along with other documents used in the writing process.⁵⁴

71. Earlier in the day, members of the Global Refugee Leaders Forum and a group of refugees had met in the offices to draft the letter. Mr. Habumuremyi had reportedly contacted the UNHCR office in Goma earlier about the security issues faced by him and other refugees who had spoken out about issues affecting refugees in the town.⁵⁵

72. His colleagues believe his disappearance could also be linked to the fact that he had helped a group of 19 Rwandan refugees when they crossed the border in the Kibati region in Nyiragongo, North Kivu, on 19 May 2021, seeking asylum.

VI. Journalists

73. Journalists exposing the violations of the rights of migrants and others, and attacks on them, and journalists covering defenders who are helping migrants and others, are often attacked.⁵⁶

74. In April 2021, the Special Rapporteur and other special procedure mandate holders received information suggesting a pattern of wiretapping and surveillance of several journalists in Italy by public prosecutors dating from 2017. Those targeted included staff members of humanitarian relief organizations and human rights defenders covering the central Mediterranean migration situation at that time. This included the seemingly baseless wiretapping of freelance journalist Nancy Porsia's mobile telephone. While she was researching Libyan human trafficking networks, prosecutors reportedly wiretapped her mobile telephone over an extensive period, recorded her communications and tracked her movements via geolocation. Personal details, contact information, names of sources and other details were apparently collected. In at least one instance, prosecutors allegedly listened in while she and another journalist were discussing how to gather video evidence of acts of violence perpetrated against migrants in Libyan detention facilities.⁵⁷

⁵² See communication COD 4/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26548>.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ See communication DZA 4/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26463>.

⁵⁷ See communication ITA 2/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26512>.

75. In November 2021, photojournalists Maciej Moskwa, Maciej Nabrdalik and another person were documenting the human rights situation of migrants in Poland close to the border with Belarus. Their car was reportedly surrounded by eight armed soldiers in balaclavas who handcuffed and threatened them and photographed messages on their telephones.⁵⁸

VII. Lawyers

76. Human rights defender Mohammad Ahmad Samir Sablough is a lawyer based in Lebanon who documents cases and assists victims of torture and Syrian refugees facing deportation. After providing Amnesty International with information in 2020 and 2021 regarding alleged violations against Syrian refugees in Lebanon, in April 2021 a representative of the General Security Directorate reportedly told Mr. Sablough “not to communicate with international NGOs” and accused him of “high treason”. In September 2021, Mr. Sablough defended a group of six Syrians facing deportation to the Syrian Arab Republic. General Security officers allegedly interrogated the detainees to obtain information about the human rights defender.⁵⁹

77. In May 2020, the Special Rapporteur raised the issue of harassment and “flagging” of human rights defenders by the Government of the United States, reportedly in retaliation for their work with migrants and asylum-seekers. These included a number of lawyers, among them Nicole Ramos, a United States citizen living in Tijuana, Mexico, and the legal director of Al Otro Lado, an organization engaged in protecting the rights of migrants and asylum-seekers in the United States and broader impact litigation. She received reports from asylum-seekers that the Customs and Border Protection agency had made slanderous statements against her at the San Ysidro port of entry, including that Ms. Ramos was a “fraud”, a “fake attorney” and a “troublemaker”.⁶⁰

78. In January 2019 lawyer Erika Pinheiro was detained by Mexican immigration authorities as she attempted to enter Mexico at San Ysidro and told by Mexican immigration officials that a foreign Government had issued a migratory alert on her passport. She was detained for two hours before ultimately being denied entry into Mexico. That same month, Nora Phillips, the legal director of Al Otro Lado in Los Angeles and a United States citizen, was detained by Mexican officials at the Guadalajara Airport based on a “migratory alert” connected to her United States passport. She was detained for approximately 10 hours, during which time neither she nor her child were given food or drinking water. Ms. Phillips is a person with disabilities and requires medication to manage her multiple medical conditions. She was ultimately denied entry into Mexico, and she and her child were returned to the United States.⁶¹

79. These incidents and others started in 2017 but appear to have escalated into what may constitute a pattern of flagging and harassment by the Government of the United States.

80. NGOs working on migration and refugee issues in Mexico and the United States have also reported attacks on defenders by violent extremists – often motivated by

⁵⁸ See communication POL 1/2022, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26975>.

⁵⁹ See communication LBN 8/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26807>.

⁶⁰ See communication USA 2/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25061>.

⁶¹ See communications MEX 2/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25168>; and communication USA 2/2020.

racist, xenophobic, anti-Semitic and anti-Muslim animus. These incidents include threats on social media.⁶²

81. In a submission for the present report, The Greek National Commission for Human Rights noted that, in March 2020, Greeks and members of far right/fascist groups from other European countries appeared both on the Aegean islands and in Esvos, where they joined groups of locals acting as an informal “militia” against asylum-seekers, refugees and human rights defenders.⁶³

82. State officials and non-State actors also target those providing legal assistance to migrants, refugees and those seeking asylum.

83. COMDHSE is a network of civil society organizations accompanying and protecting migrants in Mexico. They have reported being obstructed in their work by various security forces at border points such as Paso del Coyote, el Palenque, Limón, los Rojos and the Cascajos area.

84. In 2021, COMDHSE human rights defenders were reportedly threatened at the Mexico-United States border by officials of the Mexican National Migration Institute and ejected from the premises by the police, who photographed them without consent.⁶⁴ Other defenders have reported that armed gangs in Mexico sometimes present themselves as State officials and attack those helping migrants.⁶⁵

85. Local defenders in Colombia report that those assisting migrants on the border between Colombia and Venezuela (Bolivarian Republic of) are operating in a very dangerous context where armed groups dedicated to drug trafficking are responsible for direct attacks on migrants and those helping them.⁶⁶

VIII. Gender-based attacks on human rights defenders

86. Like Ms. Bihorac in Bosnia and Herzegovina, other defenders are also targeted on the basis of their gender or other identity, attacked not only for what they do but for who they are.

87. Valentina Chupik is a woman human rights defender and head of the NGO Tong Zhakhoni, which focuses on migration issues in the Russian Federation. A vocal critic of the migration and refugee system in the Russian Federation, in 2006 she fled her native Uzbekistan after law enforcement officers reportedly kept her in a basement for 38 hours and threatened to rape her, kill her and dismember her body.

88. She received refugee status in the Russian Federation in 2009, which was extended annually until 2021. However, in September 2021 she was detained at Sheremetyevo airport in Moscow after returning from a trip to Armenia, held for a week without access to a lawyer under constant bright lights, which she said has

⁶² Submissions from Al Otro Lado and Human Rights First.

⁶³ Submission from The Greek National Commission for Human Rights.

⁶⁴ See communication MEX 10/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26521>.

⁶⁵ Submission from Contribución del Programa de Asuntos Migratorios de la Universidad Iberoamericana Ciudad de México, la Red Franciscana para Migrantes, el Centro por la Justicia y el Derecho Internacional, el Colectivo de Observación y Monitoreo de Derechos Humanos del Sureste Mexicano, el Centro de Derechos Humanos Fray Matías de Córdova A.C. and la Red Jesuita con Migrantes – Latinoamérica y el Caribe, and with technical support from Franciscans International.

⁶⁶ Ibid.

damaged her vision, and informed her refugee status had been revoked. She is currently in Armenia and continues her work advocating for migrant rights.⁶⁷

89. Serge Musana is a refugee at the Nakivale refugee camp in southern Uganda. He is a defender of the rights of lesbian, gay, bisexual and transgender persons and director of the Nakivale Victims' Association, which fights discrimination based on sexual orientation, gender identity and HIV status, in the Nakivale refugee camp. In October 2016, three men reportedly attacked and attempted to kill him. He was stabbed in the chest and the abdomen with a knife. In March 2017, he was reportedly abducted from the Nakivale refugee settlement, tortured and sexually abused by three military officers. He was beaten, physically and verbally abused, burned by lit cigarettes and raped. Two days later he was left in a forest outside Nakivale and was reportedly told that, if he did not die by the time someone found him, he was to tell police that he had been kidnapped by unidentified individuals. In March 2022, three members of the Association, Mr. Musana, Kiza Esther and Mukendi Katedi, were attacked by unidentified individuals with knives and called "gay undesirables".

90. According to the information received, Mr. Musana is just one of a number of human rights defenders that has been attacked for working to combat discrimination on the basis of sexual orientation and gender identity in the Nakivale refugee camp. According to records kept by the Association, 24 human rights defenders have been targeted for their work, including 4 who have been killed. Others have suffered threats, torture, rape and attempted killings.⁶⁸

IX. Migrants as defenders

91. Defenders in this area also include migrants, refugees and asylum-seekers who themselves are defending the rights of others, often at great risk. These defenders often have added layers of vulnerability, involving precarious legal situations, discrimination and suspicion.

92. In a submission for the present report, PICUM notes that migrants who help others "face greater risks ... and may be afraid of losing their residence status or compromising their application for international protection", and that "Many cases of criminalization are likely to go unreported because of fears that media attention could further endanger [defenders'] relations with the authorities and limit access to border areas or reception centres; to preserve volunteers' right to private life and not to put them and their families at risk; or because some human right defenders might prefer not to speak out while trials are ongoing."⁶⁹

93. Rayhan Kabir from Bangladesh provided advice to migrants from Bangladesh in Malaysia for six years, until he was deported in August 2020. He had been helping migrants with salary claims and in cases of arbitrary detention. After he took part in an Al-Jazeera television documentary criticizing the Government's treatment of migrants during the coronavirus disease (COVID-19) pandemic, the Malaysian authorities posted his photo and personal details on social media and announced the opening of a case being opened against him. He was detained on grounds of "national integrity" and deported, with his passport marked as "blacklisted".⁷⁰

⁶⁷ See communication RUS 10/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26684>.

⁶⁸ See communication UGA 3/2022.

⁶⁹ Submission from PICUM.

⁷⁰ See communication MYS 1/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26013>.

94. Three Eritrean men granted asylum in Italy – Afewerki Gebremedhn, Abraha Ghebrehiwet and Hintsu Mebrahtom – were arrested in March 2016 on suspicion of being members of an international people-smuggling organization and charged with criminal conspiracy to facilitate illegal immigration. The accusations against the men stemmed from acts of assistance towards other Eritreans that they had performed between May 2014 and October 2015. This included giving advice on how to use public transport, helping the people involved buy tickets for buses or trains, buying clothes, food, telephones and SIM cards for those involved, as well as hosting recently arrived asylum-seekers and helping them find places to stay. They were held in Rebibbia prison in Rome until December 2017.⁷¹ The men spent over two years in prison. In May 2022, the men were acquitted by the Supreme Court of Cassation in a judgment that declared that “the fact did not exist”.⁷²

X. Courts uphold defenders’ rights

95. While not all defenders find protection in the courts, the case below is one of several known to the Special Rapporteur where courts have upheld the rights of defenders to defend the rights of others.

96. In his 2022 report entitled “Human rights violations at international borders: trends, prevention and accountability”, the Special Rapporteur also notes that “some progress has been made towards preventing systemic human rights violations at borders, and towards fulfilling the rights of migrants who have suffered human rights violations or abuses as a result of border governance measures. Such progress has been primarily achieved through national and regional courts, and has not been followed by resolute changes in government policy and border governance strategies”.⁷³

97. Some success has also been achieved in the courts on protecting human rights defenders working on these issues. Although some defenders have been fully exonerated, the Special Rapporteur notes that legal vindication can come after years of stressful court proceedings, expensive legal bills, public suspicion and costly personal and emotional sacrifice. However, it is often the judiciary that upholds States’ obligations to provide an enabling environment for the work of defenders, and she applauds those in judicial systems prepared to withstand political pressure and to protect defenders.

98. In 2019, a United States federal court acquitted Scott Warren of the charge of abandonment of property. He was part of a group that leaves food, water, blankets and medical supplies at drop sites in the Sonoran Desert in Arizona, where large numbers of migrants are known to have died from hyperthermia, exposure and dehydration. He had been charged with leaving barrels of water in the desert. The court ruled that the prosecution had violated his religious freedom.⁷⁴

99. In April 2021, a monk was acquitted in a German court after providing asylum in a church to a migrant. The court found that, although Abraham Sauer had unlawfully provided assistance to the man, his actions had been based on faith and

⁷¹ See communication ITA 1/2022, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27290>.

⁷² See www.infomigrants.net/en/post/40702/italy-eritrean-migrants-aquitted-for-helping-fellow-migrants-solidarity-not-a-crime#:~:text=Italy's%20supreme%20Cassation%20Court%20in,%22%2C%20their%20defense%20lawyers%20said.

⁷³ A/HRC/50/31, para. 71.

⁷⁴ See communication USA 6/2018, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23798>.

conscience, and he was acquitted.⁷⁵ In February 2022 the Bavarian Supreme Court upheld the acquittal.⁷⁶

100. German ship captain Carola Rackete was detained in Italy 2019 for disembarking migrants rescued at sea on the island of Lampedusa in Italy after she refused to dock in the Libyan port of Tripoli. She was arrested for assisting illegal immigration, disruption of public order and violent resistance to a warship. The case against Ms. Rackete was definitively dismissed by the Tribunal of Agrigento at the end of 2021, in a final decision. The Tribunal, in dismissing the charges against Ms. Rackete, noted that she had acted in accordance with her duty because Tripoli could not be considered a “place of safety”.⁷⁷

101. In June 2022, Matteo Salvini was due to stand trial in a Milan court on charges of defaming Ms. Rackete when he was Italian Interior Minister in 2019. He had called her a “German criminal” and a “rich German outlaw”.⁷⁸

102. In May 2022, also in Italy, Andrea Costa, the head of the Rome non-profit migrant reception centre Baobab, and two of its employees were cleared of charges related to illegal immigration. According to press reports, the judge said the acquittals were “because the crime was non-existent”.⁷⁹

103. Also in May 2022, Mussie Zerai, a priest based in Trapani, Italy, was cleared of all charges, relating to illegal immigration in connection with providing humanitarian aid to refugees.⁸⁰

104. French courts have issued a series of judgments acquitting those charged in relation to their work helping migrants, including farmer Cédric Herrou, who had provided humanitarian aid to migrants at the French-Italian border.⁸¹ He was first taken into in police custody in August 2016, and there followed a series of proceedings, including several convictions for “aiding the entry, movement and illegal residence of a foreigner in France”. On 13 May 2020, the Lyon Court of Appeal acquitted him of such a conviction, but the Public Prosecutor’s Office appealed his acquittal on 22 May 2020. The Court of Cassation finally rejected the appeal, making his acquittal final in March 2021.⁸²

105. In a landmark ruling in November 2021, the European Court of Justice found that Hungarian legislation restricting the work of migrant and refugee rights defenders was unlawful and must be rescinded.⁸³

⁷⁵ See www.sueddeutsche.de/bayern/muensterschwarzach-kirchenasyl-moench-urteil-1.5276231.

⁷⁶ Ibid.

⁷⁷ See communication ITA 5/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25526>; and communication ITA 6/2019, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24702>. See also www.icj.org/wp-content/uploads/2022/04/Criminalization-paper-22-04-2022.pdf.

⁷⁸ See www.infomigrants.net/en/post/39252/italy-salvini-on-trial-in-june-for-defaming-carola-rackete.

⁷⁹ See www.ansa.it/english/news/general_news/2022/05/03/rome-migrant-centre-head-cleared-of-illegal-immigration_e792885b-f0c1-4620-9ee0-bedbe5b32180.html.

⁸⁰ See www.infomigrants.net/en/post/40866/peace-activist-father-zerai-cleared-on-illegal-migration-charges.

⁸¹ See communication FRA 5/2017, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23183>.

⁸² See www.france24.com/en/20170106-french-court-acquits-researcher-mannoni-illegal-migrants-nice-roya-valley; and www.fidh.org/en/issues/human-rights-defenders/france-migrant-rights-defender-cedric-herrou-finally-released.

⁸³ Case No. C-821/19, available at <https://curia.europa.eu/juris/liste.jsf?num=C-821/19>.

XI. Positive actions

106. The Special Rapporteur notes that some States are also enabling the work of defenders on these issues outside the judicial process. Some NGOs report positive support for defenders working on these issues from embassies, including those of Indonesia and the Philippines in supporting defenders working on the rights of migrants belonging to the diasporas of those countries in Malaysia.⁸⁴

107. According to a 2022 report by NGO Freedom House, some human rights defenders are managing to work from Costa Rica after fleeing Nicaragua. While it is noted in the report that “[t]he process to obtain legal status in the country is cumbersome and takes a long time”, and with Nicaraguan human rights defenders reporting waits of up to two years to obtain the legal status required to work, some are managing to work. One is quoted as saying “[c]urrently I work in the defence of human rights of migrant populations, especially of political refugee seeking asylum in Costa Rica”.⁸⁵

XII. Reprisals against human rights defenders supporting migrants, refugees and asylum-seekers

108. Each year, the Secretary-General presents a report on cooperation with the United Nations, its representatives and mechanisms in the field of human rights. In it, he addresses intimidation and reprisals against those seeking to cooperate or having cooperated with the United Nations, its representatives and mechanisms in the context of human rights. In recent years, the report has featured several cases of reprisals against organizations working peacefully for the rights of migrants, refugees and asylum-seekers who were targeted for their engagements, or attempted engagement, with United Nations mechanisms.

109. For example, in the 2019 report it is noted that two organizations that participated in the review of Hungary by the Human Rights Committee in March 2018, the Hungarian Helsinki Committee and Amnesty International Hungary, had been targeted, at least in part, for their advocacy on migrants’ rights at the United Nations.

110. The report on reprisals also included that, in September 2018, special procedures mandate holders had addressed legislation and practices regulating civil society in Hungary.⁸⁶ The mandate holders had mentioned the NGO Transparency Law, which they stated would stigmatize foreign-funded NGOs. It was noted that Act VI 2018 had created a new criminal offence in the Criminal Code of “supporting and facilitating illegal immigration” and amendments to the Tax Code, including a 25 per cent tax on the funding of organizations that “promote migration”, both of which reportedly restricted cooperation with United Nations entities assisting migrants and refugees, such as the Office of the United Nations High Commissioner for Refugees. The legislative initiatives and related stigmatizing of public discourse were reported as intimidating and deterring civil society from cooperating with the United Nations, resulting in self-censorship and affecting research, advocacy and informed reporting in some cases.⁸⁷

⁸⁴ Submission from Vuka coalition, June 2022.

⁸⁵ See https://freedomhouse.org/sites/default/files/2022-01/Special_Report_LAC_HRDs_PDF_ENGLISH_Final_01262022.pdf.

⁸⁶ See communication HUN 7/2018, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24080>.

⁸⁷ A/HRC/42/30.

111. In the 2020 report, Hungary featured again with the case of the Hungarian Helsinki Committee. In July 2019, the Special Rapporteur visited Hungary and regretted that, in previous years, civil society organizations working on migrants' rights had experienced multiple obstacles in carrying out their work, such as those resulting from legislative amendments, financial restrictions and other operational and practical measures taken by the Government and that, as a result, some civil society organizations had been deterred from cooperating with United Nations entities assisting migrants and refugees.⁸⁸

112. It was also noted in the 2019 report that the Committee on Migrant Workers had addressed the Government of Kyrgyzstan regarding the designation as extremist material of a submission by civil society organizations Anti-Discrimination Centre Memorial and Bir Duino Kyrgyzstan. The decision had come from the Oktyabrsky District Court in Bishkek following the organizations' submission of an alternative report to the Committee ahead of its review of Kyrgyzstan in April 2015. The report covered the obligations of the Government to protect the rights of Kyrgyz migrant workers.⁸⁹

113. In the 2021 report, the Secretary-General noted how special procedures mandate holders addressed concerns regarding the cyberattack targeting the NGO Vietnamese Overseas Initiative for Conscience Empowerment (VOICE) following increased cooperation with the United Nations. VOICE works outside the country advocating for human rights, promoting civic space and helping Vietnamese refugees and asylum-seekers resettle in third countries. The mandate holders noted alleged credible evidence that VOICE may have been targeted by a cyberattack because of its cooperation with the United Nations, including working closely and visibly with the Office of the United Nations High Representative for Human Rights (OHCHR) and submitting information and reports to the treaty bodies and special procedures and for the universal periodic review process.⁹⁰

XIII. Conclusions and recommendations

114. Many Governments are failing in their moral and legal obligations to protect those who are refusing to turn away from defending the rights of migrants, refugees and asylum-seekers. This is primarily because of a lack of political will. States can and should protect defenders doing this work and not force them to protect the rights of others in secret. States should publicly promote the lifesaving work of defenders working on these issues and intervene to stop them from being attacked.

115. The Special Rapporteur recommends that States:

(a) Provide, in law and in practice, a safe, accessible and supportive environment for individuals and organizations that work to promote and protect the human rights of migrants, asylum-seekers and refugees;

(b) Desist from targeting human rights defenders working on issues related to migration, refugees and asylum-seekers and stop treating them as national security threats;

⁸⁸ A/HRC/45/36.

⁸⁹ A/HRC/39/41.

⁹⁰ See www.ohchr.org/en/reprisals/annual-reports-reprisals-cooperation-un; see also communication VNM 2/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26384>.

(c) Take all measures necessary to ensure that human rights defenders are protected from violence, retaliation, threats, discrimination and other kinds of pressure or arbitrary action by State and non-State actors as a consequence of their work. Condemn publicly all instances of violence, discrimination, intimidation or reprisals against them and emphasize that such practices can never be justified;

(d) Investigate and prosecute any attacks by State and non-State actors against human rights defenders, their families, associates or legal representatives;

(e) Recognize publicly the important role played by these defenders and the legitimacy of their work;

(f) Privately promote the work of defenders working in secret in other countries, without necessarily identifying them, and explore ways to better support their work;

(g) Create secure whistle-blower mechanisms accessible to those working in State institutions dealing with migration, asylum and refugees;

(h) Properly resource protection mechanisms for defenders and extend that protection to defenders working on issues on migration, refugees and asylum;

(i) Ensure that human rights defenders have access to justice and to effective remedies through national courts and other mechanisms, regardless of their immigration status;

(j) Ensure that human rights defenders are not threatened with or subject to arrest, detention or deportation when reporting crimes or disclosing information about migrants' or asylum-seekers' human rights;

(k) Ensure that national law and administrative provisions and their application facilitate the work of all actors providing humanitarian assistance to and defending the human rights of migrants, refugees and asylum-seekers;

(l) Enable everyone to defend the rights of others regardless of their immigration status, including by recognizing in domestic legislation migrants' right to freedom of association and encourage them to self-organize, regardless of their migration status;

(m) Ensure that criminal law is not misused to punish migration-related humanitarian acts or to harass civil society organizations that work with migrants;

(n) Guarantee that administrative and law enforcement officials are adequately trained with regard to the respect of the rights of those advocating for migration-related issues;

(o) Ensure that all legislation concerning people-smuggling and human trafficking includes humanitarian exemptions applicable to individuals and organizations that conduct humanitarian assistance or provide aid to migrants without criminal intent.

116. The Special Rapporteur recommends that United Nations agencies, funds and programmes and related organizations, including the Human Rights Council, its special procedures, the United Nations Development Programme, UNHCR and IOM, recognize and publicly promote the important role played by defenders working on these issues.

117. The Special Rapporteur recommends that international human rights organization and other parts of civil society explore ways to publicly and privately promote the work of defenders working in secret, without necessarily identifying them.

XIV. Update since 2021

118. Between July 2021 and the end of June 2022, the Special Rapporteur has issued communications relating to 541 human rights defenders from 59 countries, including 282 women human rights defenders (52 per cent). She and her team have participated in 103 panel or training events, with over 11,770 attendees, and conducted 61 meetings with State representatives or members of Government.

119. The Special Rapporteur's previous report to the General Assembly was on the issue of human rights defenders in long-term detention.⁹¹ Communications on the issue of long-term detention of human rights defenders were sent to 24 States in 2020 and 2021. In total, 50 per cent of those States did not respond to the communication received, including the following: Belarus, Burundi, Egypt, Eritrea, Iran (Islamic Republic of), the Lao People's Democratic Republic, Mexico, Nigeria, Nicaragua, Peru, Rwanda and Viet Nam (Viet Nam requested an extension to March 2022 but no response had been received as of June 2022).

120. In the third cycle of the universal periodic review (for the period 2017–2021), Belarus supported five recommendations relating to continuing and strengthening its cooperation with the special procedures. Egypt and Viet Nam supported six such recommendations, the Islamic Republic of Iran supported three while Eritrea supported two recommendations relating to increased cooperation with OHCHR.

121. It is extremely difficult for the Special Rapporteur to implement the mandate assigned to her by the Human Rights Council when a significant minority of States will not engage with the mandate holder, despite a number of them having pledged to do so during their universal periodic review processes. This raises further questions about the nature of their engagement with the universal periodic review system.

122. The Special Rapporteur would like to thank Bahrain, Cameroon, China, Honduras, Kyrgyzstan, Morocco, the Russian Federation, Saudi Arabia, Tajikistan, Türkiye, the United Arab Emirates and Uzbekistan for providing information on the cases she had raised with those States. At the same time, the Special Rapporteur notes that the quality of responses provided varied greatly, and some did not address the issues raised.

123. The Special Rapporteur was distressed to note that, since she published her report and called upon States to refrain from imprisoning human rights defenders for lengthy periods of time, at least four more human rights defenders included in her report who had been detained at the time of publication, have since been sentenced to 10 years or more in prison. These include Mubarak Bala in Nigeria, who received a 24-year sentence in March 2022, Trinh Ba Phuong in Viet Nam, who received a 10-year sentence in December 2021, Abdulrahman Muhammad Al-Nahhas in the United Arab Emirates, who received a 10-year sentence in September 2021 and Osman Kavala in Türkiye, who was sentenced to life imprisonment in April 2022.

124. The Special Rapporteur welcomes the release of Germain Rukuki in Burundi in June of 2021 who had been serving a 32-year prison sentence, and the release into exile of Ho Duc Hoa in May 2022, who had been serving a 13-year sentence. She also welcomes the release of Mahienour El-Masry, Ramy Kamel Salib and Ibrahim Ezz

⁹¹ A/76/143.

El-Din in Egypt, who had been facing charges that could have seen them imprisoned for 10 years or more, and the release of women human rights defenders Nassimah al-Sadah and Samar Badawi in Saudi Arabia, although she understands they remain subjected to travel bans.

125. She reiterates her call to work with supportive States to secure the release of those still serving lengthy sentences.
