

Is Everyone a Human Rights Defender?

Analyzing the constraints to formulating an alternative or revised definition of the term 'Human Rights Defender' in light of the current discussions, debates, and controversies surrounding the term.

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1. Introduction

Although I have engaged in cultural and social activism for almost half my life, I did not know of the term ‘human rights defender’ until I started a master’s degree in this field. I was more familiar with labels like activist, social worker, influencer, storyteller, etc. These terms were so frequently used by me and the people I grew up with that hearing the term ‘human rights defender’ was bit of a shock at the beginning. The word ‘defender’ did not give a very passive, complaisant vibe. It immediately made me think of someone somewhere resisting an attack. Because why should there be a need to defend a right if it is not under attack in the first place? I wondered if the label existed to highlight the attacks present in the defence of human rights or to pay homage to the people holding the fort despite the attacks. What I found most interesting was that all the other terms I was familiar with had an act of initiation embedded in them - activists *act*, social workers *work*, influencers *influence*, storytellers *tell* stories. But what do human rights defenders do? They *defend*. This suggests that there is a stimulus to which they are responding and reacting. This makes the term ‘human rights defender’ conceptually different from others because it is a response to a distress call, a by-product of its own environment. I became so curious about this multi-layered, complex, yet somehow simple term that I resorted to writing a paper on it, hoping to find an answer as to why this term has eluded me so far.

Although the impetus for this paper stemmed from my fascination to make sense of the label ‘human rights defender’ (HRD) and understand its meaning, the objective of this paper took a different approach after a quick scan of past research. A cursory glance at the literature produced in the last decade showed the term HRD had no simple definition and was in fact highly controversial (Jones, 2015). The emergence of the term is also a bit of a puzzle. The term became popular after the adoption of a ground-breaking document by the United Nations General Assembly (UNGA) in 1998. The document, commonly known as the Declaration on Human Rights Defenders¹ marked the need to internationally recognize the status and role of people who defend and promote human rights (Malkova, 2018). The history behind the formation of the document is quite intriguing and puts the controversies surrounding the term HRD into perspective.

¹ See UN General Assembly Resolution 53/144, A/RES/53/144.

After witnessing a wave of arrests of human rights activists and dissidents in the last part of the 1970s, the idea of a Declaration on the right to promote and defend human rights came from a Canadian initiative in 1980 at the United Nations Commission on Human Rights, the forerunner of today's Human Rights Council (Wille & Spannagel, 2019). The timing of this initiative had a political context since after many years of the Cold War, the West and the Communist East became interested in creating a more stable and predictable international system (Wille & Spannagel, 2019). Networks were developing between Western human rights NGOs and local dissidents and HRDs in the Eastern bloc, Latin America, and South Africa (Spannagel, 2017). These networks became important hubs for exchanging information on human rights violations, and activist groups in western democracies began to advocate for persecuted individuals in the Eastern bloc, such as Andrei Sakharov and Nelson Mandela, who were regarded as "prominent martyrs of the human rights cause" (Eckel, 2014). At the UN level, the representatives of several NGOs began to take initiatives to achieve recognition of the defence of human rights as a right in itself (Spannagel, 2017). In 1985, the UN Commission on Human Rights established a working group to draft a Declaration on HRDs. During the work on the draft, a number of noteworthy world events were happening simultaneously, such as the collapse of the Soviet Union, the fall of the last military dictatorships in Latin America, the end of the apartheid regime in South Africa, and these events contributed significantly to the completion of the draft declaration² (Wille & Spannagel, 2019). After 14 years of systematic lobbying, advocacy, and negotiation, in 1998, the UNGA adopted the '*Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*' or commonly known as the '*Declaration on Human Rights Defenders*'³ (UN General Assembly, 1998). The Declaration was adopted by UNGA by consensus, representing a very strong commitment of States to its implementation (Harding, 2015).

The adoption of the Declaration was a critical point in human rights history as it is the first UN instrument to legitimize the role and significance of people who defend rights (ISHR, 2013). It formed a normative basis for providing support to HRDs who are at risk and snowballed the development of a multi-actor protection framework for HRDs worldwide

² For example, South Africa became an active advocate for a strongly worded declaration in the Working Group after the fall of apartheid and paved the way for the adoption of Article 13 of the Declaration which is essentially about access to funding and mobilization required for defence of human rights.

³ Throughout this paper, it is referred to simply as 'the Declaration.'

(Norwegian Ministry of Foreign Affairs, 2010). Although the Declaration is the first UN instrument to consider the act of protecting and promoting human rights as a right in and of itself, the term ‘human rights defender’ curiously does not appear in the document (Helen Nolan, 2022). The Declaration does not mention or provide any specific definition for the term HRD, and this poses a problem as Declarations and Human Rights Treaties in general make sense if their subjects can be identified (Koula, 2019). However, it is important to note that this is not an unusual phenomenon in UN history. The drafters of the UN Declaration on Minorities and the UN Declaration on Indigenous Peoples Rights did not provide a definition for their subjects as well because it was too difficult to cover all aspects or characteristics of the subject (Wille & Spannagel, 2019). The term HRD, although absent from the Declaration, received formal recognition and endorsement from the international community when the position of Special Representative on the Situation of Human Rights Defenders was created post Declaration in 2000 (Jones, 2015).

Out of the 20 Articles outlined in the Declaration, only Article 1 has a relevant *basis* for the term. It only states that everyone has the right to promote and protect human rights. It does not however coin a term or construct a label for people who promote and protect human rights. One could ask if such identification is even necessary since none of the other rights mentioned in the Universal Declaration of Human Rights (UDHR) has a specialized name for the right-holder. For example, although we see Article 1 of UDHR stating all human beings are born free and equal in dignity and rights, we don’t form a specific term for people who exercise that right or have any need to associate them with labels such as ‘equality promoters.’ So, why is the absence of this term in the Declaration so significant? Why do we need to know if someone is an HRD or not? Because every year, hundreds of HRDs are mercilessly killed (UN General Assembly, 2021). Their life is anything but easy. They are *regularly* subjected to a range of attacks in the form of state intimidation, judicial harassment, kidnapping, arbitrary detention, imposition of travel bans, surveillance, information theft, public stigmatization, torture, ill-treatment, and murder (Coalition for Human Rights in Development, 2019). Various actors from various levels (political, economic, religious, State, and non-State) commit violence against HRDs because of their fight for democracy, social justice, equality, and human rights (Neto, 2018). HRDs protect the land and the environment, secure just and safe conditions of work, combat corruption, and respect indigenous cultures and rights (UNGA, 2017). Due to the rebellious, powerful, and sensitive nature of their work, HRDs face severe resistance from oppressive States and non-States actors. In just 2021 alone,

Human Rights Defender Memorial investigated and verified the killings of 358 HRDs in 35 countries around the world. Therefore, there is an urgent need to protect HRDs and form protection mechanisms they can access at international, national, and regional levels.

But how can we protect them if we cannot identify who they are? Article 1 of the Declaration only builds a foundation for the definition by outlining its core activity – the promotion and protection of human rights. It still leaves a lot of room for interpretation (Nah, 2020). For example, does the length of the activity matter? Is there a difference between someone promoting human rights for 20 years out of passion versus someone who is doing the same for 20 days out of compulsion? Does ethics play any role here? What is the difference between an activist and an HRD? Can a person who builds shelters for refugees as part of his contract be called an HRD or does he need to have taken part in a protest demanding rights for refugees? What is the difference between exercising a human right and promoting a human right? Since the Declaration leaves so much unexplained, the Office of the UN High Commissioner for Human Rights (OHCHR) produced a Fact Sheet with the aim of providing guidance on the interpretation and application of the Declaration on HRDs (OHCHR, 2004). Fact Sheet No. 29 is titled ‘Human Rights Defenders: Protecting the Right to Defend Human Rights.’ The document stresses that although ‘no qualification’ is required to be an HRD, they must adhere to three ‘minimum standards.’ By stating ‘no qualification’ the Fact Sheet re-affirms the broad wording of the Declaration and highlights that an HRD is an action-based rather than a status-based concept because it is the human rights character of the work undertaken that defines an HRD (OHCHR 2004:6). By adding conditions or ‘minimum standards’ for HRD, such as acceptance of the universality of human rights and the undertaking of peaceful activities, it creates new sets of problems for definition which have been analyzed by researchers such as Jaraisy and Feldman (2013), Fernández and Patel (2015) and Koula (2019). The minimum standards provided by Fact Sheet became a part of a larger discussion and debate regarding the reality and context of HRDs. Chapter 2 of this paper delves deeper into this.

Interestingly, although many researchers have explored the various complexities arising from the broadness of the Declaration and limitations of the Fact Sheet, they have not provided a revised version of the definition. This shows that there are some underlying constraints and challenges in formulating an uncontested, unambiguous, all-purpose-serving definition of

HRD. This is the research gap that this paper wishes to accommodate. The paper asks the following question:

What are the constraints to formulating an alternative or revised version of the definition of the term ‘human rights defender’?

This paper takes an exploratory approach as the topic of constraints has not been explored before. The main research question is answered at the end of this paper in Chapter 10. Throughout the paper the main question is broken down into four sub-questions and Chapter 2, 3, 4, 5, 6 are structured to answer those sub-questions with qualitative methods. Chapter 1 provides a historical background of the emergence of the term and introduces its present definition. Chapter 2 outlines the research objective, question, and scope of this paper. Chapter 3 elaborates on the methods used to answer the research question and details the theories chosen to justify those methods. Chapter 4 uses a mixture of literature review and textual analysis of key documents (the Declaration and the Fact Sheet) to identify the problematic aspects of the definition and paint a landscape of relevant discourses, disputes, and discussions surrounding the term. Chapter 5 uses content analysis of national laws and highlights the gaps in the effective implementation of the term. Chapter 6 provides a thematic analysis of the interviews conducted. Chapter 7 uses interview datasets to identify ways in which the term can be reconceptualized and redefined. Chapter 8 uses field notes from expert workshops to highlight the focus areas and future conceptualizations of the term. Chapter 9 examines the findings from all methods combined and provides answers to the main research question.

2. Research Gap, Objective & Questions

Intense academic research surrounding the definition of the term HRD started about a decade ago. In 2013, the Journal of Human Rights Practice published a special issue (Vol 5, Issue 3) dedicated to critical reflection on the protection of HRDs. The issue is composed of ten policy and practice notes that jointly highlighted eight areas for research starting with the definition and use of the term HRD. The article that most extensively explores the phraseology and framework of the Declaration and Fact Sheet is authored by two human rights attorneys named Raghad Jaraisy and Tamar Feldman. The authors addressed the special challenges they faced while conceptually analyzing the protests of human rights activists in the occupied Palestinian territory and how they struggled to apply the HRD

framework outlined by the Declaration and the Fact Sheet to the Palestinians fighting for self-determination. Jaraisy & Feldman (2013) raised two important questions: 1) Who is a human rights defender? 2) How should key language that identifies criteria related to HRDs be defined and understood? The authors suggested the first standard of ‘acceptance of the universality of human rights’ be fleshed out and the determinants for the ‘acceptance’ of universality be clarified.

The concept of the universality of HRDs was further analyzed by Eguren Fernández & Champa Patel in 2015. To better understand and define HRDs through their practice, the authors considered some of the limitations around the concept of the term HRD and developed a critical and ethical approach toward interpreting the criteria mentioned in the Declaration and Fact Sheet. Utilizing insights from relevant critical theory, the authors took an approach in which the defender is understood and constructed as a *relational agent* situated in human rights work. Such an approach is recommended because rights are not applied everywhere in the same way or for all individuals equally despite them being universal (Fernández & Patel, 2015). Their research shifts the focus from who is or is not a defender to analyzing what a defender does or does not do in context.

The concept and impact of what defenders do and how ‘professionally’ they do it was analyzed by Polina Malkova in 2018. Malkova (2018) focused on the Russian context to outline the landscape of professionalized and non-professionalized defenders and discussed the implications of professionalization regarding HRDs’ profile, self-identification, risks, and protection. Building on Fact Sheet and the parameters of professionalized human rights practice developed by George Ulrich & Michael O’Flaherty in 2010, she addressed the issue of the broad scope of the term HRD and elaborated on the relevance of professionalization within human rights practice to the conceptualization of HRDs. The working paper demonstrated that differentiating HRDs according to professionalization offered a framework for better understanding the situations of diverse HRDs and facilitated a more nuanced understanding and development of protection mechanisms that are responsive to their specific needs.

All the papers above built their arguments on the requirements and guidelines already mentioned in the Declaration and Factsheet. Some researchers however focused on what was *not* mentioned in those key documents. In 2019, Christina Koula wrote a paper on alternative, interpretive approaches for viewing the UN definition of HRDs. While critically analyzing

the vague characteristics of the Declaration and Factsheet, she argued that the definition should be considered in combination with the criterion of risk, which is currently not a part of the definition. The criterion of risk distinguishes those who put their safety and livelihood on the line to promote human rights from those who merely support human rights (Koula, 2019).

Adding the criterion of risk while identifying HRDs is pragmatic as the way HRDs are defined influence the way they are prioritized and protected. The current landscape of protection mechanisms for HRDs is detailed in the book titled “*Protecting Human Rights Defenders at Risk*” published in 2020. The book contains critical analysis drawn from the experiences of 407 defenders situated in Indonesia, Egypt, Kenya, Mexico, and Colombia. Scholars and practitioners in this book used an intersectional, contextually rooted approach to highlight that protection practices designed towards HRDs are most effective when they address the specific gendered and intersectional risks they face. In the final chapter of the book, the editor Alice M. Nah proposed ways in which the protection mechanisms for HRDs at risk could be reimaged and implemented. Nah (2020) argued for the need to broaden the focus from protecting humans who are defending rights to protecting the right to defend human rights.

The focus of research based on the definition of HRDs has gradually evolved in the last decade from a microscopic examination of the semantics of UN literature to a broader analysis of the conceptualization of HRD praxis, the overarching architecture of risks and protection mechanisms tied to the definition, the multi-layered normative framing of the term and the prioritization of the right to defend human rights over the actors who defend rights. All previous publications and research regarding the term HRD focus on criticizing its scope and interpreting it in the light of alternative approaches, frameworks, and theories. However, none of them propose a new, revised definition of the term. This I found interesting because it shows there are some underlying constraints in formulating a definition that is new, indisputable, unambiguous, and compelling on all fronts. What are those constraints? What are those roadblocks to reaching an alternative definition of an HRD that addresses the major concerns, debates, and suggestions emerging from prior works? So far these questions have remained unexplored. This is the research gap this thesis wishes to accommodate. The research objective of this paper is to identify the barriers to reaching a watertight definition of the term HRD. The paper takes an exploratory approach as it intends to have a better understanding of the existing problem without aiming to provide conclusive results. In other

words, the paper recognizes the problem which is the lack of a revised definition of the term HRD and aims to explore the *nature* of this problem, without providing a new definition or a solution to this problem. This approach is relevant to this paper because the topic of discussion is new and needs to be understood in depth (Elman et al., 2020). It also creates scope for future research and assists other researchers to form conclusive studies (Nargundkar, 2008). Keeping track of the research gap, objective, and approach, the main research question is stated as follows:

What are the constraints to formulating an alternative or revised version of the definition of the term ‘human rights defender’?

In light of the literature reviewed, the following areas of focus and points of contention from past research are categorized below in three sub-topics:

- a) Problematic aspects of the existing definition stemming from key documents.
- b) Current framing, conceptualization, and implementation of the term.
- c) Future appeal and reconceptualization of the term.

Keeping track of these sub-topics, the following research sub-questions are formed:

- 1) What are the existing definitions of HRD and in what ways are they helpful or problematic?
- 2) What are the gaps in understanding of the definition and how do they create problems for the implementation of the term?
- 3) How can actor-oriented and practice-based engagement contribute to more context-relevant understandings of HRDs?
- 4) In what ways can the definition be reconceptualized, redefined, and reassembled?

The next chapter explains the methods used to answer these sub-questions reflective of the sub-topics and to address the main research question within the scope of this paper.

3. Research Methods & Limitations

Since the objective of this paper is exploratory, I chose qualitative, interpretive research methodology to conduct my analysis. I used the theory of ‘social constructivism’ which states

that knowledge is constructed through interaction with others (McKinley, 2015) as previous researchers have pointed out the need to collaborate with HRDs and practitioners to critically reflect on the definition of HRDs (Nah et al., 2013, p.1), to better understand their diverse identities, approaches, and affiliations (Malkova, 2018, p. 24), and to assess the implications of HRD framework in social movements and activism (Jaraisy & Feldman, 2013). I chose an interpretive approach because I am interpreting the theories, practices, and social connotations of the term HRD by seeking their meaning in context (Klein & Myers, 1999). The four methods used in this paper are presented below under two categories:

1) Primary research methods –

- a) I conducted a textual analysis of key documents related to the definition of HRDs, namely the Declaration (1998) and the Fact Sheet (2004). I analyzed the purpose of the words/text used in those documents taking the approach of ‘rhetorical criticism.’ I used this method to answer the first sub-question.
- b) I conducted a thematic analysis of a series of semi-structured interviews taken from July to October 2022. Eleven HRDs were interviewed through snowball sampling and interview datasets were coded and thematically analyzed with an inductive approach. The interview questions were formulated with the help of findings from textual analysis of key documents and field notes from workshops I attended on this topic. I used this method to answer the third and fourth sub-questions.
- c) I took field notes while attending two expert workshops on HRDs and analyzed them with an ‘action-learning’ perspective. The field notes helped reinforce the interview findings and helped answer the fourth sub-question.

2) Secondary research methods –

- a) I conducted a content analysis of HRD-focused national laws of countries to see to what extent the term is being entrenched and implemented by States. I first selected countries listed under the ‘Global Alliance of National Human Rights Institutions’ and looked at their national protection mechanisms targeted toward HRDs. Since there are various protection mechanisms, I particularly focused on legislation on HRDs which were adopted, enacted, rejected, or left pending, because a comparison could be made between them, and the highly appreciated, expert-endorsed standard of Model Law drafted by the ISHR organization. I used a ‘directed approach’ as I took themes from key documents (broadness, universality, peace, etc.) to analyze the contents of the laws. I used this method to answer the second sub-question.
- b) I used a literature review of the most relevant papers on this topic and used them throughout the paper to provide a backdrop for the analysis.

Some significant limitations that came with the approach and selection of methods are described below:

- 1) Because the approach taken here is exploratory, the semi-structured interviews and field notes from workshops may include implicit judgment and bias.
- 2) Because the topic of research is new and unexplored, the conclusions drawn in Chapter 9 of this paper are composed of the author’s personal insights and observations regarding the research findings. Such observations have not been statistically verified. The aim of this paper is to build a foundation for future research which is why it takes an exploratory approach. The conclusions drawn are therefore not definite but more about ‘reading between the lines.’
- 3) Since the author does not have a legal background, an in-depth legal analysis of the national laws was avoided. Only sections of the laws that describe the definition of HRDs are analysed.
- 4) Because of time and funding constraints, the author could not collaborate with translators or interpreters and had to resort to conducting interviews only in English.

This put a limitation on reaching grassroots activists or HRDs around the world who are more expressive in their mother tongue.

4. Analysis of Key Documents

This chapter aims to answer the first sub-question of this paper:

What are the existing definitions of HRD and in what ways are they helpful or problematic?

4.1 Analysis of the Declaration

The foundation of HRD framework can be traced back to the Declaration on HRDs adopted in 1998. The Declaration consists of 20 Articles that combinedly elaborate the rights and protections accorded to defenders and the duties and responsibilities of States and non-State actors. Almost half of the articles (9 out of 20) emphasize the rights of HRDs. The following is a categorization of those rights in a concise form.

Articles 1, 11 – Right to work or engage in peaceful activities aimed at protecting and promoting human rights.

Articles 5, 12.1 - Right to assemble peacefully in order to address human rights violations and participate in any organizations or groups working on human rights.

Article 7 - Right to develop, discuss, and promote new ideas and principles of human rights.

Article 9.1 - Right to be protected from human rights violations and to benefit from effective remedies.

Article 9.2 - Right to complain to an independent, impartial, and competent judicial or other public authority, to access appropriate remedy including any compensation, as well as to have that complaint reviewed without unnecessary delay.

Articles 5c, 9.4 - Right to communicate with any international human rights mechanism such as the UN.

Articles 6a & b, 9.3b - Right to seek, receive and share information on human rights issues.

Articles 8.2, 9.3 - Right to submit complaints about authorities' compliance with international human rights instruments.

Articles 2, 9.3a & c - Right to file legal complaints, seek legal advice, and be treated fairly by the judicial system in addressing human rights violations.

Article 12.3 - Right to be protected in peacefully reacting against acts of violence or that result in violations of human rights.

Article 13 - Right to receive and use resources to support human rights work.

The Declaration also mentions the duties and obligations of States in protecting HRDs and creating a safe environment for the promotion and protection of human rights. The following is a categorization of those duties in a concise form.

Article 2 - Duty to protect, promote and implement all human rights and to take all the necessary measures to ensure that everyone, including HRDs, can exercise and enjoy their human rights.

Article 3 - Duty to align its domestic law with its international human rights obligations to ensure that fundamental freedoms are enjoyed.

Article 9.5 – Duty to investigate and address human rights violations promptly and impartially.

Article 12.2 - Duty to ensure that national laws and state authorities protect the peaceful work of HRDs.

Articles 14 .1, 14.2 – Duty to spread awareness and understanding of human rights and ensure access to information on human rights.

Article 15 – Duty to make human rights a part of educational systems.

Article 14.3 – Duty to ensure that there is an independent institution that protects and promotes human rights at the national level to provide support to national institutions defending human rights.

The Declaration also mentions the responsibilities of non-State actors (NGOs, media, academic institutions, banks, corporations, police officers, individuals, etc.) in safeguarding human rights and emphasizes how everyone has duties towards and within the community (*Article 18.1*), how everyone has an important role in creating an enabling environment where the human rights of all can be fulfilled (*Article 18*), how no one should participate in violation of human rights and fundamental freedoms (*Article 10*), and how everyone whose profession can affect the human rights and fundamental freedoms of others, should respect those rights and freedoms, and follow the relevant national and international standards to ensure this (*Article 11*).

As shown above, Articles 1, 5, 6, 7, 8, 9, 11, 12 & 13 are most concerned with the rights of HRDs, Articles 2, 9, 12, 14, and 15 are most concerned with the responsibilities of States and Articles 10,11,18 are most concerned with the responsibilities of everyone. This gives an approximate idea about the extent to which the Declaration stressed that the 'rights', as opposed to the 'responsibilities' of HRDs, should be recognized, prioritized, and their urgency highlighted. The Declaration does not have any exclusive article on the responsibilities of HRDs specifically, but one could argue that Articles 10, 11, and 18, which call for responsible behavior from everyone, include the responsibilities of HRDs. In that case, HRDs are responsible for creating an enabling environment for the promotion and protection of human rights without infringement and violation of others' rights. So, if we break down the name of the Declaration, which is '*Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*,' into two focus areas that are mentioned in the title, 'Rights' and 'Responsibilities', and examine the emphasis placed on them, it would be fair to say that the Declaration focused more on the rights of HRDs and responsibilities of States and less on the responsibilities of HRDs and rights of the States. This fine political and metrical balance between the rights and responsibilities of competing stakeholders achieved and envisioned by the Declaration was not sustained by its successor. The immediate follow-up document that interpreted and analyzed the text and purpose of the Declaration, namely Fact Sheet 29 by OHCHR, focused more on the responsibilities of HRDs than their rights and this caused an avalanche of discord, controversies, and debates in the research world.

Although the Declaration places a responsibility on States to implement and respect its provisions, mainly the duty to protect HRDs from harm because of their work, States are

failing to do so and authoritarian governments are instead creating unsafe environments for the protection and promotion of human rights by restricting civil society, suppressing dissent and refusing to respect human rights laws (ISHR, 2013). So, in the current context where the States are not fulfilling their end of commitment (although the Declaration was adopted by consensus) but rather creating an environment of hostility towards HRDs and making it impossible for them to enjoy their rights, one can question whether focusing on the responsibilities of HRDs and adding *more* preconditions for them to become an HRD is the right way to go. Fact Sheet 29 of OHCHR introduces a three-fold threshold for someone to identify or be identified as an HRD and calls them ‘minimum’ standards. These standards include criteria that are qualitative and idealistic in nature and open doors to question the ethical disposition, competence, and practical limits of HRDs. Many researchers and NGOs have expressed concern that these standards may have negative repercussions on the work of HRDs and exclude, rather than include, HRDs from being a part of the human rights movement (Quintana & Fernández, 2012, p. 47).

But why was it necessary for the Fact Sheet to elaborate on the text of the Declaration and extrapolate a definition from it? Because the Declaration does not mention the term 'human rights defender' and does not provide a detailed and meticulous definition of the term. The broadness of the definition is one of the primary topics of conversation among those who are critically analyzing, investigating, and developing its form (Donders, 2016).

4.1.1 The Broad Scope of ‘Article 1’ of the Declaration

Article 1 from the Declaration, as quoted below, provides a basis for the definition of the term HRD:

“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.”

The issue with the Declaration is three-fold:

- 1) It does not mention the term ‘human rights defender.’
- 2) It mentions the word ‘everyone’, so the scope of the definition is too broad.

- 3) It only mentions the activity (promotion and protection) as a basis for recognition of the right and by extension the right holder.

According to Article 1, everyone who is willing and able to defend human rights and actively do so is an HRD. That could include everybody on earth in both philosophical and literal senses. Unless someone is violating someone else's rights, he or she is involved in the promotion of human rights in some capacity. For example, a comb salesman can be an HRD because of providing a valuable service and promoting a human right mentioned in Article 23 of UDHR. Similarly, a street performer can be an HRD because of enjoying his right and promoting Article 27 of UDHR. Since the nature and degree of protection and promotion of human rights are not mentioned in the Declaration and the difference between exercising a right and promoting a right is not made clear, anybody who remotely protects promotes, or exercises a human right can be an HRD. Since a 'human rights activity' is the only characteristic needed to be a defender (according to Article 1 of the Declaration), anyone can serve as a defender at any given place and time. This activity-based approach is advantageous in the sense that it allows for a wide definition of HRDs and accommodates all individuals carrying out human rights activities, but it still leaves two main issues open: the period of activity and the motives of HRDs (Koula, 2019).

Considering the period of activity, is the person who worked in the protection and promotion of human rights for 20 years the same as the person who defended rights for 20 days? Should both 'deserve' the title HRD as they both have been involved in human rights activity, though the duration of their work is different? According to Koula (2019), the period of activity should not play any role in defining a defender because the focus should be on the work as sometimes a single event or an act can put someone in danger. She elaborates with an example of a poet who may write one poem in his lifetime and still be considered an HRD if the poem puts his life at risk and consequently becomes a landmark for his human rights activism. Secondly, concerning the motives of a defender, should a person who has been defending human rights selflessly or out of passion, get more legitimacy or recognition than a person who has been defending rights unenthusiastically or out of compulsion? Fernández & Patel (2015) argues that isolated activities are not sufficient for identification and that a person should have a *consistent* human rights-based approach over time to be regarded as a defender. Koula (2019) however states that any individual who fights for the human rights of

other people must be entitled to the status of HRD as the focus should be on the *consequences* and not on the motives of individuals.

Because the Declaration neither provides a precise definition of an HRD nor suggests a standardized procedure for determining the status of an HRD, there is much room for debate on this matter (Nah et al., 2013). The broad definition presents both challenges and benefits to stakeholders and donors seeking to support HRD protection programmes because it makes it difficult to establish HRD status for some at-risk individuals (Malkova, 2018). The broadness also causes alarm for States as they fear it gives easy access to individuals who are not HRDs to claim themselves as HRDs. For example, in the Inter-American Court case of Human Rights Defender et al v. Guatemala on August 28, 2014, the State argued that both the petitioners and the Commission tried to portray Mr. A.A. as an HRD without offering evidence to confirm this status. The State affirmed that there was no proof that Mr. A.A. worked in an institution as an HRD and that the only evidence of his supposed human rights work was his involvement in politics, which the State did not consider as a defence of human rights. The State further mentioned that the description of HRD “takes advantage of the broad definition given to human rights” (p. 39) as it allows people who are not HRDs to identify or be identified as HRDs. Chapter 5 elaborates on this topic and analyses the difficulties that arise because of States trying to limit the broadness of the definition to define HRDs in their national laws.

4.2 Analysis of Fact Sheet

Since the scope of Article 1 and the entire Declaration was uncertain and unclear, the Office of the UN High Commissioner for Human Rights produced Fact Sheet No. 29, named *Human Rights Defenders: Protecting the Right to Defend Human Rights*, to guide the interpretation and application of the Declaration on HRDs (OHCHR, 2004). The Fact Sheet re-affirms the broad wording of the Declaration and stresses that gender, age, professional qualifications, period of human rights activity or existence of formal titles like ‘activist’ are irrelevant to HRD status because the only determinant is the *human rights character* of the work undertaken (OHCHR 2004:6). It reinforces that an HRD is an action-based and not a status-based concept (Malkova, 2018). However, Fact Sheet 29 refers to three minimum standards required of HRDs: accepting the universality of human rights; proving the concern of activism falls within the scope of human rights; and conducting peaceful actions (OHCHR,

2004: 9–10). The first and third standards have spurred debates and propelled critical reflections on their relevance and connection to the reality and context of HRDs (Nah, 2020, p. 27).

4.2.1 The First Standard of ‘Acceptance of Universality’

The first requirement or minimum standard put forward by the Fact Sheet is stated below –

Accepting the universality of human rights

“Human rights defenders must accept the universality of human rights as defined in the Universal Declaration of Human Rights. A person cannot deny some human rights and yet claim to be a human rights defender because he or she is an advocate for others. For example, it would not be acceptable to defend the human rights of men but to deny that women have equal rights.”

According to this standard, an HRD must ‘accept’ the universality of human rights by not denying any human right mentioned in UDHR. This requirement led Jaraisy & Feldman (2013) to raise the following important questions:

- 1) To what extent should a defender be expected to demonstrate knowledge of and respect for the universality of human rights?
- 2) What criteria and processes should be adopted to determine this?
- 3) What is considered a ‘denial’ of human rights?
- 4) Does it have to be a vocalized denial of certain rights or does silent acceptance of social norms and practices that violate human rights constitute a denial of those rights?
- 4) Assuming that most defenders do not have the resources to work across all human rights fairly and equitably, how exactly does a defender demonstrate universality in practice?

The authors struggled to find answers to these questions when they tried to see if the activists in the occupied Palestinian territory fit the current definition of an HRD. They observed that Palestinian activists prioritized their national fight for self-determination over other struggles for human rights, such as the battle for women’s human rights because they believed that national liberation is their ‘primary’ struggle and must come at the expense of other groups in

Palestinian society. Although this prioritization undermines the ability of Palestinian women HRDs to promote and protect these rights, it is nevertheless a realistic scenario and makes one wonder if acceptance of the universality of human rights means the advocacy of all human rights in equal measure at all times. Jaraisy & Feldman (2013) also questioned how useful the universality criterion is in contexts where discrimination against women is a deeply embedded cultural norm. They noted how many Palestinian activists lived and operated within conservative communities where the contradiction and resistance to the basic rights of individuals or groups stem from social norms and religious beliefs. So, how can the standard of ‘acceptance of universality’ be imposed on HRDs if they operate in non-universal, disparate, and unique environments where the growth of individual and divergent human rights is inhibited at different stages?

Fernández & Patel (2015) provide some clarity on this issue. They suggest that the critical first step is to distinguish the universality of a norm as not the same as the universality of an approach. A focus on human rights practice rather than human rights principles would help understand that HRDs are not always able to demonstrate universality in practice because of differing external constraints within their operating environment but they can still show universality in the ethical approach” (p. 9). In other words, HRDs should be viewed within their limits, contexts, and capacities and their approach toward universality should be judged from an ethical standpoint.

So, for example, instead of asking if an HRD denied a certain right, we should ask if the HRD did their best to *avoid* denying it within their capacity, understanding, and social boundaries. According to this approach, the Palestinian activists who prioritized national liberation over women’s rights are HRDs because their approach is universal as prioritizing certain rights above others does not mean they have special importance but rather that they are urgent and easier or suitable to implement in the current context. In a different reality with ample opportunities and resources, a favorable political atmosphere and without any limitations or urgency of any kind, Palestinian activists would have advocated for women’s rights as much as they currently advocate for the right to self-determination.

Koula (2019) perceives the acceptance of universality of human rights as an individual’s “*consistent willingness to fight and react to any human rights violation*” (p. 10). She gave the example of how men in Saudi Arabia who are protesting government corruption but denying equal rights to women, can still be defined as HRDs because they have the

“willingness” to fight for particular human rights. However, Koula (2019) draws a line between individuals who protest against abuses and those who resist the adoption of other human rights using violence. Combining the analysis and observations made by Jaraisy & Feldman (2013), Fernández & Patel (2015), and Koula (2019), an HRD is someone –

- 1) who has an ethical, positive, universal approach toward all human rights.
- 2) who may not advocate for certain human rights because of not having proper resources, human rights education, opportunities, etc.
- 3) who may be vocal about some rights but silent on others because the need to be vocal about some rights surpasses the need to be vocal about others given their current context.
- 4) who may not agree with other rights as long as they do not violate *others’* rights.
- 5) who may be willing to fight against injustice in the favour of certain rights and their 'willingness' for certain rights cannot be compared with their 'neglect' of others.

Even with a multidirectional approach toward understanding the standard of 'acceptance of universality' it is still a challenging task to formulate a clear, straightforward, and out-and-out definition of acceptance of universality and, by extension, an HRD. The Fact Sheet, therefore, goes on to include two more standards where the third standard about peace led to more confusion. Koula’s (2019) use of the word ‘violently’ in her statement “*However, individuals who protest against abuses, but resist the adoption of other human rights violently, cannot be referred to as defenders*” (p. 11) came from her understanding of the third standard named ‘Peaceful action.’

4.2.2 The Third Standard of ‘Peaceful Action’

The third requirement or minimum standard put forward by the Fact Sheet is stated below –

Peaceful action

“Finally, the actions taken by human rights defenders must be peaceful to comply with the Declaration on human rights defenders.”

Jaraisy and Feldman (2013) discuss the complexity of defining peaceful demonstrations in regimes such as the military occupation in the West Bank. They state, “*Under such regimes, the gap between what is legal under the ruling regime and what is legal under international*

law becomes crucial to applying the HRD framework” (p. 9). The question about the scope and ambiguity of law comes in because of Article 3 and Article 12.3 of the Declaration. Article 3 states that domestic law, consistent with the Charter of the UN, is the juridical framework within which all promotion and protection activities of human rights should be conducted. Article 12.3 states that everyone is entitled to protection under the national law if they react to or oppose to violation of human rights through peaceful means. Thus, the standard of ‘peace’ concerning the human right to protest leans heavily on whether an action is considered lawful under the domestic legal system *before* it is deemed peaceful. For example, the UN Special Rapporteur on the situation of human rights defenders states in a commentary to the Declaration on HRDs in July 2011: “States have a positive duty to actively protect assemblies that are lawful and peaceful.”⁴ A legal and peaceful act would be allowed and protected under Article 3 and Article 12.3 of the Declaration, but what happens when an act of protest is peaceful but illegal? What happens when HRDs who work in oppressive regimes protest against oppression, but their act of protest is considered illegal because the domestic law is designed to protect the interests of the oppressors and discourage any social movement that opposes their ruling regime? Jaraisy and Feldman (2013) studies such murky waters of peace and legality under the HRD framework in occupied territories and observe that even if HRDs aim to make a peaceful protest, because of the environment of the repressive regime they are operating in, they can unintentionally become a part of a violent situation. Under these circumstances, the question of what is a peaceful action becomes difficult to answer. The authors argue that in occupied territories, there is a significant gap between the principle of non-violent resistance and the way the resistance is carried out in practice. In their words, it can be challenging to distinguish the *“violent from the peaceful and the activist from the fighter, and to determine the precise source of the violence”* (p. 9). But is the debate concerning peace, legality, and non-violence under the HRD framework only a theoretical issue? Considering the cases of two Palestinian HRDs named Abdullah Abu Rahmah and Bassem Tamimi examined by Jaraisy and Feldman (2013), the answer would be no. Both of these activists were arrested because of the nature of their protest which were deemed to be “incitement to violence” by the military forces but were considered legitimate, non-violent resistance against the occupation by the Palestinian grassroots movement. The authors compared the act of activists throwing stones at moving vehicles versus them throwing stones at the Separation Barrier and observed that activists

⁴ See UN Special Rapporteur on the situation of human rights defenders, 2011: 26

might condemn the first while defining the latter “*as a protest action that is intended not to cause any harm to life or limb (unlike live ammunition) but to express opposition to the occupation*” (p. 10). So, the question is where to draw the line between violence or incitement to violence, and legitimate exercise of the right to protest?

Jaraisy and Feldman (2013) also discuss the theoretical and practical differences between the concepts of ‘non-violence’ and ‘peaceful’ in the context of occupation and in times of conflict. To what extent does a defender need to demonstrate that his/her actions are ‘non-violent’? The Special Rapporteur’s office has stated that ‘non-violence’ is a requirement for an HRD to be afforded the right to appropriate protection (Margaret Sekaggya, 2010). But is ‘non-violence’ synonymous with ‘peaceful action’? Peaceful could refer to an action undertaken without involving violence, while non-violence could refer to a wider moral and strategic approach to social change (Gene Sharp, 1973). What happens when the beginning of a protest starts peacefully but turns violent in the middle because HRDs needed to use force to protect themselves or prevent harm? Ashworth (1975) states that “*where the attack or threat is sudden, the protection of society and its laws is no longer effective, and the individual alone may be left to protect his right to life and physical security*” (p. 1). So, although international human rights law does not establish a right of forcible resistance, the right to personal self-defence is considered a general principle of law recognized by nations (Hessbruegge, 2017) and the use of forcible resistance may be justified against human rights abuses because the illegal nature of the violative action is eliminated to counter an immediate threat of violence (Saul, 2006). These conceptual distinctions are important as research suggests that coordination, organization, and tactical sequencing of nonviolent actions have important effects on how protests unfold and ultimately succeed or fail (Schock, 2005).

Jaraisy and Feldman (2013) therefore suggest the concept of ‘relational context’ to understand the peaceful nature of such activism. The concept means that an action in itself is of no use if it is not connected to the broader dynamics at play and the actor’s agency. Fernández & Patel (2015) elaborate on this idea stating that an act of throwing stones at army tanks because of previous aggressions is not the same as the act of throwing stones at a nearby person with the *intention* to harm. The authors convene that it is still feasible for an activist, under such circumstances, to be considered an HRD even though their actions would be ethically unacceptable in other contexts. They put emphasis on the defender’s agency

which is the defender's ability to translate, frame, and shape the structures and power dynamics at play within which they operate.

A study done in 2011 on social movements, analyzed activists' agency and its relation to the power dynamic to a greater extent. Wahlström (2011) examines the complex relationship between political agency, responsibility, and collective violence while analyzing Danish and Swedish left-wing activist narratives of police provocations at political protest events. He identifies provocations in three ways - as stand-alone interactions of attack and defence, as a cause of anger leading to retaliation, and as a trigger that redefines the situation and consequently offers an opportunity for violence. He observes that protests that turn into violent clashes with authorities are often chaotic events and the responsibility for the outcome should not only consider what had 'actually occurred', but also delve into the actual sequence of actions and events. Who attacked *first* is pertinent to consider in such matters. Considering the Copenhagen Youth House demonstration, Wahlström (2011) gives an example of violence as retaliation. He implies that retaliation constitutes a settlement of accounts after the damage has already been inflicted by the police. After repeated provocations from police, the moment when protesters finally 'strike back' cannot be considered as an instigation of violence but rather as a reaction or response to violence. The author describes provocation as a redefinition of power dynamics/situation since it means the police have overstepped the limits of what is considered compatible with the original situation and thus the actions of protesters, which were not initially considered justifiable, need to be interpreted in the new context.

Nah et al (2013) therefore ask if activists who organize peaceful protests that turn violent in response to aggressive and violent policing should be considered HRDs.

Koula (2019) attempts to apply the third standard of 'peaceful action' in areas where movements are attempting to restore the rule of law. She connotes the leaders of such movements as 'revolutionaries' and builds her arguments on political philosophers who posit that citizens oppressed by the rulers of the State have a right to disobey their commands and rebel against the laws to replace them and bring social change (Walzer, 1967). In essence, the 'non-acceptance' of the present legal system is an important ingredient of any kind of revolution. Koula (2019) states that revolution may be a lawful exercise of a right to resistance in international law provided that the right to self-determination is forcibly denied

owing to colonial rule, unlawful alien occupation or racist regime. She provides the example of how the African National Congress, under the leadership of Nelson Mandela, attempted to fight against apartheid peacefully but after the massacre of 69 African protestors by South African police in 1961, Mandela set up an armed wing to actively fight against the apartheid government. In such context, should activists be deemed as HRD if, in their fight for establishing a real democracy and promoting human rights, they cross the boundaries of peaceful action and act violently? According to Koula (2019) they should be considered HRDs because the violence they commit, as a reaction to abuses, “*must be the only means by which they manage to restore democracy and promote the realization of human rights in a hostile environment*” (p. 17).

Approaching the third standard of Fact Sheet from a practical standpoint (instead of a theoretical one) shows the different layers of complexities and constraints that surface during its implementation. In practice, what is the meaning of peaceful action in occupied territories where activism falls into the gaps between domestic law and international law? How can activists show peacefulness in their protests against tyranny and oppression when they are forced to use methods rooted in that oppression as their last resort? What is a peaceful action when an action is undertaken as a response to violence or prolonged provocation and does not ‘look’ peaceful to an outsider but is an appropriate and justified response within that dynamic? What are the dos and don’ts of peaceful action in cases of self-defence, retaliation, and revolution? How can Article 3 of the Declaration, which mentions the boundary of activism to be confined within the domestic legal framework, be compatible with ‘peaceful action’ if the activist aims to achieve peace by attacking the very boundary (domestic law) he or she is confined in or oppressed by?

5. Analysis of National Laws

This chapter aims to answer the second sub-question of this paper:

What are the gaps in understanding of the definition and how do they create problems for the implementation of the term?

Before exploring the contents of national laws currently being developed for the protection of HRDs, it’s important to understand the role of HRDs in society and why such protection mechanisms exist. HRDs contribute to society’s overall progress. They work for the

advancement of human rights, democracy, peace, justice, and rule of law.⁵ They play a central role in ensuring access to redress and remedy for the marginalized group or individuals who are disproportionately affected by new measures or policies.⁶ They fight against oppressive regimes and laws and because of the gravity of their work, they are threatened, arrested, and murdered every year.⁷ Thus, various laws and regulations regarding the protection of HRDs are being developed all over the world. Countries like Canada and Norway have made the protection of HRDs a key priority in their human rights efforts.⁸ Colombia⁹ became the first country in the world to establish HRD legal protection mechanisms in 1997. Côte d'Ivoire became the first African country to adopt a law to protect HRDs¹⁰ in 2014, and Mongolia became the first Asian country to do the same in 2021.¹¹ In the last six years, there has been an upsurge in the development and enactment of national laws on HRDs in more than a dozen countries including Niger, Sierra Leone, Togo, Zambia, Burkina Faso, and Mali from Africa; Nepal, and the Philippines from Asia; Honduras, Mexico, Peru, and El Salvador from the Americas. In at least five of these countries, HRD draft laws are based on the Model Law created by the NGO named International Service for Human Rights (ISHR) in 2016.¹² The Model Law gained worldwide fame and appreciation for its ground-breaking impact on the development of national protection mechanisms for HRDs. The document titled, *A Model Law for the Recognition and Protection of Human Rights Defenders*, serves as a guideline for States wishing to implement the UN Declaration on HRDs as it was developed in consultation with over 500 HRDs from every region and is endorsed by 27 leading human rights experts and jurists. The Model Law prompted a global phenomenon of national policy framework development and inspired many countries to adopt legislation for the protection of HRDs (Ministry for Foreign Affairs of Finland, 2020). Especially in Africa and Asia, ISHR played an imperative role in strengthening legal recognition and protection of defenders at the national level. In Mongolia, for instance, ISHR

⁵ <https://www.coe.int/en/web/commissioner/human-rights-defenders>

⁶ <https://reliefweb.int/report/world/human-rights-defenders-we-need-them-more-ever-states-worldwide-must-protect-human>

⁷ <https://www.omct.org/en/what-we-do/human-rights-defenders>

⁸ https://www.regjeringen.no/en/topics/foreign-affairs/human-rights/ny-struktur/rights_defenders/id2339808/
See also <https://ishr.ch/latest-updates/canada-new-guidelines-put-human-rights-defenders-front-and-centre/>

⁹ Colombia adopted Law 199 on 22nd July 1995 & Law 418 on 26 December 1997 to regulate two protection mechanisms called Ministry of Interior and National Protection Unit.

¹⁰ <https://www.focus-obs.org/location/cote-divoire-2/>

¹¹ <https://www.ohchr.org/en/stories/2021/04/mongolia-new-law-protect-human-rights-defenders>

¹² According to ISHR annual thematic report submission to the Special Rapporteur on HRDs in March 202.

supported national partners over several years to secure the adoption of a Law on the Legal Status of HRDs which is the first legal framework built for HRDs in Asia (ISHR, 2022).

The Model Law of ISHR defines HRD as:

“Any person who, individually or in association with others, acts or seeks to act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional and international levels.” (p. 2)

Although a major part of this definition was inspired by Article 1 of the Declaration, the Model Law also took notes from Article 2(1) of the Brazilian Bill and Article 2(a) of the Nepalese Bill (ISHR, 2016). The Model Law states (under commentary on page 10) that the definition was intentionally kept less detailed compared to the ones in other HRD domestic laws¹³ because concerns were expressed during the regional consultations and the expert meetings that a more detailed definition could be used as a basis for excluding persons from classification as an HRD. It also did not include the words “through peaceful means”, as those words do not appear in Article 1 of the UN Declaration.

Since the ISHR Model Law became a guideline for many countries wishing to build national protection mechanisms on HRDs, I am taking the ISHR Model Law as a benchmark and using it to compare national laws on HRDs. The following two countries are chosen based on their review and criticism made by ISHR regarding the use of the definition of HRD in their legislation compared to the one established in Model Law. I first state the review of ISHR and then provide my own analysis.

5.1 Mali

On 12th January 2018, Mali enacted its national law on HRDs, Law No. 2018-003¹⁴ and became the third African country to adopt laws on the protection of HRDs.¹⁵ The Law was complemented by a Decree of implementation, Décret N°2020-0087/P-RM,¹⁶ on 18th

¹³ See Article 3(a) of the Philippines Bill and Article 5 of the Congolese Bill

¹⁴ <https://sgg-mali.ml/JO/2017/mali-jo-2017-03-2.pdf>

¹⁵ <https://monitor.civicus.org/updates/2018/01/23/mali-third-african-country-adopt-law-protection-human-rights-defenders/>

¹⁶ <https://www.focus-obs.org/location/mali-2/>

February 2020, and a Decision of implementation, Decision N°2021-237/MJDH-SG,¹⁷ on 21st September 2021. Both the law and decree contain several substantive rights stated in the Model Law, but they only apply exhaustively to a small subset of HRDs identified by the government. Article 3 of the Decree states that HRDs must show a professional card or badge issued by the minister responsible for human rights to justify their status as an HRD. The HRDs need to show any past criminal records, certificates of ‘life and good morals’, proof of association with a human rights organization, and other documents to get the HRD ID card. ISHR criticizes this approach saying it places an ‘unreasonable burden’ on HRDs and excludes multiple HRDs from protection and allows authorities to arbitrarily decide who is and who is not an HRD.¹⁸

Such an initiative by Mali, although restrictive for HRDs, is understandable given its political context. The country is labeled as ‘repressed’ by Civicus Monitor 2022¹⁹ and ‘not free’ by Freedom House Index 2022.²⁰ After the military coups in August 2020 and May 2021, Mali’s membership to the African Union was suspended²¹ thereby removing it from the mandate of the Special Rapporteur on HRDs. The presence of armed groups means that civilian activity is monitored, hindered, and penalized²² and this suggests why the broadness of the definition of HRDs was used as leverage to narrow the scope of the term and make the identification of HRDs less dependent on the civilian/activist and more dependent on the regime. It also removes the concept of self-identification of HRDs as an HRD has to seek for approval from the State and demonstrate a ‘moral’ disposition for certified status.

5.2 Democratic Republic of the Congo

There are five legal instruments created by Congo for the protection of HRDs.²³ I will only state the third instrument as it restricts the rights of HRD based on their definition. The third instrument is a draft law²⁴ proposed by National Assembly which is currently under review

¹⁷ https://ishr.ch/wp-content/uploads/2021/11/1633114124456_Decision-des-defenseurs-des-Droits-de-lHomme.pdf

¹⁸ <https://ishr.ch/defenders-toolbox/national-protection/mali/>

¹⁹ <https://monitor.civicus.org/country/mali/>

²⁰ <https://freedomhouse.org/country/mali/freedom-world/2022>

²¹ <https://www.aljazeera.com/news/2021/6/2/mali-suspended-from-african-union-after-second-coup-in-9-months>

²² <https://www.hrw.org/news/2022/08/09/mali-rights-reforms-crucial-civilian-rule>

²³ <https://ishr.ch/defenders-toolbox/national-protection/democratic-republic-of-the-congo/>

²⁴ https://ishr.ch/sites/default/files/documents/loi_ddh_-_version_la_plus_recente.pdf

by Parliament. According to ISHR's critique, the draft law contradicts the spirit of the Model Law and contains multiple elements that aim to restrict and control HRDs. Article 2 states that the term HRD only applies to those who 'exercise on a permanent basis the protection of human rights' and thereby limits the legal provisions to HRDs who work in formal and organized structures. Article 3.3 states an HRD must be 'a member of a non-governmental human rights organization.' Article 7 requires HRDs to participate in a human rights organization, be of Congolese nationality, be over 18 years old, have 'good morality' and a State Diploma, complete human rights training by an NGO, and not be subject to an irrevocable penalty. Article 8 requires multiple documents to accredit these elements. Articles 10-12 establish a government registry of HRDs in the country. Article 33 obliges HRDs to communicate any financial support to the ministry responsible for human rights within a month of its allocation and Article 36 mentions suspension of activity for non-compliance with this obligation. ISHR expressed deep concerns regarding the draft law as it is more inclined to control HRDs than to protect them.

The imposition of professionalization, moral characterization, human rights education, and formal documentation goes against the definition of HRD provided by the Declaration and Fact Sheet. In contrast to the Declaration, the draft law states not *everyone* can be an HRD. If you are a 17-year-old activist or a solo rebellious songwriter or an NGO uncovering corruption in the country, you cannot be an HRD under this draft law. The law also contradicts the second standard of Fact Sheet which states that defenders do not need to have valid arguments as long as their concerns fall within human rights activism. The law instead requires defenders to have a formal human rights education to showcase their eligibility and intellectual capacity of defending human rights. The articles focusing on control and transparency of funding suggest why the Congolese government wants to engage with only formal HRDs and profile them in a way that makes them easily traceable and distinguishable. Registration procedures, without appropriate basis and framing, can serve as a tool to decelerate progress (as it might take months for approval during which an HRD probably has to stop all operations) and limit self-governance and civil society space (Human Rights House Foundation, n.d.). Since the ID card registration is directly linked to the accessibility of protection mechanisms accorded to HRDs, registration is made unavoidable and thus, any limitations placed on HRDs through registration should be placed without prohibiting their functional autonomy (General Assembly, 2013). Limitations should be clearly defined,

determinable, and non-retroactive to avoid potential abuse to the detriment of fundamental freedoms and HRDs.²⁵

The definition of HRDs is the primary subject of contention for delayed adoption of the draft law in Congo. Although the Congolese NHRI (Commission nationale des droits de l'Homme) prefers the definition of an HRD as 'anyone, who, individually or in association, promotes and protects human rights', a disagreement issued over the definition in 2018 between the National Assembly and the Senate has delayed the adoption of the law on HRDs in Congo (NANHRI, 2021, p. 64).

5.3 Zimbabwe & Uganda

A few other African countries are struggling with the 'social' perception of the definition. A documentation report titled '*Developing and Strengthening African NHRIs' Existing Protection Mechanisms for Human Rights Defenders*', published by the Network of African National Human Rights Institutions (NANHRI) in 2021, analyses the national protection mechanisms of nine African countries drawn from the five geopolitical regions of the continent (Eastern, Central, West, Southern, North). The report states how countries like Kenya, Zimbabwe, and Liberia have not adopted laws to protect HRDs because of the negative profiling of HRDs and resistance toward the defence of human rights. Zimbabwe has not attempted to develop and adopt a law on HRDs because the State rejects the notion of HRDs as it views them as political activists and labels them as 'regime change agents.' There is no project or programme targeted at the implementation of the UN Declaration on HRDs in Zimbabwe because the government is generally hostile to human rights activism and does not validate the term HRD.

Uganda, on the other hand, is in the middle of preparing a draft bill on HRDs. A report titled '*Pre-Legislative Scrutiny, Regional Consultative Meetings of the Human Rights Defenders Protection Bill 2020*', published by the Defenders Protection Initiative (DPI) in 2020, studies the legislative climate for HRDs in Uganda. The report summarises the speeches, observations, recommendations, and Q/A sessions of the regional consultative meetings that are convened to develop the HRD protection bill. The following insights regarding the definition of HRDs are taken verbatim from the report (DPI, 2020):

²⁵ 2013 United Nations General Assembly official records, Sixty-eighth session, Supplement No. 53 (A/68/53), p. 39

- 1) “The locals are ignorant of their rights and the role of HRDs as they are mistaken for politicians” (p. 7)
- 2) “The term ‘Human rights defender’ should be broadened to include the aspect of peaceful promotion and protection of human rights” (p. 7).
- 3) “Clarification of human rights defenders and activists is needed” (p. 9)

From the same report, the section of Q/A session that was centred around the definition of HRDs are quoted verbatim below (DPI, 2020):

- 1) “How do we draw a line between HRDs and human rights activists? Are they mutually exclusive?” (p. 15)
- 2) “The bill is a work in progress and with every new piece of information, and input from international benchmarks we are working to realign these definitions to be more comprehensive. However, we have to appreciate that the definition of an HRD is a very difficult, very contentious issue. The drafters of the laws didn’t want to be prescriptive by defining each and every one HRD but chose to focus on what they do.” (p. 15)

Uganda is therefore interested in limiting the broadness of the definition by adding more preconditions for HRDs (as they requested to add the criterion of peace) and by having a thorough understanding of who is *not* an HRD (as they acknowledge HRDs and activists are different but request more information to know *how* they are different to ensure activists who are non-HRDs do not fall into the definition).

6. Analysis of Interviews

This chapter aims to answer the third sub-question of this paper:

How can actor-oriented and practice-based engagement contribute to more context-relevant understandings of HRDs?

Eleven HRDs were interviewed from July to October this year, 2022. The interviews were semi-structured in nature and took between one to two hours to complete. Since the participants were situated in different places in the world, most of them were interviewed virtually. All the participants had a solid background in human rights as they have worked in

protecting and promoting human rights for a minimum of twenty years. They all self-identified as HRDs. The majority of participants defended rights in association with others, either through NGOs, academic institutions, or professional networks. Two of the participants were HRDs at risk. All the interviews were conducted in English.

The participants were asked a set of forty questions thematically arranged to gather information about a) their character of work in human rights, b) their engagement with HRDs, c) their understanding of the UN HRD framework and definition sourced from the Declaration and Fact Sheet, d) their personal conceptualization of the term, e) their employment of the term in their personal life, work and field of activism and f) their reflections on the potential pathways for redefinition and reconceptualization of the term. Their answers were thematically coded and merged under three sub-topics of this paper: a) problematic aspects of the existing definition stemming from key documents (covered from Section 6.1 to Section 6.3.3) b) current framing, conceptualization, and implementation of the term (covered in Section 6.4) c) future appeal and reconceptualization of the term (covered in Chapter 7).

6.1 The Broad Scope of ‘Article 1’ of the Declaration

All the participants unanimously agreed that the definition of HRD should *not* be narrowed. They accentuated that the primary purpose of the definition is to include as many people as possible so that HRDs at risk all over the world can seek protection. Thus, an attempt to narrow the definition will limit the purpose of the HRD framework and could exclude people. The participants presented multifaceted reasons for appreciating the broadness of the definition as stated below –

6.1.1 Broadness ensures greater accessibility

A defender working on the security and protection of HRDs considers the broadness of the definition as an asset because of the accessibility it provides.²⁶ He argues that broadness prevents any cultural gatekeeping and allows anybody to be an HRD without needing “*some kind of elite status.*” A defender promoting minority rights and elimination of caste

²⁶ Participant working on the security and protection of HRDs in UN, interviewed in September 2022

discrimination considers the broadness of the definition to be “*appropriately vague and appropriately wide-ranging*” because of how it allows voices at all levels to be heard.²⁷ Since defenders work at different levels from grassroots to higher up, the broadness of the definition ensures permeability and immersion of the HRD framework vertically.

6.1.2 Broadness reinforces protection

The aim of the HRD framework is to maximize protection for HRDs at risk. A defender who frequently works with women, migrant, and refugee rights activists explains how the Declaration and overall UN HRD framework opened doors for defenders operating at remote places to catch international attention and paved the way for NGOs to come alongside activists in trouble.²⁸ The broadness of the term is hence aligned with the purpose of the HRD framework which is to maximize protection and facilitate interconnectivity. A defender working for the security and protection of HRDs states that the utility of the term lies in its offering of “*a common identification for which people can apply for support or receive increased protection*” and chiseling the definition might reduce the basis of this commonality needed for access to protection.²⁹ Another defender, who got arrested for her human rights work, contemplates whether narrowing the definition will widen the scope of harm on HRDs instead.³⁰ She states,

“Autocratic governments normally attack everyone. I mean everyone is defending a right, so if you narrow it down, you also narrow the basis of your supporters as well. You never know who will be attacked first, so if you think they are not HRDs, you would not be standing by them when it is necessary.”

6.1.3 Broadness leaves room for customization

More than half of the participants previously worked or are currently working as executive directors or operation managers of NGOs operating in the field of human rights. They have direct insights into the vision, mission, strategy, and theory of change of their organizations. All of them expressed that they are only interested in the character of the human rights work

²⁷ Participant working on the promotion of minority rights, interviewed in July 2022

²⁸ Participant working on women, migrant, and refugee rights, interviewed in July 2022

²⁹ Participant working on the security and protection of HRDs in UN, interviewed in September 2022

³⁰ Participant working on women’s rights and currently at risk, interviewed in August 2022

of a defender and that no other qualification is required. However, each of the NGOs has its own mandate and disseminates its resources accordingly. Aligning with the organization's focus and strategy, the definition and interpretation of the term HRD either supports the mandate or gets supported by the mandate. *“The definition is tied in with their [NGOs'] specific mandate and vision and mission. So, who they include or exclude, will be for the purposes of their programme”* says a woman human rights defender (WHRD).³¹ The definition provided by the UN is a foundation on which these NGOs customise a tighter definition for their specific programmes and activities. A defender working against inequality, discrimination, and marginalization for two decades describes how the mandate of her NGO unintentionally adds the criterion of ‘professionalism.’³² She states,

“We do explicitly say that we want to support movement building, not just organizations, but I'll be very open and on record with the fact that that's not easy with the client, with the current sort of setup that most donors operate under where they are scrutinized by politicians and their own bureaucracy. It's not easy to find good ways of doing that without putting demands on the local organizations to professionalize.”

This shows how NGOs often adjust to their social climate by customizing their approach or theory of change to reach an equilibrium. The broadness of the HRD definition allows room for such adjustments.

6.2 The First Standard of ‘Acceptance of Universality’

Half of the participants viewed the standard of ‘acceptance of universality’ as a non-discriminatory clause that presents a negative obligation. As they see it, it is a cautionary standard that warns against opposition, discrimination, and intolerance of human rights. The other half viewed the standard as a theoretical proposition that has little to no bearing on reality. According to them, it is an idealistic standard that has a purpose like a roof, but no

³¹ Participant working on women, migrant, and refugee rights, interviewed in July 2022

³² Participant working against inequality, discrimination, and marginalization, interviewed in August 2022

pillar of valid procedures to support it. Observations from all the participants are assorted below into two findings:

6.2.1 The degree of discrimination is the key

A defender working on advocacy of HRDs for almost two decades thinks the term should not apply to those who ‘clearly’ violates the rights of others.³³ Another defender similarly states,³⁴

“If I was brought a case about an environmental defender who was at risk because he worked defending the rights of the environment, but then we also received customer information that he was involved in domestic abuse, then I wouldn't consider that person a human rights defender. I think if somebody is actively working against the rights of others, I wouldn't see them as a human rights defender.”

The participants’ use of words like “clearly” and “actively” shows their emphasis on the *degree* of intent and consequence behind discrimination. How far is the person going with their opposition to other human rights? Are they simply voicing opinions against women or actively harming them and substantiating their internalized view of gender inequality and endorsement of violence? The degree of discrimination thus plays a role in the assessment of discrimination.

However, the nature of assessing the degree of discrimination is different for individuals and organizations. A defender, who has worked in the field of human rights with different NGOs for over twenty years, states that the understanding of ‘acceptance of universality’ is less about the ‘articulation’ of organizations but more about their perspective towards human rights in “*all aspects of their practice and ethics.*”³⁵ Therefore, the assessment of the degree of discrimination with regards to an organization needs to consider the organization’s *overall* human rights approach. An individual HRD, as pointed out by the defender above, has an obligation to maintain both his public and private life in a way that evinces his understanding of universality. Unlike institutions, an individual HRD most likely does not have an

³³ Participant working on advocacy of HRDs and abolition of death penalty, interviewed in July 2022

³⁴ Participant working on the security and protection of HRDs in UN, interviewed in September 2022

³⁵ Participant working on the research and promotion of HRDs, interviewed in September 2022

articulated, authorized, public mandate to define his overall approach toward human rights and therefore his standard of ‘acceptance of universality’ would be scrutinized from action to action rather than the *totality* of all his actions in his lifetime. Thus, the tipping point for organisations to go from mild discrimination to a severe violation of human rights is further along the line than an individual HRD.

6.2.2 Acceptance of universality is impractical

A defender doing intensive research on HRDs for over a decade questions the existence and pragmatism of the root concept of universality.³⁶ She explains that we are born in racist societies and have colonized minds and imbibed gender inequality. The imposition of universality is thus not a practical idea as it assumes an individual is untethered and unaltered by his surrounding environment and life experiences. She goes on to explain how the standard of ‘acceptance of universality’ expects defenders to have a fine-combed, expansive, and updated knowledge about all the existing and emerging human rights. Such an assumption is not practical as both the scope and understanding of human rights are constantly changing and *“it's not possible to keep abreast of every single right.”*³⁷ A defender working in the field of governance, business, and human rights also reflects on the practicality of this standard since the perspective of human rights defence varies with social settings and regional politics.³⁸ How can the standard of ‘acceptance of universality’ be realized if the answers to questions like ‘what is a legitimate human right’ and ‘what is the socially and politically acceptable way of defending a right’ remain contextual and observer relative?

6.3 The Third Standard of ‘Peaceful Action’

The majority of participants perceived the third standard of the Fact Sheet to be problematic. They reflected on the complex role of subjectivity in defining peace and observed if the champions of peace were the sole benefactors of their proposition. However, three out of eleven defenders found the standard of ‘peaceful action’ to be appropriate and useful. A

³⁶ Participant working on women, migrant, and refugee rights, interviewed in July 2022

³⁷ Participant working on women, migrant, and refugee rights, interviewed in July 2022

³⁸ Participant working in the field of governance, business, and human rights, interviewed in July 2022

defender working for the security and protection of HRDs believes the third standard adds value to the defenders' public disposition as it counters the narratives of oppressive states.³⁹ A WHRD at risk agrees with the requirement of peaceful action and considers civil disobedience to fall under the scope of peace as long as there is no initiation of violence or adoption of violent means. She put extra emphasis on the 'methods' chosen by activists to convey their message because with wrong methods they might *"run the risk of looking like their oppressors and turn into what they oppose."*⁴⁰

Although few of the participants found the third standard germane to the defence of human rights, the others questioned its validity and utility. Their responses are categorized into two findings below:

6.3.1 Who defines peace?

A defender, working in the field of governance, business, and human rights, asks who defines peace and who benefits from that definition.⁴¹ She implies that the entity that has the power to define peace will use its preferred definition to draw more power. Another WHRD resonates with this and points out the *"legitimate State monopoly over the means of violence"* to show how the third standard of Fact Sheet ultimately benefits the States because they have the power to define what peace is and have the legitimate right to use violence.⁴²

6.3.2 Peace in the continuum of means and ends

A defender promoting minority rights and elimination of caste discrimination contemplates if the characteristics of peace and peaceful activism are rooted in the cause of activism or its course.⁴³ She states,

"Peaceful activism is of course something that we should promote, certainly not violent activism, but how are you defining peaceful activism? Are you saying the farmers who blockaded the streets in Delhi because of their right to peaceful assembly and association are

³⁹ Participant working on the security and protection of HRDs in UN, interviewed in September 2022

⁴⁰ Participant working on women's rights and currently at risk, interviewed in August 2022

⁴¹ Participant working in the field of governance, business, and human rights, interviewed in July 2022

⁴² Participant working on women, migrant, and refugee rights, interviewed in July 2022

⁴³ Participant working on the promotion of minority rights, interviewed in July 2022

no longer HRDs because some of that ended in violence? Because they protested? If everything was about peaceful activism, there would still be apartheid in South Africa.”

Re-examination of methods used by previous activists throughout the course of history can redefine peace if viewed under the lens of the *ends* and not the means of protests. A defender pointed out how a theoretical definition of peace cannot do justice to the reality on the ground because “*in various contexts, people had to use non-peaceful ways to advocate for human rights or to ensure that human rights became a reality.*”⁴⁴

Another defender who works extensively to mobilize and fund HRD organizations, posits that the Fact Sheet is a theoretical document as it is not meant for the defenders but for States and protection actors.⁴⁵ She states the inclusion of the term ‘peace’ as a standard is “*more about how we view human limits*” and is a useful, guiding tool for NGOs to build their vision on.

The question of whether peace is predominantly a purpose, procedure, or perspective has no easy answer as it lies in different places in the means-to-ends spectrum for different observers.

6.3.3 The grey areas of peaceful activism

One of the participants described how context plays an imperative role in peaceful activism and how a violent action can be deemed non-violent if it was acted out in self-defence or retaliation.⁴⁶ Another defender states how the role of context only comes into the discussion when a protest *turns* violent and not when it starts as violent with people openly taking up arms.⁴⁷ She makes an interesting distinction between protests which unintentionally turn violent and protests which occur because of violent *intent*.

A defender who works to improve the situation and environment of HRDs mentions the ‘do not harm principle’ her organization uses to assess the activism of defenders and states how in cases of police repression, they expect HRDs to have “*exhausted all possible measures to*

⁴⁴ Participant working in the field of governance, business, and human rights, interviewed in July 2022

⁴⁵ Participant working on the research and promotion of HRDs, interviewed in September 2022

⁴⁶ Participant working on the security and protection of HRDs in UN, interviewed in September 2022

⁴⁷ Participant working against inequality, discrimination, and marginalization interviewed in August 2022

respond to any threats in a peaceful way” before they aggression or violence.⁴⁸ This shows how using violence as a legitimate form of protest is acceptable only as a *last* resort. Assessment of the activists’ methods should therefore take the *sequence* of actions into account.

6.4 Current understanding of the term: Risk and self-identification

When participants were asked to describe their current understanding of the term, all of them explained it with references to risks and self-identification. A pattern emerged where risk and self-identification were frequently used as intertwined concepts.

6.4.1 Risk is important for protection actors to identify HRDs

There is still a considerable gap in the understanding and conceptualization of the term at the international level.⁴⁹ One of the prominent ways of expounding the relevance and significance of HRDs to upper-level decision-makers is to highlight the risks HRDs face because of their work. All participants unanimously attributed the factor of risk as the primary catalyst for the UN HRD framework. Historically, the term HRD came about because people, who were defending human rights, were at risk, and a protection regime needed to be built around those who were in danger.⁵⁰ A defender postulates that most people who gained international recognition as HRDs are known because of the risks they were in and what they did *despite* those risks.⁵¹ Risk is the fundamental ingredient and prerequisite for protection of an HRD.⁵²

Another defender, who is currently at risk and under protection, stressed the need to highlight not just the risks HRDs face but also the risky *environment* in which they operate.⁵³ She states how the fear of not knowing “*who is going to be targeted next*” creates a very risky environment for HRDs which should be acknowledged alongside the physical attacks.

Risk also plays an important role in creating hierarchies within HRDs in terms of prioritization, international recognition, interconnectivity, and resource mobilization. A

⁴⁸ Participant working on advocacy and fostering enabling environment for HRDs, interviewed in July 2022

⁴⁹ Participant working on the security and protection of HRDs in UN, interviewed in September 202

⁵⁰ Participant working on women, migrant, and refugee rights, interviewed in July 2022

⁵¹ Participant working in the field of governance, business, and human rights, interviewed in July 2022

⁵² Participant working on advocacy of HRDs and abolition of death penalty, interviewed in July 2022

⁵³ Participant working on women’s rights and currently at risk, interviewed in August 2022

defender working on the security and protection of HRDs in the UN explains how cases are prioritized on the basis of the category and level of risk⁵⁴ -

“In terms of absolute urgency, I mean if somebody is at risk of being shot dead versus somebody at risk of being arrested, the priority would be providing protection towards the person who is going to be shot.”

6.4.2 Risk discourages self-identification

All participants were aware of the term ‘human rights defender’ and identified themselves and others with it. However, for HRDs, who are individuals, the understanding was not rigidly based on the scope and standards provided by the Declaration and the Factsheet, but rather on their personal experiences and exposure. A defender, working in the field of governance, business, and human rights, states that although the UN Declaration is a starting point in theory, people have different realities and *“people’s experiences as HRDs define it [the term].”*⁵⁵ For instance, defenders working in countries that prefer domestic laws and structures over international interventions did not identify themselves as HRDs because the term is viewed as an international tool to interfere and transgress into domestic matters.⁵⁶ This shows how people’s personal experiences, exposure, and realities define the social meaning of the term and their inclination toward self-identification. Defenders in such countries adopt a less controversial and more relatable and acceptable variation of the term such as ‘social worker.’⁵⁷

Two of the participants expressed hesitation to self-identify themselves as defenders because their understanding and consciousness around the term HRD is heavily linked with risk. A defender prefers to call herself a *“human rights defender’s ally”* instead.⁵⁸

6.4.3 Self-identification is not obligatory for risk assessment

A defender at risk talked about the complexities and hazards that come with fighting for women’s rights in Myanmar. She states, *“I didn’t want that much to speak out against the community perception as we need more alliances than enemies in our smaller society.”*

⁵⁴ Participant working on the security and protection of HRDs in UN, interviewed in September 2022

⁵⁵ Participant working in the field of governance, business, and human rights, interviewed in July 2022

⁵⁶ Participant working on women’s rights and empowerment and currently at risk, interviewed in October 2022

⁵⁷ Participant working on women’s rights and empowerment and currently at risk, interviewed in October 2022

⁵⁸ Participant working on the research and promotion of HRDs, interviewed in September 2022

Myanmar.⁵⁹ Her rationale behind focusing more on cooperation over contention is because of her observation that in places where the concept of human rights is still burgeoning, advocating for the establishment of the label HRD is meaningless and sometimes counterproductive. In such places, popularising the term is less important than working on its core principle of defending rights. This sentiment resonates with the majority of the participants who concur that using human rights language is not necessary for the identification of human rights work, it's the character of the work that counts.⁶⁰ A defender who worked closely with the current UN Special Rapporteur on HRDs on her mandate states how defenders are not obligated to self-identify to be considered as HRDs because protection actors can identify them based on their work.⁶¹

This shows that self-identification only becomes crucial if the protection actors fail to identify HRDs. As long as the NGOs or other non-State actors can identify the work of an activist as human rights defence, the absence of self-identification is not a problem. The role of self-identification only becomes relevant if a defender is *not* recognized as an HRD by a protection actor and if he or she needs to prove their credibility as an HRD, nevertheless. The onus of recognition or identification of HRDs thus fall mostly on the protection actors.

The next chapter analyses the findings regarding the last part of the interview; the reconceptualization of the term HRD.

7. Reconceptualization of the term 'HRD'

This chapter aims to answer the fourth sub-question of this paper:

In what ways can the definition be reconceptualized, redefined, and reassembled?

When asked about what changes they wish to see in the definition of HRDs, the participants responded that the term HRD is only as good as the foundation it stands on, the establishment of the right to defend. They emphasized the need to focus more on the promotion of the right to defend. They also emphasized on building the social depth of the term HRD by repackaging it with the perspective of impact rather than action. Their answers are explained in detail below:

⁵⁹ Participant working on women's rights and empowerment and currently at risk, interviewed in October 2022

⁶⁰ Participant working on women, migrant, and refugee rights, interviewed in July 2022

⁶¹ Participant working on the security and protection of HRDs in UN, interviewed in September 2022

7.1 Promoting the right to defend

A prominent pattern of thinking that emerged from the responses of all participants is that they think the attention and scrutiny behind the label HRD are somewhat overdramatized and redundant. Although they agree the label itself is a focal point for drawing resources and communicating with relevant stakeholders at different levels, they do not consider it as something distinct but rather a by-product and a facilitator of a much broader and larger movement. A defender who conducts research on HRDs at risk pointed out that the reason the label HRD is so politically charged and misunderstood is because of insufficient promotion of human rights education and under-resourced development and broadcast of the right to defend human rights.⁶² Another defender who served the role of an executive director in an NGO supporting frontline, grassroots HRDs used the term ‘ecosystem’ thrice in her interview to explain how metrics should not be added to HRDs individually but rather used to support the architecture of human rights defence or, as she referred to it, the ecosystem.⁶³

A defender at risk provided insights on whether the term HRD had any influence over the diffusion and normalization of the right to defend human rights in conservative societies. She observed that it had little to no power of persuasion or revolutionary appeal when it comes to changing the minds or attitudes of people who are HRD averse.⁶⁴ She states that countries like Turkey where there is high resistance toward the concept of human rights as a whole, without the promotion of the right to defend human rights the term HRD can only play a limited role in pushing the movement forward. Another defender at risk explains this dilemma in the context of Myanmar. She notes that in places in where many have yet to fully understand and appreciate basic rights and fundamental freedoms, labels like HRDs or WHRDs sound foreign to most people, especially when the majority of them live far away from the capital or in the countryside.⁶⁵ She remarks that States are fearful of such foreign labels because they don’t want people to understand them and make sense of a movement that teaches the language of rebellion. In such circumstances, the defender believes the primary thing to do is to disseminate information about human rights to ordinary people and encourage them to advocate for their rights before they are introduced to terms like HRD.

⁶² Participant working on women, migrant, and refugee rights, interviewed in July 2022

⁶³ Participant working on the research and promotion of HRDs, interviewed in September 2022

⁶⁴ Participant working on women’s rights and currently at risk, interviewed in August 2022

⁶⁵ Participant working on women’s rights and empowerment and currently at risk, interviewed in October 2022

Participants also mentioned the reasons for activists not self-identifying as HRDs are because of the absence of human rights education and a safe environment for defence of human rights. A defender working on governance, policy issues, and the rights of women, states how women in Kenya chose not to identify as HRD because of lack of proper human rights education.⁶⁶

Thus, for a successful establishment of the HRD framework, gaps in human rights education on the ground needs to be addressed and the right to defend human rights needs to be promoted. This conclusion was drawn by the majority of the participants.

7.2 Promoting the impact of HRDs

Another notable pattern of thinking that emerged from the responses of participants, especially those working in NGOs, is their emphasis on the need to promote the impact of HRDs. One of the participants explained the need to adjust the definition of the term HRD with the current results-oriented culture of the world.⁶⁷ He states,

“The world is being driven by results and the answer to who is an HRD does not necessarily point out the aspect of the outcome of the definition itself. It’s [the term is] more like a narrative. We need a description that shows an outcome that will lead a person to think a particular person is an HRD. I would suggest configuring sustainable development goals and expressing HRDs as having something to do with any one or several targets of sustainable development goals. That would be very, very helpful to so many who are left out just because they do not directly figure within the current narrative of HRD. It [the term] needs to be tied to the long-term goal of the world because defenders in different ways contribute directly to the achievement of those goals, but sometimes the way they achieve those goals is not captured in the definition that is there.”

Other participants mentioned how the appreciation of the role of HRDs is culturally recognized by awards and prizes. More than half of the participants were of the opinion that awards created hierarchies within the social status of the term HRD, and implied that such hierarchies propelled the entire movement forward. A WHRD, involved in the pre-selection award screening process explains how the metrics designed for special training programmes

⁶⁶ Participant working in the field of governance, business, and human rights, interviewed in July 2022

⁶⁷ Participant working on network and capacity building of HRDs, interviewed July 2022

focus heavily on the impact of HRDs and their “*vision going forward regarding the rights they are advocating.*”⁶⁸ Another defender intensively involved in the nomination and screening process of award programmes elaborates on the *meaning* of impact.⁶⁹ She states

“If the rights of the people you are defending have actually been realized within a short period of time as opposed to the person that has been defending a long time, then your impact has a greater magnitude.”

Two other defenders connected the ramifications of award mechanisms with the momentum of the HRD movement as a whole. The defender who visualized the movement as an ‘ecosystem’ thinks the award systems put a ‘spotlight’ on social movements and this special focus or spotlight reinforces the cause of the movement and pushes it forward.⁷⁰ A defender mentioned how the ‘fame’ of HRDs played a role in popularising the movement and shaping the ‘classical’ understanding of the term.⁷¹ Another defender pointed out the ‘protective effect’ of such awards but also showed concern about their limits:⁷²

“When you arrest someone, and he's an award winner of the Goldman Environmental Prize for example, then that goes into the headlines, you know. When you arrest a Nobel Peace Prize winner, the news will pick it up and the States can be in trouble, right? They might think ‘Oh, we better not harm him, because he's an award-winning journalist!’ So, I think there is a protective effect. I think it also brings up this thing about some categories of people being more valuable than other categories of people. So, I'm always thinking also about who is invisibilized? Who are not given the awards but are suffering the same risks? Yeah. So, it's great for those who are given the awards but what happens to those who are not given the awards? Who are in the shadows, unknown, disconnected, far away, don't speak English, don't speak the major UN languages, you know? It's tougher for them.”

⁶⁸ Participant working in the field of governance, business, and human rights, interviewed in July 2022

⁶⁹ Participant working on advocacy and fostering enabling environment for HRDs, interviewed in July 2022

⁷⁰ Participant working on the research and promotion of HRDs, interviewed in September 2022

⁷¹ Participant working on advocacy of HRDs and abolition of death penalty, interviewed in July 2022

⁷² Participant working on women, migrant, and refugee rights, interviewed in July 2022

8. Analysis of Workshops

This chapter aims to answer the fourth sub-question of this paper:

In what ways can the definition be reconceptualized, redefined, and reassembled?

I included workshops in my methodology as they are excellent sources of providing direct consolidated insights into the ‘latest’ hot topics about a subject and because they help researchers gain tacit knowledge from observing other’s presentation of research findings and their suggested roadmap or vision for the future (Storvang et al., 2018). Since the fourth sub-question of this paper is future-oriented, I decided to answer it with a combination of interview analysis and field notes from expert workshops. In this chapter, I present the field notes I have taken while attending relevant, HRD expert workshops in the last six months.

8.1 Workshop on HRDs (Oslo, 2022)

“*Workshop on Human Rights Defenders*” was a provisional workshop held on June 22nd, 2022, at the University of Oslo, Norway.⁷³ The workshop aimed to address research and policy gaps in HRD protection and discussed the need for collaboration between academics and policymakers working on the topic of HRD protection. There were three speakers at this event. The presentation made by Prof. Alice M. Nah from the University of York had some insights that I found useful to build my arguments for this paper. I attended the workshop physically and took the following notes:

- 1) Under ‘areas for further research’ Nah mentions how the distribution of scarce protection resources leads to power and positionality in movements. As civil society actors fill the ‘implementation gap’ with local and international resources, protection activities which are resource intensive (emergency grants, funds, campaigns, relocations) have begun to ‘guard’ the (precious) resources and space given to HRDs. This potentially reconfigures the relation between civil society actors from supporters to gatekeepers and regulators of behavior.
- 2) Under ‘areas for further research’ Nah mentions how the term HRD has different meanings at different levels (international, regional, national, local). A key tactic of protection has been to construct them as exceptional people, worthy of praise and

⁷³ Details of this workshop are not yet uploaded on the university website.

recognition and treat them as heroes and celebrities instead of ordinary people. This focuses attention and resources on individuals rather than collectives / movements which has negative effects.

- 3) Under ‘concluding thoughts’ Nah mentions the need to critically examine “Who is defined as a human rights defender and how?”

8.2 Workshop on Human Rights & Environmental Defenders (Oslo, 2022)

“*Workshop and Public event on Human Rights and Environmental Defenders*” was a ‘Research and Practitioner’ workshop held on September 14th, 2022, at the University of Oslo, Norway.⁷⁴ The workshop focused on finding pathways to an enabling environment for HRDs especially environmental defenders and several of the challenges were discussed. One of the sub-topics was about the construction, usage, and perception of labels and categories of defenders, which I found most relevant for my paper. The workshop was composed of professors, researchers, campaign managers, lawyers, practitioners, NGO workers, business specialists and young activists. There were twelve presentations in total. Several of them provided excellent insights that I used to formulate questions for my interviews. Comments made by Michel Forst, Ed O’Donovan, and Dr. David R. Goyes were quite useful and relevant for this paper. I attended the workshop physically and took the following notes:

- 1) The label of HRD is a double-edged sword. Protection actors need the label to identify people who need help and to build a framework of protection mechanisms around it. States (and non-State actors) need the label to identify ‘agents’ who have different views than them and thus need to be silenced. Environmental activists hardly use labels to identify themselves. They don’t perceive their defence of nature as something special or praiseworthy but something that any ‘normal human being’ would do.
- 2) The concept of self-identification is clear, but what is not clear is the argument of whether it should be encouraged or discouraged. Encouraging self-identification could lead to a shift in focus from the defence of human rights to the defender of human

⁷⁴ <https://www.jus.uio.no/smr/english/about/current/events/2022/human-rights-defenders-workshop-and-public-event.html>

rights. This could lead to the intemperance of status-based ideology over the activity-based philosophy of HRD framework.

- 3) Hannah Storey from Front Line Defenders gave a presentation where she mentioned “slight variations in the definition of HRD” as one of their six challenges in HRD advocacy.
- 4) Rachel Cox from Global Witness organization gave a presentation where she mentioned environmental defenders cover a broad range of people including journalists, lawyers, politicians, and majority of their killings took place in states with limited civic freedoms.
- 5) Christen Dobson from Business and Human Rights Resource Centre gave a presentation where she mentioned “addressing the *root* causes of killings” and the need to “support, *amplify and celebrate* the work of HRDs” as their HRD programme objectives.
- 6) Busisiwe Kamolane from Centre for Applied Legal Studies gave a presentation where she mentioned how protests were called ‘riots’ in South Africa to repress activists.
- 7) Prof. Peris Jones from Norwegian Centre for Human Rights gave a presentation where he raised the question - “What kind of knowledge do we need or should prioritize for thinking about an ‘enabling environment’ for HRD?”

9. Discussions & Conclusion

The objective of this paper is to find the constraints to formulating an alternative or revised version of the definition of the term HRD. Four sub-questions are formulated, and four different methods are used to answer them. Chapter 2 explores key documents to find problematic aspects of the definition of HRD. The major problematic aspect stemming from the Declaration is the broadness of the definition. According to Article 1 of the Declaration, everyone has a right to promote and protect human rights, so, by extension, everyone can be an HRD. It does not mention any other factors like the period of activity of defence of human rights, the role of ethics of defenders, or any other standard that determines who is *not* a defender. The OHCHR published a Fact Sheet to provide more clarity on the definition. The Fact Sheet reaffirmed the broadness of the Declaration but heavily focused on the human rights character of the work of defenders and put forward three minimum standards to judge this work. According to the standards, defenders need to protect and promote human rights

peacefully, without denying others' rights. Idealistically, this definition works as it has all desirable goals like peace, acceptance of universality, and promotion of human rights. But realistically it falls apart. The first standard of acceptance of universality is not feasible in places where human rights themselves have to fight each other to get a seat at the table. In countries like Palestine, the right to self-determination gets priority over all other rights because of their historical context so denial of certain rights is unavoidable as it is essential to deny or neglect some rights to prioritize others which are more urgent. Acceptance of universality criteria is also taxing in cases where the denial of certain rights stems from the preservation of culture and local understandings of human rights. A man fighting for men's rights but denying women's rights is still two steps forward, and one step backward. He *is* protecting and promoting a human right but just not for all. Expecting the man to show universality of norm over universality of approach will unfairly punish his willingness to advocate for even a single right. The third standard of peaceful activism cannot be implemented in places where there are gaps between domestic and international laws because the law decides what is peaceful and oppressive rulers can change the law to change the definition of peace to favour their regime. An action deemed peaceful under international law can be seen as illegal under domestic law if there are considerable gaps between the two laws. Boundaries of peace and peaceful method also become blurry in cases of police repression, provocation, self-defence, retaliation, and the fight for self-determination in occupied territories. Peaceful action therefore cannot be viewed separately without knowing the context, purpose, and logic of that action. The intention of an individual plays a critical role in assessing peaceful action because a person can unintentionally become a part of a violent situation and may be forced to use violent means because of the lack of a better option. Why should we then condemn the hostility of a person trapped in a hostile environment if he had to resort to hostility to survive that hostile environment?

Chapter 6 delves deeper into these issues and tries to view the definition from an actor-oriented, practical standpoint. HRDs / participants share their views on peace, universality, and broadness of the definition from their own experiences, expertise, and exposure. They welcome the broadness of the definition because it ensures everyone can ask for protection without worrying they might not receive it, and everyone can provide protection without worrying if they gave it to the wrong person. A broad definition does what it is supposed to do - it opens all the gates and welcomes everyone. HRDs / participants however had reservations about the standards of acceptance of universality and peace. They found the

standards impractical as peace is not a straightforward, black-and-white concept and acceptance of universality is only applicable in theory. They showed concerns about the misuse of power by States because States have the legitimate right to define peace and exercise violence, so the standard for peaceful action can be a State mechanism to monitor protests and control HRDs. They mentioned how history showed, in cases of abolition of apartheid, that ‘peace’ itself was not attained peacefully. Turning a blind eye to the context of so many powerful achievements in the world is only possible in theory, not in practice. HRDs showed concerns about accomplishing acceptance of universality without effectively rejecting the context of time, place, social settings, regional politics, limitations of resources, and individualism.

Chapter 3 discusses how States view the term and the struggles they face to give the definition of HRD a concrete shape. Countries like Mali and the Democratic Republic of the Congo tried to limit the broadness of the definition by adding elements that restrict the work of HRDs, especially the ones combating corruption in governance, and adding the criteria of ID card registration to make HRDs traceable. Their concern about the source of funding for HRDs shows how they fear the term HRD could be misused by someone who is an enemy of the State or a spy. Zimbabwe makes this clear by outwardly calling them ‘regime change agents’ and Uganda requests clarification about the definitional differences between an activist and an HRD. States’ primary concern is to limit the broadness of the term because it invites even those people whose defence of human rights is questionable and who might have an ulterior motive. States reject the notion of self-identification as they are taking extreme measures to make the onus of identification fall within their jurisdiction. A defender is compelled to submit a stack of documentation to prove their eligibility and competence as an HRD. They cannot consider themselves as HRD *before* they are considered as such by the State. This shows that it is not the broadness of the term that is the contested issue, but the *need* for that broadness. HRDs need a broad definition to ensure easy access to protection and to invite new activists into the movement. States need a specific definition of the term to identify potential misfits (in a best-case scenario) and track the work of HRDs to hinder their progress (in a worst-case scenario). However, the definition does not to experiment with the dimensions of broadness or specificity if the contrasting *needs* for broadness and specificity find a middle-ground. For example, in cases of access to protection, the definition could avoid the whole context of action-based criteria like peace, acceptance of universality, and the activity of defending rights, and focus instead on the *contribution* of an individual in the

advancement of human rights. A person who does not actively protect or promote human rights can still contribute to the advancement of human rights as pointed out by an interviewee who talked about the role of HRDs in attaining Sustainable Development Goals. Focusing on the contribution of an individual in the advancement of human rights actually includes *more* people which is desirable by both the protection actors and HRDs wishing to expand the movement. A single mother taking care of three children and ensuring they have proper education and nurture is an HRD under this perspective because she is advancing the *values* of human rights (freedom, dignity, equality, etc.) by implementing them herself and by creating an enabling environment for future generations to implement them. In this way, the focus of the nature of human rights would be less on the protection and promotion of human rights and more on their implementation and advancement. This perspective also works for States that wish to specify the definition. Viewing HRDs as contributors to human rights advancement and focusing on the *intention* and *consequence* of their work sets a clear distinction between HRDs and terrorists or violent activists. Both groups (HRDs and non-HRDs) can use the same methods (peaceful or violent) and have different consequences. To answer the question of Uganda in this regard, all HRDs are activists because they use all of their activism to advance human rights, but not all activists are HRDs because not all of them use their activism to advance human rights. For example, someone can strike for the right to be rich. Although it is activism in its form of the method, it is not an advancement of human rights. This perspective reflects the proposed reconceptualization of the term where the participants of interviews and presenters from workshops (Alice Nah, Christin Dobson) stressed on the need to highlight the *impact* and role of activists.

The findings from interviews in Chapter 3 also shed light on the matters of self-identification. Self-identification is not needed for protection as the factor of risk guides protection actors to HRDs. However, self-identification is linked with the future appeal of the term discussed in Chapter 7 – the development of the right to defend and focus on right to defend. The more societies accept the right to defend human rights, the more they will accept the people who are exercising that right and the easier it will become for HRDs to self-identify without the fear of risk. The more societies promote defenders and their contributions, the more people will acknowledge and celebrate them and the more enthusiastic people will be to join the movement. So, to answer the question from the second workshop, encouraging self-identification may shift the focus from defence of human rights to the defender of human rights but shifting the focus from the defender of human rights to defence of human rights

will actually increase self-identification which will increase the bulk of the movement and propel it forward. Self-identification, therefore, are not the means but the ends of the success of HRD movement.

Finally, in light of the discussions made above, what are the constraints to formulating an alternative or revised version of the definition of the term HRD?

- 1) The first constraint is the competing interests of the users and employers of the term. HRDs want a broad definition because they want more access to protection and recognition of the vastness and diversity of their work. They want the definition to reflect that everyone can be a defender. States on the other hand want to limit the broadness of the term because they want to specifically identify who is not a defender. They want the definition to reflect that *not everyone* can be a defender. The revised version of the definition needs to assess if the cost of limiting the term is greater than the cost of broadening the term and if a middle-ground can be reached where both costs are minimized.
- 2) The second constraint is the two-tiered definition of the term. The term is trying to hit both the targets of 'who can be a defender' and 'who is a defender.' One question is concerned with the possibility (or capability) of being a defender, and the other is concerned with the probability (or conformity) of being a defender. The Declaration states everyone has the right to defend rights, which means everyone can be a defender if they wish. But having the right to do something is not the same as choosing to exercise that right. Therefore, although everyone can be a defender, not everyone is. Some may choose not to promote or protect any right. The current definition includes words like 'anyone' to show that everyone can be a defender which is the answer to 'who can be a defender', but it follows up with clauses of peace and universality that target to answer the 'who is a defender.' The definition tries to marry the message of the Declaration to the message of the Fact Sheet, not considering that the two messages are answers to two different questions. The two tiers of this definition are exclusive. A) Anybody can defend rights (in other words, being violent or non-discriminatory does not dilute this right) B) Anybody who uses violence is not a defender (in other words, having the capacity to defend rights does not automatically mean they are defender). The revised version of the definition needs to break this two-tier into silos or coalesce them in synergy. The problem with two

tiers is that the question of ‘who can be a defender’ needs the establishment of the right to defend which is absent in many countries and the question of ‘who is a defender’ needs the establishment of thresholds, gatekeeping, and hierarchies through award systems and theoretical guidelines which are generally good for showcasing ‘poster child’ of movements but cut into the access to protection and broadness envisioned by the Declaration. Research on how to answer these questions without cutting into each other’s territory might help with the discovery of knowledge that Prof. Peris Sean Jones mentioned in the workshop.

- 3) The third constraint is the unrealistic expectation of the term to fulfill herculean, idealistic goals. The standards mentioned in the Fact Sheet are termed as ‘minimum’ but they require the maximum from HRDs. They require the HRDs to operate in a vacuum, as beings with no emotion or history, with no interaction with society, culture, context, time, and space. Expecting to fulfill a theoretical goal while disregarding practical limitations is a challenge indeed. The revised version of the term needs to consider the gaps between idealistic expectations and practical limitations.
- 4) The fourth constraint is a lack of understanding of the words used in the definition of HRDs as spheres of social energies and clusters. For example, the Fact Sheet states it doesn’t matter if someone possesses the title of activist or not, they can still be an HRD because of the nature of the work they do. But such a simplistic way of seeing labels disregards the social powers and perceptions behind them. Even synonymous labels have different social meanings that conjure different emotions or reactions from people (Bashir et al., 2013). Uganda requested for a clarification between activist and HRD, because they don’t see perceive them as replaceable. Busisiwe Kamolane from the workshop stated the same how protests were called ‘riots’ in South Africa to repress activists. This shows that words meaning the same theoretically can actually affect and create different realities. The revised definition, therefore, needs to take into account the social perception of the words like ‘peace’, ‘defender’, ‘harm’, ‘impact’, and ‘strive’ because the definition of HRD needs to take the social context of HRDs into consideration. How the words that define them are perceived by others is important to know before we do a superficial celebratory boosting of their profiles. Each word used in the definition should have a clear, contextual definition on its own so as to deflect as much of the social fabric of the world as possible.

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