

## **Input from UNHCR in relation to the *Declaration on Human Rights Defenders*, reports of the Special Rapporteur and strengthening the role and security of human rights defenders**

Human rights violations and the unlawful restriction of defenders' rights are addressed under international refugee law and UNHCR's mandate as they may amount to persecution within the meaning of the *1951 Convention Relating to the Status of Refugees and its 1967 Protocol (hereinafter: the 1951 Convention)* giving rise to the need for international protection. Whether different actions or omissions amount to persecution needs to be considered in relation to the circumstances of each individual case. Sometimes, various measures, if considered in isolation, may not amount to persecution, but when considered in a broader context, their cumulative effective may justify claims of well-founded fear of persecution. Persecution can arise from unjustified restrictions on the exercise of certain rights, abuse of law, threats, reprisals, intimidation, defamation and violations of human rights. In the context of the increasing use of criminal law to restrict the activities of human rights defenders, mere membership in a group that is responsible for criminal acts is not a sufficient basis for excluding persons from benefitting from international protection under refugee law. These and other relevant principles are consistently underlined and applied by UNHCR in working to ensure that human rights defenders receive refugee protection where applicable under the *1951 Convention* or otherwise.

### **1. Reflection in UNHCR's work of the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*<sup>1</sup> (hereinafter: the *Declaration*) and reports of the Special Rapporteur on Human Rights Defenders**

UNHCR gives due consideration to the provisions of the *Declaration* in the interpretation of the *1951 Convention* in a myriad of policy documents including amicus briefs to national and supranational courts, and in the determination of the international protection needs of human rights defenders.

The provisions of the *Declaration* are reflected in UNHCR's country-specific and thematic policy instruments on the international protection needs of particular groups. UNHCR publishes *Eligibility Guidelines for Assessing International Protection Needs* and *International Protection Considerations* that constitute legal interpretations of the criteria for refugee status as stipulated in the *1951 Convention* in respect to different categories of persons on the basis of social, economic, security, human rights and humanitarian conditions in various countries. In this regard, the international protection needs of human rights defenders who find themselves outside their country of origin or habitual residence on account of their activities, profession, religion or opinion have been taken into account in UNHCR's *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers* coming from Guatemala,<sup>2</sup> Pakistan,<sup>3</sup> Afghanistan,<sup>4</sup> and El Salvador<sup>5</sup> as well as in its

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<sup>1</sup> UN General Assembly Resolution 53/144, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, A/RES/53/144, 9 December 1998.

<sup>2</sup> UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of asylum-seekers from Guatemala*, January 2018, HCR/EG/GTM/18/01, available at: <http://www.refworld.org/docid/5a5e03e96.html>

*International Protection Considerations* in relation to asylum-seekers from Syria<sup>6</sup> and Ukraine.<sup>7</sup>

UNHCR has identified human rights defenders as a category of persons in need of international protection by addressing and describing the type of human rights violations defenders experience together with the availability of remedies in the country, the role of non-State Actors,<sup>8</sup> and states' inability or unwillingness to hold perpetrators accountable,<sup>9</sup> where relevant. For instance, with respect to human rights defenders who are asylum-seekers from Guatemala, UNHCR documented acts that constitute violations of the human rights prescribed by the *Declaration*, including violations of the right to life, right to liberty and security of the person, right to freedom of assembly, right to freedom of expression, or right to a fair trial. Such acts involved harassment, threats, attacks and murder committed by gangs, organized criminal groups, elements of security forces and political groups. Harassment or intimidation often included criminalization of activities of defenders, arbitrary arrests and prolonged use of pretrial detention.<sup>10</sup> Other human rights violations particularly relevant for UNHCR's mandate include restrictions on freedom of movement, property confiscation, or abduction.<sup>11</sup>

As reflected in the *Commentary to the Declaration*,<sup>12</sup> UNHCR has also addressed this issue specifically from a gender perspective and investigated the particular risks faced by women human rights defenders, for instance in its *Eligibility Considerations for International Protection of Asylum-Seekers from Afghanistan*<sup>13</sup> and its *Position Paper on Returns to Libya*.<sup>14</sup> UNHCR has documented situations where women political and civil society activists, journalists and those not complying with strict interpretations of religious and societal gender norms were reportedly singled out by various actors for intimidation, assaults and assassinations.<sup>15</sup>

UNHCR has often reflected the situation of human rights defenders as a professional category together with the situation of judges, lawyers, or journalists in consideration of defenders' right to the lawful exercise of their profession stipulated in the *Declaration*.<sup>16</sup> In its *International Protection Considerations regarding asylum-seekers from Syria*, UNHCR

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<sup>3</sup> UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan*, 2017, available here: <http://www.refworld.org/docid/5857ed0e4.html>

<sup>4</sup> UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 2016, available here: <http://www.refworld.org/docid/570f96564.html>

<sup>5</sup> UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador*, 2016, available here: <http://www.refworld.org/docid/56e706e94.html>

<sup>6</sup> UNHCR, *International Protection Considerations with regard to people fleeing the Syrian Arab Republic*, 2017, available here: <http://www.refworld.org/pdfid/59f365034.pdf>

<sup>7</sup> UNHCR, *International Protection Considerations related to the Developments in Ukraine – Update III*, 2015, available here: <http://www.refworld.org/docid/56017e034.html>

<sup>8</sup> UNHCR, *Guidance Note on Refugee Claims Relating to Victims of Organized Groups*, 2010, available here: <http://www.refworld.org/docid/4bb21fa02.html>

<sup>9</sup> UNHCR, *Eligibility Guidelines: Pakistan*, p. 25.

<sup>10</sup> UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Guatemala*, 2018, p. 52, available here:

<http://www.refworld.org/publisher.UNHCR.COUNTRYPOS./5a5e03e96.0.html>

<sup>11</sup> UNHCR, *International Protection Considerations: Syria*, p. 53.

<sup>12</sup> *Commentary to the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, 2011, available here: <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>

<sup>13</sup> UNHCR, *Eligibility Guidelines: Afghanistan*, p. 38.

<sup>14</sup> UNHCR, *Position on Returns to Libya – Update I*, 2015, available here:

<http://www.refworld.org/docid/561cd8804.html>

<sup>15</sup> *Id.*, p. 6.

<sup>16</sup> UNHCR has argued that a person cannot be required to change their profession to avoid persecution. See UNHCR, *MSM (Somalia) v. Secretary of State for the Home Department: Submissions on behalf of UNHCR*, 5 November 2014, AA/00387/2014, available at: <http://www.refworld.org/docid/545cc43f4.html>

considered human rights defenders together with the following categories of professionals: journalists and media professionals, academics and teachers, doctors and health professionals, humanitarian workers, and artists.

More broadly, the categories of human rights defenders considered by UNHCR include persons working for the defense of human rights in general or the rights of indigenous peoples, land and environment activists, trade unionists as well as defenders of rights of victims of conflicts (Guatemala); defenders of the rights of members of religious minorities (Pakistan), and defenders who oppose political regimes or religious views (Ukraine, El Salvador).

The refugee status determination process needs to consider of the right to promote, develop and discuss new human rights ideas and principles (Art. 7 *Declaration*). Institutions determining claims for international protection are required to take into account not only defenders' actual activities or expressed political or religious views but also the way their activities are perceived by national authorities and what allegations are made or intentions or associations imputed to them, whether real or not, including as documented by UN reports and other reliable sources of evidence, including reports elaborated by the Special Rapporteur on the Situation of Human Rights Defenders.<sup>17</sup> UNHCR consistently stresses that "defenders working on issues perceived to be sensitive by either the State or non-State armed actors may be in need of international protection on the basis of their political opinion and/or membership of a particular social group or on another Convention grounds, whether real or imputed to the defenders" [emphasis added].<sup>18</sup> In its *Guidelines on International Protection No. 9 regarding refugee status based on sexual orientation and/or gender identity*, UNHCR recognized that LGBTI activists and human rights defenders, whether acting or perceived as human rights defenders, could be granted refugee status on the basis of fears of persecution on account of political opinion or religion, if their advocacy is perceived as conflicting with prevailing political or religious views, norms and/or practices, without necessarily themselves being LGBTI.<sup>19</sup>

In direct relation to this point as well as in recognition of the rights to freedom of expression and association enshrined in the *Declaration*, UNHCR strongly advocates that asylum-seekers cannot be denied refugee status on the grounds that they could change or conceal their identity, opinions or characteristics in order to avoid persecution. UNHCR has made its position clear in this regard in a number of cases litigated before national and regional courts concerning concealment based on sexual orientation and/or gender identity,<sup>20</sup> changing

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<sup>17</sup> General Assembly, Report of the Special Rapporteur on the situation of human rights defenders, Ms. Margaret Sekaggya, A/66/203, 28 July 2011, para 114; Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders, Ms. Margaret Sekaggya, A/HRC/19/55, 21 December 2011, para 52 (any opinion perceived to differ from State ideology continues to be branded as a security concern and used a justification to unduly restrict the right to freedom of opinion and expression) (emphasis added).

<sup>18</sup> UNHCR, *Eligibility Guidelines: Guatemala*, p. 52; *International Protection Considerations: Syria*, p. 54.

<sup>19</sup> UNHCR, *Guidelines on International Protection No. 9, Claims to Refugee Status based on Sexual Orientations and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 2012, para 40, available here: <http://www.unhcr.org/509136ca9.pdf>

<sup>20</sup> See UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, HCR/GIP/12/01, available at: <http://www.refworld.org/docid/50348afc2.htm>, paras 30-33. See also UNHCR, *Observations in X, Y and Z v. Minister voor Immigratie en Asiel*, Court of Justice of the European Union, C-199/12-C-201/12, 7 November 2013, para 5.2.2, available here: <http://www.refworld.org/docid/527b94b14.html>; UNHCR, *Submission in the case of 2018 Du34558 regarding claims of refugee status based on sexual orientation and gender identity*, 2018, available here: <http://swigea56.hcrnet.ch/refworld/docid/5a9d6abf4.html>

one's profession,<sup>21</sup> concealing one's political opinion,<sup>22</sup> concealing one's religion,<sup>23</sup> and women who are perceived as not adhering to prevailing cultural and/or religious norms by asserting their human rights.<sup>24</sup>

In its *Guidelines on International Protection No. 13 on the Applicability of Article 1D of the 1951 Convention* relating to the refugee status of Palestinian refugees, UNHCR maintains that "politically active Palestinian refugees who may attract attention because of their beliefs or activities, and who may even do so at great personal risk to themselves or their families, cannot be required to cease such activities as a precondition for protection under Article 1D; that would undermine the object and purpose of the *1951 Convention* overall".<sup>25</sup>

In addition to taking into account the rights enshrined in the *Declaration*, UNHCR supports the work of the Special Rapporteur on Human Rights Defenders by providing its mandate with confidential information on the situation of human rights defenders, where relevant, in preparation of his country visits, such as for Hungary and Mexico. It also relies on findings and recommendations of the Special Rapporteur on Human Rights Defenders to stress particular issues of concern in country-specific reports to UN human rights treaty bodies, including the Subcommittee on Prevention of Torture. Furthermore, UNHCR has recently published, jointly with the Inter-Parliamentary Union, a *Handbook for Parliamentarians on refugee protection* that *inter alia* highlights that the mandate of the Special Rapporteur on the situation of human rights defenders is of particular relevance for the protection of asylum-seekers and refugees.<sup>26</sup>

## **2. UNHCR's good practices related to the provision of support to States and challenges in the implementation of relevant human rights obligations and commitments**

UNHCR often raises issues relating to the protection of human rights defenders in confidential comments to UN human rights treaty bodies, such as the UN Human Rights Committee and the Committee against Torture. These interventions have resulted in concrete recommendations addressed to the States concerned in relation to the establishment of dedicated mechanisms for the investigation of acts of violence and threats against human rights defenders. Recommendations on the development of training and education programmes on the importance of freedom of expression, freedom of association

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<sup>21</sup> UNHCR, *MSM (Somalia) v. Secretary of State for the Home Department: UNHCR Submissions*, 18 January 2016, paras 19, 28, 31, available here: <http://www.refworld.org/docid/56a23f2b4.html>.

<sup>22</sup> UNHCR has stated that "For international refugee law to proceed on the basis that individuals would be expected to return to pledge a public allegiance, which they do not and would not hold, to, for example, an oppressive regime, under a well-founded fear of persecution if they do not do so, is surely precisely the opposite message and purpose to that envisaged by the 1951 Convention." See *UNHCR intervention before the Supreme Court of the United Kingdom in the case of RT (Zimbabwe) and others (Respondents) v Secretary of State for the Home Department*, 25 May 2012, 2011/0011, para 13, <http://www.refworld.org/docid/4fc369022.html>.

<sup>23</sup> UNHCR, Statement on Article 9(1) of the EU Qualification Directive, 17 June 2011, *Bundesrepublik Deutschland (Germany) v. Y and Z*, para 4.3.2, available here: <http://www.refworld.org/docid/4dfb7a082.html>.

<sup>24</sup> Women who assert their human rights, including such rights as freedom of expression and freedom of thought, conscience and religion, and who in doing so are seen as not adhering to prevailing cultural and/or religious norms (or who have adopted "a western lifestyle") cannot be required to conceal protected identity. See also UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in case numbers 201701423/1/V2, 201704575/1/V2 and 201700575/1/V2 (Ghasemi, Moradi and Nuur Jelaini) before the Council of State*, 28 February 2018, <http://swigea56.hcrnet.ch/refworld/docid/5a9d69ff4.html>.

<sup>25</sup> UNHCR, *Guidelines on International Protection No. 13: Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees*, 2017, para 28, available here: <http://www.refworld.org/docid/5a1836804.html>

<sup>26</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, 2011, p. 13, available here: <http://www.unhcr.org/3d58e13b4.pdf>

and freedom of assembly for law enforcement officers, military personnel, staff of private security companies, judges and prosecutors have also been made.<sup>27</sup>

### 3. Recommendations on measures relevant to the promotion of the *Declaration*

UNHCR suggests the following measures be given due consideration by relevant actors, including but not limited to States, UN entities, non-governmental organizations, civil society, and national human rights institutions, as potential means of promoting the *Declaration*:

- a) Empower human rights defenders through comprehensive training and other capacity-building initiatives with a view to strengthen their ability to use international and regional human rights mechanisms effectively and work for change;
- b) Strengthen human rights laws and systems through establishing an international legal duty to prevent and address reprisals against human rights defenders and the victims they represent;
- c) Strengthen national legislation and procedures to protect refugees who are human rights defenders by prohibiting or criminalizing acts of intimidation, surveillance or other acts of threat including in the country of asylum;<sup>28</sup>
- d) Promote the use of the UN and regional human rights mechanisms to prevent, remedy and seek accountability for attacks and restrictions against human rights defenders;
- e) Work in enhanced partnership with national human rights institutions, civil society and other actors to ensure that governments fulfil their duty to protect human rights defenders under existing international, regional and national legal frameworks; and/or
- f) Promote changes in national legislation and practices that affect human rights defenders to bring them in line with the provisions in the *Declaration*.

### 4. UNHCR development of awareness-raising activities at the local, national, regional and international levels to promote and support the *Declaration*

UNHCR recognizes the role of human rights defenders in public positions expressed at the highest level, including in statements by the High Commissioner for Refugees himself, and often issues public statements that raise concerns relating to defenders' protection.<sup>29</sup> For example, the High Commissioner in his address before the UNHCR Executive Committee expressed concern at the attacks and obstruction of the work of NGOs, human rights defenders, humanitarian actors and national human rights institutions. In the words of the High Commissioner, "[N]o one should easily dismiss or denigrate the courageous work of civil society in advancing the cause of caring and protecting and saving lives, both on land

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<sup>27</sup> UN Human Rights Committee, *Concluding Observations: Honduras*, CCPR/C/HND/CO/2, 22 August 2017, para 41.

<sup>28</sup> UNHCR documented situations where refugees continued to experience threats, intimidation or surveillance in the country of asylum. In response to such acts, UNHCR examined the implications of measures criminalizing acts of espionage of refugees. See: UNHCR, *Comments by UNHCR on the Memorandum of 6 December 2013 proposing Criminalization of Refugee Espionage*, 2014, available here: <http://www.refworld.org/docid/5829ad6c4.html>

<sup>29</sup> UNHCR, *UNHCR concern at increasing murders of local leaders in Colombia*, 17 November 2017, available here: <http://www.refworld.org/docid/5a0ed5614.html>

and at sea".<sup>30</sup> This standpoint, and the positions expressed in the abovementioned legal and interpretive guidance regarding the potential international protection needs and rights of human rights defenders, is reflected in the work of the organization at all levels, consistently with UNHCR's mandate and capacities.

**Division of International Protection  
UNHCR  
April 2018**

**Enclosed:** Annex containing excerpts of relevant UNHCR documents on two issues: (A) consideration of human rights defenders as persons potentially in need of protection under refugee law; and (B) concealment to avoid persecution.

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<sup>30</sup> UNHCR, *Statement to the 68<sup>th</sup> Session of the Executive Committee of the High Commissioner's Programme*, 5 October 2017, available here: <http://www.refworld.org/docid/59ddd49b4.html>

## Annex

### A. Human rights defenders as persons at risk of persecution and in need, potentially, of international protection

1. UNHCR, [Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Guatemala](#), 2018, pp. 34 and 52-53

Impunity is reported also to be a particularly acute problem in relation to violence and other crimes committed against a range of other sectors of society, such as **human rights defenders**, legal and judicial professionals, indigenous populations, children and adolescents, individuals of diverse sexual orientations and/or gender identities, journalists and other media workers. Moreover, there are reports of criminal law provisions being frequently used by the authorities as a means of intimidating and harassing members of indigenous communities engaged in land disputes, legal and judicial professionals, **human rights defenders** and journalists. [...]

**Human rights defenders** and other social and political activists who are working on issues perceived to be sensitive have reportedly been the frequent subject of harassment, threats, attacks and murder by gangs, organized criminal groups, elements of the security services and powerful political groups. Those who are subject to such mistreatment reportedly include but are not limited to **persons working for the defence of human rights in general, the rights of indigenous peoples, the rights of victims of the Guatemalan civil war, as well as land and environmental activists, trade unionists and defenders of the civic movement that stemmed from the 2015 institutional crisis.**

Between 2000 and August 2014, it is reported that 174 human rights defenders were murdered. In 2014 seven human rights defenders were reportedly murdered, 13 in 2015, and 14 in 2016; in the first half of 2017 seven such murders were recorded. 377 In 2013, 657 attacks were recorded against human rights defenders; this figure rose to 813 attacks in 2014 before falling to 493 attacks in 2015 and to 263 in 2016. However, the first half of 2017 showed a sharp upward trend, with 236 attacks recorded in just six months, or 90 per cent of the total number registered during the whole of 2016. A large proportion of these attacks are reportedly directed against those **working on the rights of indigenous peoples and environmental and land rights issues.** Attempts to **intimidate human rights defenders** reportedly frequently include prosecutions based on the misuse of criminal law provisions, arbitrary arrests and prolonged use of pre-trial detention, as well as defamation campaigns by powerful special interest groups.

**Against this background, and taking into account the limitations on the ability and willingness of State agents to provide protection to civilians (see section II.C), UNHCR considers that depending on the particular circumstances of the case, human rights defenders and other social and political activists who are working on issues perceived to be sensitive by either State or non-State armed actors may be in need of international refugee protection on the ground of their (imputed) political opinion, and/or their membership of a particular social group, or on the basis of other Convention grounds.**

2. UNHCR, [International Protection Considerations with regard to people fleeing the Syrian Arab Republic](#), Update V, 3 November 2017, pp. 53-54

**Human rights defenders**, including lawyers, have reportedly been targeted by government forces for killing, arbitrary arrest and *incommunicado* detention, unfair trials before military and anti-terrorism courts, restrictions on their freedom of movement, property confiscation,

and other forms of harassment and intimidation. At the same time, non-state armed actors have reportedly also targeted human rights defenders for intimidation, death threats, abduction and incommunicado detention, including in situations where **human rights defenders** have been involved in documenting abuses committed by these groups. Hardline Sunni Islamist groups have also reportedly issued fatwas (religious edicts) against **human rights defenders** and have sought to justify their killing on the basis of apostasy.

**UNHCR considers that professionals such as journalists and citizen journalists, academics and teachers, doctors and other health professionals, humanitarian workers, human rights defenders and artists are likely to be in need of international refugee protection on the basis of their political opinion or imputed political opinion, and/or other relevant grounds, depending on the individual circumstances of the case.**

3. UNHCR, [Eligibility Guidelines for Assessing the International Protection Needs of Members of Religious Minorities from Pakistan](#), January 2017, pp. 25 and 27

State authorities have also reportedly failed to provide adequate protection to members of the judiciary, lawyers, **human rights defenders** and others who defend the rights of members of religious minority groups and who themselves are reportedly threatened, intimidated, harassed and physically attacked.

All claims by asylum-seekers originating from Pakistan, whether on the basis of the refugee criteria in the 1951 Convention or broader international protection criteria, including complementary forms of protection, need to be considered on their merits according to fair and efficient status determination procedures and up-to-date and relevant country of origin information. UNHCR considers that claims of members of religious minorities and their family members **require particularly careful examination, as do other religion-based claims such as those made by human rights defenders, activists and lawyers who defend the human rights of members of religious minorities in Pakistan.**

4. UNHCR, [Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras](#), 27 July 2016, pp. 39 and 61-62

Despite improvements to the legal framework for the protection of vulnerable groups in Honduras from 2015 onwards, impunity is reported also to be a particularly acute problem in relation to violence and other crimes committed against a range of other sectors of society, **such as human rights defenders**; legal and judicial professionals; indigenous and Afro-descendant populations; children and adolescents; individuals of diverse sexual orientations and/or gender identities; journalists and other media workers; and peasant communities particularly in the Bajo Agúan region.

**Human rights defenders**, and other social and political activists who are working on issues perceived to be sensitive, and their family members, have reportedly been the subject of threats, attacks and killings by gangs, organized criminal groups, elements of the security services, including private security personnel and other individuals in Honduras. Those who are subject to such mistreatment reportedly include but are not limited to **persons working for the defence of human rights in general, women's rights activists, activists working on the rights of individuals of diverse sexual orientations and/or gender identities, trade unionists, indigenous and peasant rights activists, and land and environmental activists.** Between 2010 and 2014, it is reported that 22 **human rights defenders were murdered**, 14 of whom during the time when they were beneficiaries of precautionary measures by the Inter-American Commission on Human Rights. During the same period,

human rights defenders in the country also reported two forced disappearances of their colleagues, 15 kidnappings, 88 cases of information theft, 53 cases of vehicle sabotage and 3,064 prosecutions allegedly initiated to intimidate human rights defenders through the misuse of criminal law provisions. In 2014 and for each of the four preceding years from 2010 to 2013, Honduras was the country with the highest per capita rate for murders of land and environmental activists in the world. These trends apparently continued undiminished in 2015 and into 2016. In 2015 and 2016, it was also reported that other **activists participating in public protests concerning social and political issues**, including those convened against the government by the Indignados ('Indignant') movement, had been threatened and killed.

**Depending on the particular circumstances of the case, UNHCR considers that human rights defenders and other social and political activists who are working on issues perceived to be sensitive by either State or non-State armed actors may be in need of international refugee protection on the ground of their (imputed) political opinion, and/or their membership of a particular social group, or on the basis of other Convention grounds.**

5. UNHCR, [\*Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan\*](#), 19 April 2016, pp. 38 and 40

AGEs [Anti-Government Elements] are reported to target human rights activists, with activists having been killed or injured in targeted attacks. **Women human rights defenders** are reported to be at particularly high risk. [...]

There are widespread reports of the targeting of women in the public sphere, including female parliamentarians, provincial council members, civil servants, journalists, lawyers, police officers, teachers, **human rights activists** and women working for international organizations.

6. UNHCR, [\*Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador\*](#), 15 March 2016, pp. 39-40

Journalists and **human rights defenders**, especially those working on issues relating to organized crime and corruption in El Salvador have reportedly been the subject of threats, attacks and even killings by criminal elements.

**Depending on the particular circumstances of the case, UNHCR considers that journalists, other media professionals and human rights defenders who are working on issues perceived to be sensitive by either State or non-State armed actors, including but not limited to organized crime and corruption, may be in need of international refugee protection on the ground of their (imputed) political opinion, or on the basis of other Convention grounds.**

7. UNHCR, [\*Position on Returns to Libya - Update I\*](#), October 2015, pp. 5-6 and 13-14

According to reports, **human rights defenders**, politicians, **civil society activists**, media professionals, religious leaders, government officials, as well as members of the judiciary and law enforcement agencies are deliberately singled out by various groups for intimidation, abduction, burning and looting of homes, as well as unlawful killings in a climate of impunity. Reports document the widespread use of torture and other ill-treatment in detention facilities run by Libya's internationally recognized government and its allied forces as well as by other armed groups. [...]

Women are subjected to severe discrimination in law and practice. Women political and **civil society activists**, journalists and those not complying with strict interpretations of religious and societal gender norms are reportedly singled out by various actors for intimidation, assaults and assassination across the country. [...]

Claims for international protection of persons having been directly affected by developments since 2011 may need to be given particular attention, including, inter alia, claims submitted by political and **human rights activists**, members of the judiciary and law enforcement officers, women engaged in the public sphere, humanitarian workers, bloggers and media professionals, members of ethnic and religious minorities, individuals of (real or perceived) diverse sexual orientations and gender identities, and members of tribes/families or individuals perceived to be in support of one of the conflict parties or the former Gaddafi regime.

**Persons with these and other profiles may be in need of international protection in accordance with the 1951 Convention, for reason of real or imputed political opinion, or for reasons related to other 1951 Convention grounds.**

8. UNHCR, [\*International Protection Considerations Related to the Developments in Ukraine – Update III\*](#), 24 September 2015, p. 15

**Claims for international protection made by persons having been involved in recent developments, including, for example, political and religious activists, journalists, members of minorities, and human rights defenders may need to be given particular attention.**

9. UNHCR, [\*Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Colombia\*](#), September 2015, pp. 35 and 37-39

According to the IACHR [Inter-American Commission on Human Rights], the State does not guarantee the security of its judges, magistrates, attorneys **and public defenders** against all kinds of pressures, including attacks and threats aimed at their relatives or meant to destabilize their lives and future careers.

The Ombudsman has also **reported murders of and threats to public defenders**. However, investigations into reported **incidents against public defenders** often pose significant difficulties due to the nature of their work. **Public defenders** exercise duties related to penal law and the defence of criminal cases both in their public ex officio function and as private lawyers; threats may relate to one or both of these activities. In October 2014, two killings, one attack and several threats against **public defenders** were registered in the departments of Antioquia, Caldas, Cauca and Nariño. [...]

A solid network of human rights organizations exists within Colombia. Their dialogue with the authorities has improved recently with the creation of the Mesa Nacional de Garantías (National Board of Guarantees for the Defence of Human Rights) mechanism. This mechanism was developed to facilitate discourse with the Government as a response to reports of human rights violations. Despite such improvements, **the situation for human rights defenders continues to be reason for concern**. This is evidenced by the 2,611 human rights defenders for whom the National Unit for Protection has established special protection measures.

Human rights defenders risk being stigmatized in the context of the armed conflict. Threatening flyers are reportedly used to incite fear and to prevent further reporting of the armed groups' actions by **human rights defenders**. At the same time, in some instances State authorities are reported to have wrongly concluded that legal activities carried out by human rights defenders were either illegal or tied to armed groups. The promotion of the full exercise and enjoyment of human rights results in a high degree of exposure, **leaving human rights defenders increasingly vulnerable to threats, harassment, and violence**. This is reflected by the **626 reported cases of aggression against the life or physical integrity of human rights defenders in 2014** against the 366 cases reported in 2013. Among the threats against different social movements reported in the first half of 2014, actions against members of certain organizations for the defence of human rights stood out. These organizations include the Permanent Committee for the Defence of Human Rights, the Inter-Congregation Commission for Justice and Peace, the Movement for Victims of the State (MOVICE) and regional organizations such as Regional Corporation for the Defence of Human Rights (CREDHOS). Threats against persons involved in judicial proceedings regarding extrajudicial killings, known as "false positives", should also be noted.

Between 1996 and May 2012, at least 290 human rights defenders were reported to have been killed. In the first half of 2013, a further 37 were recorded as having been killed, and then during 2014, 55 human rights defenders were reportedly killed. Among the victims were agricultural, community, social, trade union and land restitution leaders. The IACHR observed that, in addition to being killed, human rights defenders are generally victims of ill-treatment, and often have also been subjected to failed attempts of murder, as well as, physical attacks, sexual violence, arbitrary detention or threats. The IACHR has reported that attacks are often committed inside their homes and often in the presence of their children or family members.

In 2015, organizations for the defence of human rights reported a 71 per cent increase in the number of incidents of aggression committed against their members between 2010-2014. In particular, the use of individual and general threats was 2.3 times higher in 2014 than in 2013. These threats come mainly from groups such as the Águilas Negras and Rastrojos, as well as other NAGs.

Although the State is taking measures to **protect human rights defenders from aggression**, in some cases there is no institutional response or the response is not timely. For instance, of the 55 persons killed in 2014, 31 had reported receiving death threats to the authorities. While protective measures have been put in place for 2,611 persons, it is not always effective: five of the protected persons were reportedly killed despite protective measures being in place. Furthermore, at least 3,621 requests for protection reportedly remained unanswered. The absence of protection measures is further compounded by the fact that additional measures – such as judicial investigations and the identification of the causes of the risk – are not implemented or adequately addressed. Both the IACHR and the OHCHR have expressed concern over the level of impunity for crimes committed against human rights defenders. Local human rights organizations have also expressed concern, given the fact that the prosecutor's office has not delivered "results in any cases.

**Depending on the particular circumstances of the case, UNHCR considers that human rights defenders, including but not limited to land restitution claimants and their leaders, may be in need of international refugee protection on the basis of their (imputed) political opinion, or on the basis of other Convention grounds.**

10. UNHCR, [Guidance Note on Refugee Claims Relating to Victims of Organized Gangs](#), 2010, paras 12 and 16

Gangs may direct harm at individuals who in various ways have resisted gang activity or who oppose, or are perceived to oppose, the practices of gangs [...] Such “gang-resisters” may be grouped broadly into the following categories: [...] f. NGO workers, human rights activists, lawyers and participants in community- or church-based groups who oppose gangs, thus becoming the targets of intimidation tactics and violence by gangs. [...]

Unlawful or arbitrary measures, including extra-judicial killings, have also sometimes been used against members of civil society who may be perceived as critics of the government’s approach towards the gangs. This includes, for example, human rights activists and former law enforcement officials who have acted as “whistle-blowers” and reported corrupt or otherwise unlawful behaviour of government officials in relation to gangs.

11. UNHCR, [Guidelines on International Protection No. 12, Claims for refugee status related to situations of armed conflict and violence under Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees and the regional refugee definitions](#), 2016, para 38

Persons pursuing certain [...] professions or occupations may be at risk for reasons of, for example, their real or perceived political opinion or religious (or non-)belief. Their activities, role or status within society that follows from, or is associated with, their trade, profession or occupation, may be regarded as a real or perceived opinion on a matter in which the machinery of state, government, society or policy may be engaged, 79 in particular, in a country in conflict. For instance, journalists and other media professionals, and human rights and rule of law defenders, may report factually or critically on the conduct of certain actors, medical professionals treating opposition fighters may be seen as supporting the opposition, humanitarian workers continuing with their humanitarian work may be perceived as assisting the “enemy”, 80 and religious leaders may side, or be seen to be siding, with one of the parties.

12. UNHCR, [Guidelines on International Protection No. 9, Claims to Refugee Status ON Sexual Orientation and/or Gender Identity within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), 2012, paras 40 and 66

LGBTI activists and human rights defenders (or perceived activists/defenders) may have either or both claims based on political opinion or religion if, for example, their advocacy is seen as going against prevailing political or religious views and/or practices.

The extent to which international organizations and other groups are able to monitor and document abuses against LGBTI individuals remain limited in many countries. Increased activism has often been met with attacks on human rights defenders, which impede their ability to document violations.

## **B. On concealment to avoid persecution**

1. Concealment in relation to sexual orientation and/or gender identity

- 1.1. UNHCR, [Guidelines on International Protection No. 9, Claims to Refugee Status ON Sexual Orientation and/or Gender Identity within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), 2012, para 31

That an applicant may be able to avoid persecution by concealing or by being “discreet” about his or her sexual orientation or gender identity, or has done so previously, is not a

valid reason to deny refugee status. As affirmed by numerous decisions in multiple jurisdictions, a person cannot be denied refugee status based on a requirement that they change or conceal their identity, opinions or characteristics in order to avoid persecution. LGBTI people are as much entitled to freedom of expression and association as others.

- 1.2. UNHCR, [Observations in the cases of Minister voor Immigratie en Asiel v. X, Y and Z \(C-199/12, C-200/12, C-201/12\) regarding claims for refugee status based on sexual orientation and the interpretation of Articles 9 and 10 of the EU Qualification Directive, 2012](#), para 5.2.2- 5.2.3

A person cannot be denied refugee status based on a requirement that she or he can change or conceal his or her identity, opinions or characteristics in order to avoid persecution. LGBTI individuals are entitled to freedom of expression and association in the same way as others. 'Persecution does not cease to be persecution because those persecuted can eliminate the harm by taking avoiding action.' A proper analysis as to whether a LGBTI applicant is a refugee under the 1951 Convention needs to be based on the premise that applicants are entitled to live in society as the persons they are, and need not hide their identities. [...]

In UNHCR's view, this requires an objective and fact-specific examination of the nature of the applicant's predicament and whether this amounts to persecution. The role of the decision-maker is to assess risk (whether the fear of persecution is well-founded) and not demand conduct (pronounce upon what the applicant should do and not do).

- 1.3. UNHCR, [Statement on religious persecution and the interpretation of Article 9\(1\) of the EU Qualification Directive](#) issued in the context of two references for a preliminary ruling to the Court of Justice of the European Union (CJEU) from the Bundesverwaltungsgericht (Germany) lodged on 18 February and 2 March 2011 – *Federal Republic of Germany v Y* (Case C-71/11) and *Federal Republic of Germany v Z* (Case C-99/11), 2011, para 4.3.1

One's religious belief, identity or way of life can be seen as so fundamental to human identity that one should not be compelled to hide, change or renounce this in order to avoid persecution, in particular where the risk of being persecuted hinges on the future behaviour of an applicant. In fact, being compelled to forsake or conceal one's religious belief, identity or way of life where this is instigated or condoned by the State may itself constitute persecution, or be part of a pattern of measures that cumulatively amount to persecution in an individual case. "Persecution does not cease to be persecution because those persecuted eliminate the harm by taking avoiding action." Adopting such an approach would undermine the protection foundations of the 1951 Convention. Manifestations of religious belief cannot be expected to be suppressed in order to avoid a danger of persecution as long as the manifestations constitute an exercise of human rights. In the same vein, a statement by an applicant expressing the intention to abstain from certain religious manifestations in order to avoid persecution does not render refugee protection unnecessary; to the contrary, this avoidance could constitute evidence of the individual's fear of persecution.

2. Concealment in relation to (imputed) political opinion and the need to display public political allegiance to the State

- 2.1. UNHCR [Intervention before the Supreme Court of the United Kingdom in the case of RT \(Zimbabwe\) and others \(Respondents\) v Secretary of State for the Home Department](#), 25 May 2012, 2011/0011, para 13

Returning to a context-specific approach, it is a striking idea that the reason for denying international protection is the insistence on an individual publicly being untruthful to the officials of his or her State. It is an even more striking response to return such a person on the basis that they are to be expected, under the threat of persecution, publicly to state an insincere political allegiance to an oppressive regime. For international refugee law to proceed on the basis that individuals would be expected to return to pledge a public allegiance, which they do not and would not hold, to, for example, an oppressive regime, under a well-founded fear of persecution if they do not do so, is surely precisely the opposite message and purpose to that envisaged by the 1951 Convention.

2.2. UNHCR, [Guidelines on International Protection No. 13, Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees](#), 2017, para 28

Politically active Palestinian refugees who may attract attention because of their beliefs or activities, and who may even do so at great personal risk to themselves or their families, cannot be required to cease such activities as a precondition for protection under Article 1D; that would undermine the object and purpose of the 1951 Convention overall.

### 3. Concealment in relation to the requirement to change one's profession

UNHCR, [MSM \(Somalia\) v. Secretary of State for the Home Department: UNHCR Submissions](#), 2014, paras 17, 19 and 33.

UNHCR contends that it is impermissible to deny an asylum applicant refugee status on the basis that they could be expected to conceal (or exercise discretion or restraint in relation to) one of the core grounds/statuses protected by the 1951 Convention, i.e. race, religion, nationality, membership of a particular social group or political opinion, in order to avoid persecution. Requiring an asylum applicant to change profession such as in the circumstances of this case would be tantamount to requiring him to exercise restraint in relation to a core ground/status, namely political opinion. [...]

The principle that it is impermissible to deny an applicant refugee status on the basis that they could be expected to exercise discretion in relation to one of the core grounds/statuses is well-established in the case-law of both the UK Supreme Court and the Court of Justice of the European Union. [...]

Requiring someone to change profession, such profession being indissociable from imputed persecution, on the basis that this would avoid the risk of persecution on the grounds of imputed political opinion would therefore undermine the protection conferred by the 1951 Convention in relation to political opinion.

### 4. Concealment in relation to religious freedoms

UNHCR, [FA \(Pakistan\) v. Secretary of State for the Home Department: Case for the Intervener](#), 2017, paras 11 and 14

[I]t runs contrary to that rationale for individuals to conceal who they are, or modify their behaviour, or avoid activity, for the material reason of avoiding such persecutory harm; which involves surrender of the person's right to live freely and openly as who they are in terms of the protected characteristic. [...]

[I]t follows that the individual who would, if returned to the country of origin, modify their behaviour or avoid activity for the material reason of avoiding persecutory harm, because of the dangers of living freely and openly in society as who they are in terms of the protected characteristic, is entitled to refugee protection.