



The Hard Road to a Human Rights Defenders (HRD) Protection Law: Initial Assessment of the Bills in the 19th Congress





Founded in 1979, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) is a regional association of national and regional networks of civil society organizations (CSOs) in Asia actively engaged in promoting food sovereignty, land rights and agrarian reform, sustainable agriculture, participatory governance, and rural development. ANGOC member networks and partners work in nine Asian countries together with some 3,000 CSOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy discussions with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

The complexity of Asian realities and diversity of CSOs highlight the need for a development leadership to service the poor of Asia – providing a forum for articulation of their needs and aspirations as well as expression of Asian values and perspectives. Thus, the ANGOC network promotes land and resource rights, smallholder agriculture, and human rights and civic participation, by serving as a platform for Asian CSOs to generate knowledge, share tools, and conduct constructive policy dialogues.

ANGOC is a member of the Indigenous Peoples and Community Conserved Areas and Territories (ICCA), International Land Coalition (ILC), Global Forum on Agricultural Research and Innovation (GFAIR), Global Land Tool Network (GLTN), Fair Finance Asia (FFA), and Alliance for Land, Indigenous and Environmental Defenders (ALLIED).

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Acronyms

AFP	Armed Forces of the Philippines
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
AHRC	Ateneo Human Rights Center
BHR	Business and Human Rights
CAFGU	Citizens' Armed Forces Geographical Unit
CHR	Commission on Human Rights
CPP	Communist Party of the Philippines
CSO	civil society organization
DoJ	Department of Justice
HB	House Bill
HRD	Human Rights Defender
HRV	Human Rights Violation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
NPA	New People's Army
NTF-ELCAC	National Task Force to End Local Communist Armed Conflict
OHCHR	Office of the United Nations High Commissioner for Human Rights
PNP	Philippine National Police
RA	Republic Act
RPC	Revised Penal Code
SB	Senate Bill
SDGs	Sustainable Development Goals
UN	United Nations
UNDP	United Nations Development Programme
UDHR	Universal Declaration on Human Rights

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Introduction

In 1998, the UN General Assembly adopted the Declaration on Human Rights Defenders (Resolution 53/144), recognizing individuals and groups who peacefully promote and protect human rights and fundamental freedoms. The Declaration obliges States to respect and protect human rights defenders (HRDs) without discrimination, protect them against any arbitrary action as a consequence of the legitimate exercise of their rights, ensure remedies for violations, and conduct impartial investigations into alleged abuses. States are also urged to foster an enabling environment for their work through legislative, administrative, and institutional measures, including public education and independent human rights bodies.

At present, there are five pending bills in the Philippine legislature that seek to establish protections for HRDs. There are four bills in the House of Representatives and one filed in the Senate. Table 1 below shows the bills, their principal authors, title, and status as of September 2024.

Table 1. Pending Bills in the Philippine Congress Proposing a Human Rights Defenders Protection Law

Bill No.	Principal Author/Sponsor	Title	Status
House Bill 0077	Edcel Lagman	An Act Defining the Rights and Fundamental Freedoms of Human Rights Defenders, Declaring State Responsibilities, and Instituting Effective Mechanisms for the Protection and Promotion of these Rights and Freedoms	Pending with the Committee on Human Rights since 26 July 2022
House Bill 00256	Raoul Manuel, et al.	An Act Defining the Rights and Fundamental Freedoms of Human Rights Defenders, Declaring State Responsibilities, and Instituting Effective Mechanisms for the Protection and Promotion of these Rights and Freedoms	Pending with the Committee on Human Rights since 26 July 2022
House Bill 04284	France Castro, et al	An Act Defining the Rights and Fundamental Freedoms of Human Rights Defenders, Declaring State Responsibilities, and Instituting Effective Mechanisms for the Protection and Promotion of these Rights and Freedoms	Pending with the Committee on Human Rights since 03 August 2022

Bill No.	Principal Author/ Sponsor	Title	Status
House Bill 04124	Ron Salo	An Act Recognizing Individuals, Groups and Organs of Society that Promote and Protect Human Rights and Fundamental Freedoms, Providing Protection, Security, Benefits and Welfare, Appropriating Funds Therefore, and for Other Purposes	Pending with the Committee on Human Rights
Senate Bill 2447	Risa Hontiveros	An Act Defining the Rights and Fundamental Freedoms of Human Rights Defenders, Declaring State Responsibilities, and Instituting Effective Mechanisms for the Protection and Promotion of these Rights and Freedoms	Filed and pending with the Justice and Human Rights Committee

The purpose of this paper is to initiate discussions, gather viewpoints, and develop strategies for the drafting of an effective HRD Protection Law.

Thus, this paper seeks to:

- provide an overview of the HRD bills filed in the 19th Congress; and,
- discuss objections and Constitutional questions on an HRD bill.

In the preparation of this paper, research was conducted on relevant laws, articles, treaties, reports, international documents, and judicial pronouncements. In addition, on 13 September 2024, a focused group discussion among CSOs was jointly organized by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) and the Commission on Human Rights (CHR), to gather insights in enhancing the draft HRD bills.

The Imperative to Protect HRDs

HRDs also often become victims of human rights violations (HRVs).

Every year, many HRDs suffer atrocities ranging from intimidation, illegal detention, to torture and death. They are also subjected to stigmatization and criminalization (Lawlor Report, 2021). Threats, intimidation, and stigmatization often precede physical assaults and deaths of HRDs (Lawlor Report, 2021¹). The Lawlor Report highlighted the alarming situation of HRDs globally: from 2015 to 2019, despite underreporting, at least 1,323 HRDs were killed in 64 countries

¹The Lawlor Report is the 2020 Report of the UN Special Rapporteur Mary Lawlor on the situation of human rights defenders.

(Lawlor Report, 2021). In 2022, a record of more than 400 HRDs were killed (UNDP, 2023). In 2019, the Business and Human Rights Center reported 572 attacks on HRDs on business-related activities alone (Lawlor Report, 2021).

Philippine context

From January 2015 and December 2019, the Office of the United Nations High Commissioner for Human Rights (OHCHR) established at least 208 murders of HRDs, including journalists and trade unionists, in the Philippines. State law enforcement agents intimidated NGOs and CSOs through visits, raids, and detentions. From 2015 to 2020, the OHCHR also found that at least 40 lawyers, representing farmers and indigenous peoples in land rights cases, were killed (UNHRC, 2020).

More recently, the UN Special Rapporteur on Freedom of Expression and Opinion highlighted red-tagging in her preliminary report (Khan, 2024), and expressed serious concern for HRDs in the following statement:

On the negative side, I note with grave concern the threats that civil society actors and many journalists face, especially those critical of state policies and working in advocacy, human rights and social justice issues, particularly in relation to marginalized communities.

The UN Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change visited the Philippines in late 2023. The Special Rapporteur reported incidents of red-tagging and harassment against HRDs, particularly those who worked on land and resource conflicts, commonly known as environmental defenders. Each organization visited by the Special Rapporteur reported cases of members being harassed, vilified, abducted, detained, or even killed (Fry, 2024). Clergymen and humanitarian workers were not spared from harassment; many were red-tagged under the Anti-Terrorism Law, resulting in frozen bank accounts (Fry, 2024). The Special Rapporteur expressed concern over these incidents, noting the lack of any real connection between environmental defenders and the overthrow of government (Fry, 2024).

In 2020, the Commission on Human Rights (CHR) released its findings on its inquiry on alleged HRVs against HRDs. Even though the Duterte administration denied that government was involved in an organized attack against HRDs, the CHR concluded that there is evidence that readily disproves this claim (CHR, 2020).

The CHR found that the attacks on HRDs are systematic. The CHR concluded that there is an intentional distortion of human rights in order to undermine and even vilify those who promote them. The defense and advancement of human rights is misrepresented as the defense and advancement of criminality, which is how red-tagging works. Through red-tagging, the efforts of HRDs are portrayed as

criminal and equated to terrorism, and HRDs are branded as members or fronts of communist insurgents. The CHR also observed that laws have been weaponized against HRDs who find themselves subjected to court cases based on fabricated charges. All these contribute to the shrinking civic space in the Philippines (CHR, 2020).

The previous administration's emphasis on public order and national security, including a "war on drugs" led to serious violations of civil rights. This focus also resulted in controversial legislation, notably the Anti-Terrorism Act of 2020, which threatens the ability of HRDs to freely advocate and work for the protection of human rights.

Seventh of March 2021 is marked as one of the deadliest days for HRDs in recent history. Pre-dawn raids conducted by the Philippine National Police (PNP) and Armed Forces of the Philippines (AFP) in CALABARZON led to killings and arrests, earning the day the infamous title "Bloody Sunday." Nine HRDs died in those raids that the OHCHR immediately condemned (Shamdasani, 2022). Among those killed were a labor rights activist, an activist representing fishing communities, two activists advocating for housing rights, and two indigenous peoples activists (Shamdasani, 2022). The National Bureau of Investigation (NBI) would later file murder complaints against 17 policemen as their investigation found that the operatives had "deliberate intent to kill" in the conduct of the raids (Bolledo and Buan, 2022). A total of 34 policemen have since been charged for murder for their involvement in the Bloody Sunday killings (Cabico, 2022).

A few months later, the UN's Michelle Bachelet called on the government to stop the rhetoric that justified unfettered killings by State agents (Santos, 2022). It should be noted that Bloody Sunday happened after then President Duterte endorsed killings of persons connected to the communist insurgency (Regencia, 2021).

The shrinking civic space continues since the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) never stopped its red-tagging of journalists (Lee-Brago, 2023). Since the start of the new administration, journalists and members of the media continue to be violently attacked, including the most high-profile murder of radio and online commentator Percy Lapid (Lee-Brago, 2023).

With these developments, HRDs cannot draw confidence from the government that they can continue their advocacies in a safe space.

Thus, the situation necessitates a Human Rights Defender Law that enumerates an HRD's rights and includes government obligations to respect the activities of HRDs. It should provide remedies and reliefs for the HRD at distress, for it is only when government provides a safe environment and a wide and broad civic space can HRDs be safer (UNDP, 2023).

Reported Experiences of Human Rights Defenders from Recent News Articles

In recent years, the Philippines has drawn global attention for escalating threats to democracy. While HRVs have long persisted in the country, pronouncements by former President Rodrigo Duterte provided a seeming cloak of immunity for State agents to commit HRVs in the guise of implementing law and order in the country (UNHRC, 2020). In a recent televised appearance, Duterte even admitted using his confidential and intelligence State funds to finance the perpetration of extra-judicial killings (Ramos, 2023).

With Ferdinand Marcos Jr.'s assumption of the presidency, the tacit coddling of State agents, who violated human rights, by the Head of State has ceased. However, the first two years of Marcos' term remain marred by numerous HRVs, with State agents continuing to perpetrate violence and harassment against rights holders. In August 2023 alone, police were implicated in the killings of innocent teenagers in separate incidents (Sarao, 2023).

The civic space for human rights discussion and promotion, which considerably shrunk during the Duterte administration – evidenced by the closure of ABS-CBN and the criminalization of Nobel laureate Maria Ressa – has seen only marginal improvement. While Ressa was recently acquitted in one of the criminal cases filed against her, it is noted that two radio commentators were murdered within Marcos' first four months in office. Meanwhile, websites of two independent news outlets, *Bulatlat* and *Pinoy Weekly*, remained blocked after being tagged as terrorist fronts during Duterte's last days in office (Bolledo, 2022). Former Senator Leila de Lima, a vocal critic of Duterte's drug war, remained detained on fabricated charges for over a year into Marcos' tenure, despite nearly all witnesses recanting their testimonies (UN OHCHR, 2023; Laqui, 2023). While De Lima was ultimately acquitted of the charges against her, the Department of Justice (DoJ) persisted in prosecuting her until the courts dismissed the charges. Alarming, the DoJ Secretary publicly also defended red-tagging as part of democracy (Torres-Tupas, 2023), thus, signaling that not much has changed in government's treatment of human rights.

HRDs continue to be red-tagged, criminalized, abducted, and even murdered. The NTF-ELCAC continues with its red-tagging of journalists (Lee-Brago, 2023). This contributes to the shrinking of civic space.

In a recent incident of criminalization of HRDs, former House Representative Satur Ocampo and current House Representative France Castro were found guilty of child abuse, alongside 11 others (Sarao, 2024). The charges against them came about when they tried to assist a Lumad community being harassed by a paramilitary group (Sarao, 2024). Although they were able to rescue Lumad teachers and students, they were intercepted at a checkpoint by the PNP and AFP (Sarao, 2024). Instead of getting support from the PNP and AFP, they were

arrested for supposedly endangering the children whom they rescued (Sarao, 2024). This incident highlights the continued misuse of laws to suppress HRDs.

Criminalization is one form of the HRVs committed against HRDs. As seen in the Philippines, any offense or crime can be imputed against an HRD. Child abuse, though, is not a crime often filed against HRDs.

The military has also been at the front and center of abductions of HRDs. In September 2023, advocates of groups opposed to the Manila Bay reclamation were abducted by the military (Bolledo and Buan, 2023). In the same month, defenders of indigenous peoples went missing after the military abducted them, but the military later claimed they were merely arrested (Cabico, 2023).

Since Marcos Jr. became president, it was reported that there have been at least 22 incidents of abductions (Cabico, 2024). In March 2024, two environmental rights defenders were mauled and dragged into a vehicle (Cabico, 2024). The two HRDs were alleged to have been harassed, red-tagged, and intimidated (Cabico, 2024). While the two were later released, their abductors have not been identified.

The foregoing are real-life experiences of HRDs in the Philippines. They are constantly harassed, threatened, vilified, red-tagged, even abducted or killed. Many victims of enforced disappearances remain missing. HRDs are modern-day heroes, but they are far from invincible and are certainly not bullet-proof. They likewise need protection.

Human Rights Violations in Land and Resource Conflicts

Land and resource conflict is embedded in the social structures of the Philippines that the continuous occurrence of HRVs remain to place the country in the top tier of dangerous countries for land and environmental defenders. The year 2023 appears to be no different from the past years. In the Land and Resource Conflict Monitoring Report for 2023 prepared by ANGOC, there were 18 victims of HRVs in the country.

HRVs persist and the opposing interests remain the same. In some cases, HRVs are committed in the same geographic areas that have reported them in the past years or even decades. Land and environmental defenders deal with decades-long conflicts that seemingly have no resolution in sight. HRDs in land and resource conflicts provide hope to victims by their work, passion, and sacrifice. Thus, that they are able to work unencumbered by threats to their human rights must be made a priority, since land and environmental defenders may just be the ones to end generations-long land and resource conflicts.

Basis of Protection of HRDs under International Human Rights Law and other References²

The Philippines is a signatory to key international human rights treaties and documents, creating obligations for the State to perform certain acts, including the enactment of laws that protect and uphold human rights. Moreover, some principles of international human rights law, though not embodied in binding instruments, are widely accepted in many jurisdictions. Under the Philippine Constitution, the generally accepted principles of international law are adopted as part of the law of the land (Article 2, Section 2 Philippine Constitution). It is thus important to consider the international legal framework when drafting legislation, as this ensures compliance with the Philippines' commitments, while allowing for progressive legislation of emerging human rights norms and practices.

The need to protect human rights includes the need to protect human rights defenders. By pursuing and protecting other peoples' human rights, HRDs invariably find themselves in the same position of needing protection for their own human rights.

The Universal Declaration of Human Rights (UDHR) is the progenitor of treaty law as regards human rights, namely the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Being treaties, States may be called out to respect their obligations in these documents.

While the human rights system emanating from the UDHR is largely within the ambit of international law, ultimately, the effective protection of human rights depends greatly on municipal legal systems (Brownlie, 2008). Thus, to avoid any question whether a generally accepted principle is in place in the Philippines, it is best to adopt principles upholding human rights, whether these have become widely accepted or just merely emerging.

A key and important note in preparing an HRD law is that no new rights nor obligations are being created. Even if the draft laws identify rights in favor of HRDs and obligations to be performed by the State, these are based on long-established human rights; including second and third generation rights.³ On the basis of the interrelatedness of human rights, a restatement of the rights in the context of HRDs can be found in the pending bills. While no new rights are created, there may be relatively new principles as regards protection, such as the responsibility and liability of private business.

² Please see Annex C for other references.

³ Human rights, while essentially indivisible, are classified into generations to define their historical recognition. First generation rights refer to civil and political rights, to which the rights to life, liberty, property, and security of persons belong. Second generation rights refer to economic, social, and cultural rights like the rights to health, education, and culture. The third generation of human rights cover collective rights, such as the right to environment.

UN Declaration on HRDs

The United Nations General Assembly recognizes the rights of Human Rights Defenders (UN General Assembly, 1999). 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 (Declaration) was overwhelmingly adopted in 1999. While it is not a legally binding instrument, it nonetheless is an expression of the rights under the ICCPR.

Article 1 of the Declaration unequivocally states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” Article 5 underscores that in exercising the right under Article 1, the freedom of assembly and association must be guaranteed. Relatedly, under Article 12, people have the right to peaceably protest human rights violations. Article 9 (3) (b) further recognizes the right to complain to the government for human rights violations committed by its agents.

Article 10 emphasizes that respect and protection of human rights is not merely a State duty. The article declares that “no one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms.” The provision discourages passivity and thus, one’s failure to act to prevent violations of human rights is equally a participant in the violation.

The imprimatur of passing an HRD law is contained in the Declaration. Article 2 provides that the signatory State should provide the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy human rights and fundamental freedoms in practice. Hence, the State has the obligation to take legislative, administrative, and other measures to guarantee the rights and freedoms under the Declaration.

Article 3 underscores the importance of domestic law in ensuring the protection and promotion of HRDs’ human rights:

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

Article 12 guarantees effective protection for everyone under a national law when they react or oppose, through peaceful means, activities and acts, including those by omission, attributable to the State and acts of violence

perpetrated by non-State actors that result in violations of human rights and fundamental freedoms.

Model Law drafted by ISHR

The International Service for Human Rights (ISHR) gathered human rights experts and organizations to craft a Model Law⁴ on which States can base their local statute that protects HRDs. A number of States have instituted HRD protection laws in their countries. The Philippines’ proposed law, through four bills pending in its legislature, is based on the Model Law.

Section 2 provides a model definition of an HRD. This was patterned after Article 1 of the Declaration. The pending bills took off from this definition and added sentences to clarify the scope of the definition. The model definition states:

For the purposes of this Law, a “human rights defender” means 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.

The Model Law recommends that a domestic statute establish rights in the context of HRDs and likewise, a corresponding set of obligations to HRDs for the relevant State to perform. The rights and obligations are enumerated in Table 2 below.

Table 2. HRD Rights and State Obligations under the Model Law

Rights	State Obligations
1. Right to promote and protect human rights and fundamental freedoms	1. Obligation to respect, promote, protect, and fulfil the rights of human rights defenders
2. Right to form groups, associations, and organizations	2. Obligation to facilitate the activities and work of human rights defenders
3. Right to solicit, receive, and utilize resources	3. Obligation to provide free access to materials relating to human rights and fundamental freedoms
4. Right to seek, receive, and disseminate information	4. Obligation not to disclose confidential sources
5. Right to develop and advocate for human rights ideas	5. Obligation to prevent, and to ensure protection against, intimidation, or reprisal
6. Right to communicate with non-governmental, governmental, and intergovernmental organizations	6. Obligation to penalize intimidation or reprisal

⁴ Many States have yet to incorporate the principles of the Declaration in their laws and many continue to implement policies that restrict the rights of HRDs. Thus, the Model Law was crafted to help States develop effective legislation that is consistent with the Declaration. It is also a tool for non-State actors, including HRDs, to lobby for the recognition and protection of the rights of HRDs. The Model Law would also aid all stakeholders to assess the effectiveness and comprehensiveness of protections for HRDs provided in laws and policies.

Rights	State Obligations
7. Right to access, communicate with, and cooperate with international and regional human rights bodies and mechanisms 8. Right to participate in public affairs 9. Right to peaceful assembly 10. Right to represent and advocate 11. Right to freedom of movement 12. Right to privacy 13. Freedom from intimidation or reprisal 14. Freedom from defamation and stigmatization 15. Right to exercise cultural rights and to development of personality 16. Right to effective remedy and full reparation	7. Obligation to ensure protection against arbitrary or unlawful intrusion and interference 8. Obligation not to participate in violating in human rights and fundamental freedoms 9. Obligation to conduct investigation 10. Obligation to ensure effective remedy and full reparation 11. Obligation to promote and facilitate human rights education 12. Act with extraordinary diligence

The Model Law is heavily influenced by the Declaration, as can be seen in the enumerated rights and obligations. For example, the *Right to develop and advocate for human rights ideas* comes from Article 7 of the Declaration. The clause in the Model Law refers to new ideas and principles and thus, is not limited to what is generally referred as first to third generation rights, but includes rights that may be established that have yet to gain wide acceptance like sexual orientation and gender identity (Commentary, Model Law).

The *Right to participate in public affairs* is based on Article 8 of the Declaration. Nevertheless, the Model Law added the provision of Article 8 to specifically include the right “to make recommendations to any public authority regarding legislative or regulatory changes relating to human rights and fundamental freedoms” (Commentary, Model Law). While participation in legislative activities was not stated in the Declaration, the statement describes acts of participation in public affairs.

The *Obligation to prevent and to ensure protection from intimidation and reprisal* is based on Article 12 (2) of the Declaration. Likewise, the *Obligation to conduct investigation* is taken from Article 9 (5) of the Declaration. These are some of the mandates for the State to provide protection and relief to HRDs.

Some of the enumerated rights are drawn from existing human rights documents, but enunciated in the context of HRDs. For instance, the *Right to privacy* is already found in the UDHR (Article 12), the ICCPR (Article 17 [1]), and also in the Convention on the Rights of the Child (Article 16).

Meanwhile, the *Obligation to facilitate the activities and work of human rights defenders* and the *Obligation not to disclose confidential sources* came from the law enacted by the Ivory Coast. Hence, the Model Law was also inspired by experiences of HRD legislation in certain countries.

Scoping of HRD Bills in the Philippines’ 19th Congress

As of September 2024, four HRD bills have been filed in the House of Representatives and one in the Senate. A survey of the pending bills reveals that all but one (HB 04124) had been crafted from the ISHR’s Model Law. Unless specifically stated, any reference to the bills does not include HB 04124, as it does not follow the Model Law and is less comprehensive than the others.

Declared State policies

The policies declared in the bills are summarized in Table 3 below:

Table 3. Declared State Policy in the Bills

Bill	Declaration of Policy
HB 0077	<ul style="list-style-type: none"> a. To value the dignity of every human person and to recognize, respect, protect, promote, and fulfill the rights and fundamental freedoms of persons, individually or in association with others, regardless of race, ethnicity, color, sexual orientation and gender identity, language, religion, political or other opinion, national or social origin, property, birth or other status; b. To give highest priority to the implementation of legislative enactments, executive issuances and judicial decisions that guarantee respect, protection, promotion, and fulfillment of human rights and fundamental freedoms; c. To provide access to legal remedies and reparative measures including monetary compensation and psychosocial complement and rehabilitation to human rights violations victims; d. To fully and strictly adhere to the principles and standards on human rights and fundamental freedoms set by the Constitution and international human rights instruments including the: <ul style="list-style-type: none"> 1. Universal Declaration of Human Rights (UDHR); 2. Declaration on the Rights and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders); 3. International Covenant on Civil and Political Rights (ICCPR); 4. International Covenant on Economic, Social and Cultural Rights (ICESCR); 5. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); 6. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW); 7. Convention on the Rights of the Child (CRC); 8. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW); 9. Convention on the Rights of Persons with Disabilities (CRPD); 10. International Convention for the Protection of All Persons from Enforced Disappearance (CPED); 11. Declaration on the Rights of Indigenous Peoples (UNDRIP); and, 12. Other universal treaties, comments and resolutions.

Bill	Declaration of Policy
HB 00256	Same as (a), (b), and (c) in HB 0077. Adds <i>jus cogens</i> principles in (d) and UN Declaration on the Rights of Peasants and Other People Working in Rural Areas in the enumeration of treaties and international documents
HB 02484	Same as HB 00256
HB 04124	<p>a. To further promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status;</p> <p>b. To acknowledge the important role and the valuable work of individuals, groups and associations in contributing to the promotion and protection of human rights and fundamental freedoms of peoples and individuals, including, in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources;</p> <p>c. To recognize the vibrant and enabling civic space in the Philippines composed of 101,000 registered non-profit organizations of which around 60,000 are non-government organizations engaged in advocacy work such as human rights, together with 2,276 private media outlets broken down as 364 AM stations, 951 FM stations, 561 TV stations, and around 400 newspaper titles;</p> <p>d. To protect the enabling and vibrant democratic civic space of the Philippines against all forms of threats including, but not restricted to, violent extremism, intimidation, and reprisals;</p> <p>e. To reaffirm the particular importance of achieving sectoral cooperation through a whole of State and/or whole-of-society approach to fulfill human rights obligations of the State set by the Constitution and all eight (8) core human rights treaties to which the Philippines is a State party to, namely:</p> <ol style="list-style-type: none"> I. International Covenant on Civil and Political Rights (ICCPR); II. International Covenant on Economic, Social and Cultural Rights (ICESCR); III. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); IV. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW); V. Convention on the Rights of the Child (CRC); VI. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW); VII. Convention on the Rights of Persons with Disabilities (CRPD); and, VIII. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). <p>f. To fully and strictly adhere to the principles and standards on human rights and fundamental freedoms set by:</p> <ol style="list-style-type: none"> I. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders); and, II. UN Fact Sheet No. 29 on Human Rights Defenders published by the Office of the High Commissioner on Human Rights.
SB 2447	Same as HB 0077

Salient Features of the Bills

The relevant bills follow the basic definition of HRDs in the Model Law. Crucially, the bills also leave out the clause “through peaceful means” as regards the pursuit of human rights and opposing State policies that is found in the Declaration’s Article 12. Apart from HB 0077, the other relevant bills include enumerations of who may be considered as HRDs.

Following the Model Law, the three relevant bills enumerate the same rights and obligations under the Model Law. Though under the Model Law, the Freedom from Defamation and Stigmatization is enumerated, the bills include a specific Right Against Vilification. There is a corresponding obligation assigned to the State to Refrain from Derogatory and Unfounded Labelling that is also not found in the Model Law.

The relevant bills also establish a Right to Sanctuary or Right to a Safe Refuge which, in HB 0077 and SB 2447, appears to be a relief provided only to victims of intimidation and reprisals. HB 00256 and HB 002484, however, expand the right to any violation of human rights. They also expand the right, as any person can establish a sanctuary which may benefit the victim and his or her immediate family. However, none of the bills define what a sanctuary is and to what extent it is inviolable, particularly against State agents.

HB 00256 and HB 002484 also add the Right to be Secure in Educational Institutions. The Right prohibits the entry of any member of the PNP, AFP, or CAFGU into the premises of an educational institution without the consent of the student council and the school authorities. In addition, the right appears to extend beyond the premises of educational institutions, as it prohibits the conduct of custodial investigation on a student, staff, faculty or employee of the educational institution, who is an HRD, without the prior notification to the student council and school authorities. It also requires that the arrest of such HRD must be immediately reported by the PNP, AFP, or CAFGU unit head to the student council and school authorities at the soonest possible time.

The following obligations upon the State are not part of the Model Law, but were added in the relevant bills:

- Obligation to enforce and institutionalize command responsibility;
- Obligation to adopt human rights-based governance;
- Obligation to strengthen protection programs; and,
- Obligation to respect the principle of non-refoulement.⁵

⁵This principle is found in human rights law where a person should not be returned to a country where his or her life or freedom will be threatened or he or she will suffer irreparable harm.

Table 4. Salient Features of the Bills

Bill No.	Highlights
<p>HB 0077</p>	<p><i>Definition:</i></p> <p>Human Rights Defender refers to any person who, individually or in association with others, acts or seeks to act to protect, promote or strive for the protection and realization of human rights and fundamental freedoms and welfare of the people at the local, national, regional, and international levels.</p>
	<p><i>Rights Established:</i></p> <ul style="list-style-type: none"> • Right to Promote and Protect Human Rights and Fundamental Freedoms • Right to Form Groups, Associations, and Organizations • Right to Solicit, Receive, and Utilize Resources • Right to Seek, Receive, and Disseminate Information • Right to Develop and Advocate for Human Rights Ideas • Right to Communicate with Non-Governmental, Governmental, and Intergovernmental Organizations • Right Against Vilification (not found in Model Law, but can refer to Freedom from Defamation and Stigmatization) • Right to Access, Communicate with, and Cooperate with International and Regional Human Rights Bodies and Mechanisms • Right to Participate in Public Affairs • Right to Peaceful Assembly • Right to Represent and Advocate • Right to Freedom of Movement • Right to Privacy • Freedom from Intimidation or Reprisal • Right to a Sanctuary (not found in Model Law) • Freedom from Defamation and Stigmatization • Right to Exercise Cultural Rights and to Development of Personality • Right to Effective Remedy and Full Reparation
	<p><i>Obligations of Public Authorities:</i></p> <ul style="list-style-type: none"> • Obligation to respect, promote, protect, and fulfil the rights of human rights defenders • Obligation to facilitate the activities and work of human rights defenders • Obligation to provide free access to materials relating to human rights and fundamental freedoms • Obligation not to disclose confidential sources • Obligation to prevent and to ensure protection against intimidation or reprisal • Obligation to penalize intimidation or reprisal • Obligation to refrain from derogatory and unfounded labelling (not in Model Law) • Obligation to ensure protection against arbitrary or unlawful intrusion and interference • Obligation not to participate in violating human rights and fundamental freedoms

Bill No.	Highlights
HB 0077	<ul style="list-style-type: none"> ● Obligation to conduct investigation ● Obligation to ensure effective remedy and full reparation ● Obligation to enforce and institutionalize command responsibility (not in Model Law) ● Obligation to adopt human rights-based governance (not in Model Law) ● Obligation to strengthen protection program (not in Model Law) ● Obligation to respect the principle of non-refoulement (not in Model Law) ● Obligation to promote and facilitate human rights education ● Act with extraordinary diligence
	<p><i>Human Rights Defender Committee</i> (Section 41)</p> <ul style="list-style-type: none"> ● Protect human rights defenders from intimidation and reprisals; ● Ensure accountability for acts of intimidation and reprisal; ● Facilitate and promote inter-agency and inter-department coordination to prevent, protect from, investigate, and ensure accountability for acts of intimidation or reprisal; ● Investigate on its own, or on complaint by any party, all forms of violations of human rights and fundamental freedoms of human rights defenders; ● Publicly acknowledge and promote the legitimate and important role, activities and work of human rights defenders; ● Consult regularly and work closely with human rights defenders in the implementation of this Act; ● Monitor existing and proposed legislation, assess their impact or potential impact on the status, activities, and work of human rights defenders, and propose amendments and/or remedial measures or block their passage if the measures shall, to a large extent, adversely affect the human rights defenders and their work and activities; ● Prepare and submit reports and communications on the situation of human rights defenders to relevant international and regional human rights bodies and mechanisms; ● Monitor and carry out periodic reviews of the implementation of this Act, the first of which shall be conducted one (1) year after its effectivity; ● Submit annual reports on the situation of human rights defenders and the status of implementation of this Act to the Office of the President of the Senate and the Office of the Speaker of the House of Representatives; ● Make recommendations to relevant authorities on the appropriate measures to be taken to promote a safe and enabling environment for human rights defenders, mitigate and prevent risks they face, and address the root causes of violations against human rights defenders; ● Perform other relevant functions as may be necessary to attain the objectives of this Act.

Bill No.	Highlights
HB 0077	<p><i>Violators of the law cannot avail the benefit of the Probation Law (Section 50)</i></p> <p><i>Offenses:</i></p> <ul style="list-style-type: none"> • Violations of the rights established under Sections 5 to 16 (except Sections 17 to 22) is punishable by imprisonment without privilege of parole; • Impeding, obstructing or influencing investigations and any petition by altering, destroying, mutilating, concealing, covering up, falsifying or making false entries in a document or specimen is punishable by imprisonment (<i>prision mayor</i>) and fine (Php100,000); • Violations of the Act are to be considered as aggravating circumstances in violations of other penal laws; and, • Penalties apply to whole complement of government or paramilitary unit.
HB 00256	<p><i>Definition:</i> Human Rights Defender refers to any person who, individually or in association with others, acts or seeks to act to protect, promote or strive for the protection and realization of human rights and fundamental freedoms and welfare of the people at the local, national, regional, and international levels. Any bona fide member of a human rights organization shall be considered to be a human rights defender. Defenders can be of any gender, of varying ages, from all sorts of professional or other backgrounds. This includes defenders who work on human rights or on gender issues, environmental and land rights defenders, trade unionists and labor organizers and youth human rights defenders. Human rights defenders are not only found within non-government organizations and intergovernmental organizations, but might also, in some instances, be government officials, civil servants or members of the private sector.</p> <p><i>Due Diligence</i> Added Section 5 on Due Diligence. The section requires a public officer to act with extraordinary diligence on any complaint or report of a human rights violation against an HRD. The public officer is mandated to act on the complaint or report with such required diligence within three days from its receipt. Failure to do so shall make the public officer liable criminally, civilly, and administratively. (Though this is already part of the obligations of the State and Public Authorities in HB 0077.)</p> <p><i>Rights Established:</i> Same as HB 0077, but adds: Right to be Secure in Educational Institutions</p> <p><i>Obligations of Public Authorities</i> Same as HB 0077</p> <p><i>Human Rights Defenders Protection Committee (Section 43)</i> Same functions as stated in Section 44 of HB 0077 (Section 46)</p>

Bill No.	Highlights
HB 00256	<p><i>Offenses:</i></p> <ul style="list-style-type: none"> • Violation of the rights established in Sections 6 to 22 of the bill (except Section 23) are punishable by imprisonment (12 to 15 years) and fine (Php300,000.00) plus without the benefit of parole; • Impeding, obstructing or influencing investigations and any petition by altering, destroying, mutilating, concealing, covering up, falsifying or making false entries in a document or specimen is punishable by imprisonment (10 to 12 years) and fine (Php150,000.); • Private actors may be held liable as conspirators even for acquiescence; and, • Violations of the act are to be considered as aggravating circumstances in violations of other penal laws.
HB 02484	<p><i>Definition:</i> Same as HB 00256</p>
	<p><i>Due Diligence</i> Same as HB 00256</p>
	<p><i>Rights Established:</i> Same as HB 00256</p>
	<p><i>Obligations of Public Authorities:</i> Same as HB 0077, but without obligation to act with due diligence</p>
	<p><i>Human Rights Defenders Protection Committee</i> (Section 43) Same functions as stated in Section 44 of HB 077 (Section 46)</p>
	<p><i>Offenses:</i> Same as HB 00256</p>
HB 04124	<p><i>Definition:</i> Human Rights Defender is an exclusive term that refers to any person (State or non-State Actor) who accepts the universality of human rights as defined in the Universal Declaration of Human Rights, promotes and protects human rights, including but not restricted to the elimination of apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources through peaceful means unless provided for by law.</p> <p>It shall be the policy to define Human Rights Defender to be as inclusive and participative to all sectors of society in accordance with 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 (Declaration on Human Rights Defenders); and the UN Fact Sheet No. 29 on Human Rights Defenders published by the Office of the High Commissioner on Human Rights.</p>

Bill No.	Highlights
HB 04124	<p><i>Rights Established</i></p> <p>Similar to HB 0077, but does not include or explicitly state the following:</p> <ul style="list-style-type: none"> • Right Against Vilification • Right to Participate in Public Affairs • Right to Represent and Advocate • Right to Freedom of Movement • Right to Privacy • Freedom from Intimidation or Reprisal • Right to a Sanctuary • Freedom from Defamation and Stigmatization • Right to Exercise Cultural Rights and to Development of Personality • Right to Effective Remedy and Full Reparation
	<p><i>Obligations of Public Authorities:</i></p> <p>Section 11 establishes the State as the prime human rights duty-bearer</p> <p>Section 12 places duty on the State to protect HRDs and is obligated to enact laws to protect human rights</p> <p>Section 13 obligates the State to promote civil, political, economic, social and cultural rights</p> <p>Section 14 mandates teaching and training for law enforcement officers, the AFP, and public officials</p>
	<p><i>Human Rights Defenders Benefits and Welfare Committee</i></p>
	<p><i>Offenses:</i></p> <p>Does not define offenses nor provide penalties for the violation of any of the law's provisions</p>
SB 447	<p><i>Definition:</i></p> <p>Human Rights Defender refers to any person who, individually or in association with others, acts or seeks to act to protect, promote or strive for the protection and realization of human rights and fundamental freedoms and welfare of the people at the local, national, regional, and international levels. Provided, that this definition shall also include environmental defenders, women and LGBTQI+ human rights defenders, child's rights defenders, and those involved in the defense and promotion of economic, social and cultural rights.</p>
	<p><i>Rights Established:</i></p> <p>Same as HB 0077</p>
	<p><i>Obligations of Public Authorities:</i></p> <p>Same as HB 0077</p>
	<p><i>Human Rights Defenders Protection Committee (Section 41)</i></p> <p>Same functions as stated in Section 44 of HB 0077 (Section 44)</p>
	<p><i>Offenses:</i></p> <p>Same as HB 0077</p>

The proposed law provides for the establishment of a Human Rights Protection Committee. Its tasks are enumerated in the law, but may need further articulation and specificity. This appears to be based on Article 14 (3) of the Declaration and the Model Law's Mechanism for the Protection of Human Rights Defenders.

The members of the Human Rights Protection Committee are to be nominated by specific CSOs under the law. This provision may receive opposition from State agents especially since some, if not all, of these groups are the ones they commonly vilify or red-tag. In any event, these groups are HRDs themselves and are fully aware of the experiences of HRDs. Nevertheless, the law may provide a clearer selection process for these CSOs so as not to exclude other HRDs.

Discussion of the Pending HRD Bills

Objections on the Need for an HRD Law

Opposition to the pending HRD bills is expected, with critics raising familiar arguments. The talking points early on have been clear. Objectors would say there are already existing laws that protect HRDs and also apply to everyone without creating a special class of persons (Chi, 2023). They would say the present bills lack a concrete definition of HRDs and have provisions that duplicate the mandate of the CHR (Chi, 2023). State agents would argue that an HRD legislation would hinder their efforts at suppressing insurgency and terrorism (Chi, 2023).

However, as observed by Rep. Edcel Lagman, author of one of the HRD bills, one argument by State agents ironically bolsters the very need for an HRD law. State agents have said that "making it illegal to subject rights defenders to acts of intimidation, reprisal and derogatory labeling was *unwarranted and impermissible, because of the classification in favor of human rights defenders is not justified*" (Chi, 2023). In short, they object on the ground of equal protection since HRDs will be defined as a special class of persons, but at the same time they ignore the harm brought by intimidation, reprisal, and labelling.

State agents cannot be allowed to intimidate and label HRDs. The Lawlor Report emphasizes that threats are not mere threats to HRDs. Threats not only impede the work that HRDs do, but are an actual violation of their rights (Lawlor Report, 2020). Moreover, as underscored by the framers of the Esperanza Protocol, threats are precursors to physical harm and death. Hence, threats can never be minimized and the use of such strategy against HRDs by State agents and even by private persons, is one of the main arguments to support an HRD law.

As highlighted earlier, HRDs in the Philippines operate in perilous conditions. Passing a law that protects them hurdles the Constitutional test for a valid law,

due to the pressing need to safeguard human life and promote human rights. The politically powerless may command extraordinary protection from the government. The Philippine Supreme Court has declared that Congress may define classes of persons narrowly in order to prevent evils against them.⁶ The conditions in the Philippines are the obvious proof for the necessity of the HRD law.

The UN Special Rapporteur on Freedom of Expression and Opinion advocated for a Human Rights Defender Law following her trip to the Philippines (OHCHR, 2024). Likewise, after visiting the Philippines and particularly detention centers, UN torture prevention experts called for the urgent creation of a monitoring body to prevent torture (OHCHR, 2023).

HRDs speak for the voiceless and fight for the weak. If they are likewise rendered voiceless and made powerless by the attacks against them, how else can human rights flourish in the Philippines?

Constitutional Questions Raised against the Bills

In this discussion, the paper focuses on the bills patterned after the ISHR's Model Law. These bills have a comprehensive and more specific articulation of the rights of HRDs and the corresponding obligations of the State as regards their rights. Moreover, these bills strengthen protections by imposing penalties on violations of the HRDs' rights enumerated in the law and other acts not in consonance with the spirit of the law.

Questions about the constitutionality of the proposed HRD Protection Law are addressed in this section. Critics argue that the pending bills violate the principle of equal protection since there are already existing laws that protect HRDs, and that a law specific to HRDs creates a new, unwarranted class of persons. There is likewise opposition to the creation of the Human Rights Defenders Protection Committee on the claim that it would infringe on the functions and mandate of the CHR.

- *Argument 1: There are already existing laws that protect and grant reliefs to HRDs.*

The Revised Penal Code (RPC) provides penalties for murder, physical assault, arbitrary detention, and libel. These offenses can be filed against perpetrators of killings, abductions, physical harassment and torture, red-tagging, and vilification. Additionally, there are special laws that provide for penalties and offenses in addition to those in the RPC, even though they arise from the same acts. These include the Anti-Torture Act and the Anti-Enforced or Involuntary Disappearance Act.

⁶ See *Zomer Development Company, Inc. v. Court of Appeals, et al.*, G.R. No. 194461, 07 January 2020.

The Anti-Torture Act and Anti-Enforced or Involuntary Disappearance Act demonstrate the value of enacting laws even when existing statutes provide relief, i.e., the RPC. Bills addressing similar subject matters should not be dismissed outright since they may be passed to make existing laws more effective or patch gaps that are not covered by present legislation.

The draft bills contain an articulation of the rights of HRDs framed in the context of their work and based on the Declaration. For instance, the *Right to communicate with Non-Governmental, Governmental, and Inter-governmental Organizations* is unique to HRDs. HRDs are ensured this right as it is essential for the performance of their work. During the focused group discussion (FGD), CSOs also highlighted the *Right to seek, receive, and disseminate information* as necessary to their work as HRDs.

Ironically, the very stance of State agents against an HRD law is itself an argument for its enactment, as State agents often fail to understand the role and importance of HRDs. An HRD protection law would inform State agents of their responsibility and duty to uphold HRDs' rights, preventing them from being obstacles – or worse, perpetrators – of offenses described in the law. The bills also enumerate the obligations of the State to ensure that HRDs can perform their work without undue interference. Presently no legislation has done this.

In the 2007 visit by the UN Rapporteur, this lack of understanding was manifested in State agents' interaction with the UN Rapporteur:

Newspapers routinely carry reports of senior military officials urging that alleged CPP front groups and parties be neutralized. Often, prominent political parties and established civil society groups are named specifically. The public is told that supporting their work or candidates is tantamount to supporting "the enemy." This practice was openly and adamantly defended by nearly every member of the military with whom I spoke. When I suggested to senior military officials that denunciation of civil society groups should only be done according to law and by the Government, the response was that civilian authorities are in no position to make such statements because they might be assassinated as a result. On another occasion, I asked a senior civilian official whether the Government might issue a directive prohibiting such statements by military officers. He expressed vague sympathy for the idea, but his subordinate — a retired military commander — promptly interjected that such a directive would be "impossible" because "this is a political war." When political "warfare" is conducted by soldiers rather than civilians, democracy has been superseded by the military (Alston Report, 2008).

As highlighted during the FGD, the violations of human rights experienced by HRDs are not the same as those contemplated in existing laws. For instance, while libel under the RPC involves defamatory acts, libel in the form of vilification

and red-tagging against HRDs carries far reaching and possibly more devastating consequences. The organized campaigns, often led by State agencies and amplified by private actors, inflict severe psychological harm on HRDs that often extends to their families. Such vilification and red-tagging frequently precede wrongful imprisonment or worse, enforced disappearances and killings. Ultimately, the offenses under the proposed HRD protection law arise from the suppression of human rights of the marginalized and powerless, an urgent reason for the enactment of such law.

Despite existing laws like the Anti-Enforced or Involuntary Disappearance Act, atrocities against HRDs persist in alarming numbers. Since the start of the Marcos Jr. administration there have been at least 14 victims of enforced disappearances (Chi, 2024). UN Special Rapporteurs, based on their observations, have called for the enactment of HRD-specific protections. Additionally, the FGD surfaced the enduring legacy of HRVs against HRDs, particularly during the administrations of Ferdinand Marcos Sr. and Rodrigo Duterte. The Ateneo Human Rights Center's study concluded that red-tagging of youth leaders are meant to suppress the emergence of socially concerned leaders. With the experience of young environmental activists being abducted by the military, such conclusion extends to acts graver than red-tagging. In this light, vilification and red-tagging, abductions, killings, and other acts meant to harass and silence HRDs must be stopped and perpetrators held accountable.

Thus, an HRD protection law is necessary because existing laws fail to account for the unique context of HRDs' work; inadequately address the specific violations they face; and, have proven insufficient to curb the prevalence of human rights violations against them.

- *Argument 2: the pending bills violate the equal protection clause in protecting a specific class of persons*

By enacting an HRD law, there is no new class of persons being designated and neither are there new rights being created. Ultimately, the law seeks to protect HRDs who, ultimately, are victims themselves. Their rights are sourced from the same set of civil, political, economic, social, and cultural rights that each Filipino is assured.

Equal protection, however, was not intended to prohibit the legislature from enacting statutes that either tend to create specific classes of persons or objects, or tend to affect only these specific classes of persons or objects. Equal protection "does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced." As aptly discussed in *Victoriano v. Elizalde Rope Workers Union*:

The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the State. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman, and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and, that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the State is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. Hence legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear (*Zomer Development Company v. Court of Appeals, et al.*, G.R. No. 194461, 07 January 2020).

The Supreme Court's disquisition upholding that the Violence Against Women and Children Act does not violate the equal protection clause, can be applied in this instance:

The unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and,

the widespread gender bias and prejudice against women all make for real differences justifying the classification under the law. As Justice McIntyre succinctly states, “the accommodation of differences ... is the essence of true equality (Jesus Garcia v. Hon. Rey Alan Drilon, et al., G.R. No. 179267, 25 June 2013).

HRDs often become victims of HRVs and abuses because their advocacy for the marginalized places them at the lower end of unequal power relationships. When HRDs perform their work, they become more likely to be victims of violence than when they remain passive and uninvolved. Red-tagging persists because some HRDs, as human rights activists, are often targets of societal bias and prejudice. The public frequently assumes activists to be members of red-tagged organizations, perpetuating stigma, and hostility. The latter case was observed by a UN Special Rapporteur in 2007, and still holds true today:

Many in the Government have concluded that numerous civil society organizations are “fronts” for the Communist Party of the Philippines (CPP) and its armed group, the New People’s Army (NPA). One response has been counter-insurgency operations that result in the extrajudicial execution of leftist activists. In some areas, the leaders of leftist organizations are systematically hunted down by interrogating and torturing those who may know their whereabouts, and they are often killed following a campaign of individual vilification designed to instill fear into the community. The priorities of the criminal justice system have also been distorted, and it has increasingly focused on prosecuting civil society leaders rather than their killers (Alston Report, 2008).

These experiences echo the experiences of women that led to the enactment of the Violence Against Women and Children Act. Thus, an HRD protection law would pass a constitutional challenge on equal protection.

- *Argument 3: An HRD law encroaches on the mandate of the CHR*

A review of the pending bills would show that certain powers given to the HRD Protection Committee would exceed those held by the CHR at present. However, during the FGD, CHR representatives were not concerned about this issue, as many agencies have formulated their own policies on human rights and even organized their own human rights offices. Thus, the CHR’s concern is to be able to engage these offices in discussions on an HRD Protection Law and help in its implementation.

The main concern raised about the powers of the HRD Protection Committee enumerated in the bills is that they are too broad. Further clarification and definition of these powers are needed before concluding that the Committee would encroach on the CHR’s jurisdiction and powers. As highlighted during the

FGD, the delegation of certain powers to the Committee may be viewed as supplementing those powers that the CHR possesses.

Thus, the overall sentiment is that the protection of human rights and fundamental freedoms is a shared responsibility by everyone. It was even proposed that the law include a provision authorizing the HRD Protection Committee to deputize CSOs to perform some of its functions, fostering broader collaboration in upholding human rights.

Points to Ponder on Some Provisions in the Bills

Defining a Human Rights Defender

Broad vs restrictive definition

The question of whether a broad or restrictive definition of an HRD should be adopted is apparent in the pending bills. HB 00256 and HB 04284 track the Declaration's broad definition of HRDs. HB 0077 and SB 2447 do not specifically mention government officials or civil servants, but neither restricts their definition to rule out government officials or civil servants from the definition.

Indeed, a broad definition of HRDs opens the benefits of an HRD law to unscrupulous claims of protection. However, restricting it runs the risk of failing to protect legitimate HRDs; contradicting the intent of having an HRD law in the first place. In any event, reliefs are not blindly granted as claiming them would go through a judicial or administrative process. It should be emphasized though that an HRD should not bear the burden of proving that he or she is one.

Defining HRDs in the Philippine context

Defining who qualifies as a human rights defender is both delicate and critical. It cannot be overly broad and neither can it be too restrictive and exclusive.

The many cases of red-tagging in the Philippines have fostered a public perception that HRDs are primarily activists, trade-unionists, or members of cause-oriented groups – mostly leaning to the left – since they are the usual victims. These include CSOs. HRDs may also include party-list representatives coming from the marginalized sectors.

Because of their profession, human rights lawyers, as the public refers to them, are considered as HRDs. These lawyers may be members of non-governmental organizations (NGOs) or work independently and may represent human rights victims *pro bono*⁷ from time to time.

⁷Means "for free."

Media practitioners, frequently targeted during periods of repressive governance, also embody the role of HRDs; they suffer when civic space has shrunk. Members of media were imprisoned and media outlets shut down and seized during Martial Law under President Marcos Sr.'s Letter of Instruction No. 1. The same was true during the Duterte administration when news media were subjected to harassment and pressures (Yang, 2022). Early in the Marcos Jr. administration, online news outlet *Bulatlat* remained shut down. Over the decades, many journalists have been killed in the Philippines; thus, making the Philippines one of the deadliest places for such profession. They could also be HRDs.

Teachers and educators, like Chad Booc, can be considered as an HRD. Booc, a *cum laude* engineering graduate of the University of the Philippines, became a victim of red-tagging and killing as he volunteered to tutor *Lumad* children through an alternative schooling program (UP DIO, 2022). Because of his work with indigenous peoples, he was vilified as a member of the Communist Party of the Philippines-New People's Army (CPP-NPA) and accused of recruiting child warriors for the insurgents (AHRC, 2024). When he was arrested, it did not matter that the children he tutored were housed in a retreat house of the University of San Carlos, a Catholic educational institution in Cebu City. He was detained for two months until the cases of child abuse, trafficking, kidnapping, and serious illegal detention were dismissed (AHRC, 2024). In 2022, he was killed in what the military claims to be an encounter, though many dispute this claim, asserting it was actually an instance of extrajudicial killing (UP DIO, 2022).

Though often overlooked in mainstream discussions, defenders of land, resource, and environmental rights are also considered as HRDs. In March 2024, the CHR was prompted to release a statement on the abduction of environmental rights defenders in San Carlos, Pangasinan (CHR, 2024). They were also previously red-tagged.

HRDs working on land rights are the most vulnerable, particularly those who represent victims of land grabs and indigenous peoples deprived of their right to free, prior, and informed consent (FPIC) (Lawlor Report, 2021). In 2019, half of the recorded killings of HRDs were committed against those involved in land and resource conflicts (Lawlor Report, 2021).

The Philippines has been considered the deadliest place for environmental defenders in Asia, as there were 48 HRDs in this field who were killed in 2017 (Espina-Varona, 2018). From mid-2016 to 2019, some 113 environmental HRDs were reportedly killed (Lalu, 2019). Without fail, the Philippines continues to have the highest number of environmental HRDs killed in Asia. Of the 16 killed in 2022, 11 were from the Philippines (Global Witness, 2023). In 2023, 17 HRDs were killed in the Philippines raising the total to 298, from 2012 to 2023 (Global Witness, 2024).

The CHR does not give a specific definition of who HRDs are, but rather defines them by their work (CHR, 2020). Thus, the Commission states:

“HRDs engage in duties, whether for profit or pro bono, that aim to, among others, investigate and report on violations of human rights; provide support to ensure the fulfillment of international treaty obligations; lobby for legislative or judicial reforms; mobilize and shape public opinion on human rights; or secure accountability for human rights violations. HRDs include members of civic organizations, journalists, lawyers, representatives of marginalized sectors, members of the academe, government officials, and all others who engage in activities for the fulfillment of basic human rights (CHR, 2020).”

Meanwhile, some definitions of HRDs provided by independent international organizations are listed below:

Box 1. HRD Definitions by Different Organizations

“Human rights defenders are people who are making the world a better and fairer place by promoting and protecting human rights. They seek to ensure our shared commitment to freedom, respect, equality and dignity is reflected in our laws, policies and practices.”

- *International Service for Human Rights*⁸

“Human rights defenders work to improve societies and contribute to peace and democracy. Defenders are agents for positive change and development. They are key in protecting against human rights violations and in advancing universal human rights.”

- *Human Rights House Foundation*⁹

“Human rights defenders are people who, individually or with others, act to promote or protect human rights through peaceful means.”

- *Office for Democratic Institutions and Human Rights, Organization for Security and Co-Operation in Europe (OSCE)*¹⁰

“Human rights defenders seek to protect and promote the rights of vulnerable and marginalized communities in the face of state or corporate repression.”

- *Carr Center for Human Rights Policy, Harvard Kennedy School*¹¹

The Model Law, upon which the pending bills were patterned, provides the following definition:

“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” (Section 2, ISHR Model Law).

⁸ See <https://ishr.ch/about-human-rights/who-are-human-rights-defenders/>

⁹ See <https://humanrightshouse.org/we-stand-for/human-rights-defenders/>

¹⁰ See <https://www.osce.org/odihr/human-rights-defenders>

¹¹ See <https://www.hks.harvard.edu/centers/carr/programs/human-rights-defenders>

In the commentary on Section 2 of the Model Law, it is recommended that States adopt a less detailed definition to avoid an exclusive interpretation of who an HRD may be. For instance, an enumeration may have the unintentional effect of restricting the definition. The CHR's definition is broad and captures the work of probably all HRDs. While it may be detailed, it has a catch-all clause at the end. It covers all HRDs that work to uphold human rights. It includes members of the academe and government officials, who may not be in the mainstream mindset of who HRDs are.

These broad definitions should be compared to the Carr Center's definition that limits HRDs to those who represent the "vulnerable and marginalized communities in the face of state or corporate repression." There are advocates of the HRD law who wish to limit the law's coverage to those who are oppressed and lack resources to protect themselves or obtain relief.

In this regard, the situation of former CHR Commissioner, Department of Justice Secretary, and Senator Leila de Lima begs the question of whether she should be considered an HRD. From all indications, her imprisonment of over seven years for what has been proven to be trumped up charges stemmed from her investigation, as then Chairperson of the CHR, of the killings in Davao City under then Mayor Rodrigo Duterte (Gonzales, 2017). Indeed, such investigation was also prompted by families of victims of killings in Davao who sought justice for their kin. She was upholding human rights and fundamental freedoms; there is no question in that regard.

De Lima conducted her investigation by virtue of her mandate as Chairperson of the CHR. She was a government official. She was imprisoned while holding the elected position of senator. She could be viewed to have considerable influence and resources to protect herself. Nonetheless, she was politically powerless relative to then President Rodrigo Duterte and his allies. Some would say she is not an HRD because she only advocated for human rights due to her mandate at the CHR. Some would say she is not an HRD under the draft bills because her imprisonment was politically motivated. Some would reject her being an HRD because she was a senator and had access to resources.

These definitions should also be compared to the definition under the Declaration and OSCE's as stated above. It would be observed that the clause "through peaceful means" is missing from these definitions and from the pending HRD bills. However, this clause appears in HB 04124.

A broad definition of HRDs risks including individuals or entities who commit the very violations HRDs seek to address, under the guise of protecting the rights and interests of other persons. For instance, State agents, such as the military and police, whose mandates include the duty to protect and advance human rights, have often been implicated in HRVs against HRDs. Considering such uniformed personnel as HRDs by virtue of their mandate would be contradictory and

undermine the essence of the term. This is precisely the conundrum in including government officials in the definition of HRDs, since the Armed Forces of the Philippines (AFP), Philippine National Police (PNP) or the NTF-ELCAC justifies their red-tagging activities as their means of protecting the general citizenry. Thus, adding the clause “through peaceful means” or “non-violent means” in the promotion of human rights would disqualify the AFP, the PNP, and other armed State agents.

Meanwhile, some media practitioners may not actively advocate for human rights, but may occasionally speak or write or report against it from time to time. Similarly, there are lawyers who do not make a career out of human rights advocacy and charge professional fees when representing victims. There are employees of human rights CSOs who take care of the business side of their operations. Should any of these qualify as HRDs? Put another way, should being an HRD be based on the time spent in advocacy, whether one profits from such work, or is mere affiliation sufficient? Broad definitions such as those used by the CHR, the Model Law, and the Declaration, include all of them, as does the definition provided by the Carr Center. However, legislators may take on a different or more restrictive view.

Fact Sheet 29,¹² which elucidates the Declaration, is quite clear in keeping the definition of an HRD as wide as possible. It acknowledges that HRDs are not only found within CSOs or inter-governmental organizations. Instead, it opens the possibility that HRDs could be government officials, civil servants, or those from the private sector. Fact Sheet 29 also does not distinguish an HRD based on one’s title in an organization; on whether one does human rights work professionally; or one’s remuneration for doing such work. It also considers judges who rule in favor of human rights and politicians taking a stand to uphold human rights as HRDs.

During the FGD, it was suggested that while the law should adopt a broad definition of HRDs, it could be limited by including provisions to disqualify certain individuals from availing the benefits of the law. Additionally, the law could specify conditions under which it becomes operative for certain individuals, ensuring clarity and avoiding unintended misuse of HRD protections.

The legal definition of an HRD in the Philippine context must strike a proper balance. The focus should not be on how expansive or restrictive the definition is but rather on whether the definition effectively provides the necessary protection required by HRDs in the Philippines.

Human rights are universal and should be respected and upheld at all times. As emphasized, an HRD law does not create new rights; rather, it reinforces the protection of existing rights. Therefore, any person whose fundamental rights are

¹² People of the Philippines v. Willington Rodriguez y Hermosa, G.R. No. 211721, 20 September 2017.

under attack should be able to readily avail of the protections provided by law. In this regard, a broad definition of an HRD protects the human rights of as many persons as possible. The more relevant question would be if the person claiming protection needs and deserves such protection.

Group Criminal Liability

A basic principle in criminal law is that only those who committed a crime may be held liable. Under the Constitution, “[n]o person shall be held to answer for a criminal offense without due process of law” (Section 14[1], Article III, PH Constitution). Furthermore, it is paramount that any person accused of a crime is presumed innocent until he or she is proven guilty (Section 14[2], Article III, PH Constitution).

A person may be held criminally liable as a principal, accomplice, or accessory (Articles 16 to 19, RPC). One may also be held criminally liable for being a conspirator in the commission of the crime. A conspiracy exists when two or more persons come to an agreement to commit an offense and decide to commit it (Article 9, RPC).

Thus, imposing criminal liability upon the entire complement of a government unit and penalizing each and every member is problematic as proposed in HB 0077 and SB 2447. Mere association, absent any participation or conspiracy in the commission of a crime, cannot be a valid and constitutional provision. The Supreme Court has said:

It is a basic rule that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. This is premised on the constitutional presumption that the accused is innocent unless his guilt is proven beyond reasonable doubt. This standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime he is charged with.¹³

The same can be said with the institution of the command responsibility obligation. While it appears that no criminal liability is imposed upon the superior officer, sanctions are nonetheless imposed. Administrative sanctions may be imposed upon errant superior officers unless their role in the offense against HRDs is clear and proved to give rise to criminal liability. Furthermore, the law should define how far in the chain of command any administrative sanction should extend.

¹³ People of the Philippines v. Willington Rodriguez y Hermosa, G.R. No. 211721, 20 September 2017.

Overbreadth

The proposed HRD Protection law is a criminal statute as it imposes penalties on the violation of the rights enumerated in the law. The draft provisions show that the penalties are imposed across each and every possible violation of the rights enumerated without regard to the gravity of the act.

In addition to such observation, the penalized acts are not defined, since what are punished are violations of the rights enumerated. In this regard, the criminal acts under the law are not clear. Thus, the penal provisions of the law may be questioned on the basis of overbreadth or vagueness. The jurisprudence on this matter is stated in the following:

Foremost, a facial review of a law or statute encroaching upon the freedom of speech on the ground of overbreadth or vagueness is acceptable in our jurisdiction. Under the overbreadth doctrine, a proper governmental purpose, constitutionally subject to State regulation, may not be achieved by means that unnecessarily sweep its subject broadly, thereby invading the area of protected freedoms. Put differently, an overbroad law or statute needlessly restricts even constitutionally-protected rights. On the other hand, a law or statute suffers from vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application (Loida Nicolas-Lewis v. COMELEC, G.R. No. 223705, 14 August 2019).

The same can be said with the institution of the command responsibility obligation. While it appears that no criminal liability is imposed upon the superior officer, sanctions are nonetheless imposed. Administrative sanctions may be imposed upon errant superior officers unless their role in the offense against HRDs is clear and proved to give rise to criminal liability. Furthermore, the law should define how far in the chain of command any administrative sanction should extend.

To avoid being declared as broad or vague, statutes should be complete and have sufficient standards. For instance, in the draft bills, the acts of false labelling and red-tagging are not defined, yet such acts are punishable under the law. While there is a general sense among the public what such acts are, they still need to be well-defined in the statute if they are to be penalized. Furthermore, under UN Human Rights Committee's General Comment 34, any restriction on free speech must be "formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly." It adds that laws must have enough guidance for authorities to properly discern which are protected speech and which are otherwise restricted.

Two tests determine the validity of delegation of legislative power: (1) the completeness test, and (2) the sufficient standard test. A law is

complete when it sets forth therein the policy to be executed, carried out or implemented by the delegate. It lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented (ABAKADA Guro Party List, et al. v. Cesar Purisima, et al., G.R. No. 166715, 14 August 2008).

To reiterate, since the proposed law sanctions offenders with penalties that include imprisonment, the acts constituting an offense and its elements must be clearly presented. This is in line with the constitutional right to due process; be presumed innocent; and, to be informed of charges against a person.

In the following jurisprudence, a case for obstruction of justice was dismissed against the accused for supposedly harboring and concealing a criminal. However, the act of “harboring” and “concealing” was never defined in the law nor in jurisprudence in order for an accused to be validly convicted of the crime of obstruction of justice through said means. The same goes for many provisions of the proposed HRD protection law. It is thus well to be reminded of the Supreme Court’s ruling on the matter:

We take this occasion to remind petitioners of the basic principle that penal statutes are strictly construed against the State and that all doubts are to be resolved liberally in favor of the accused. As this Court explained in People v. Sullano:

xxx criminal law is rooted in the concept that there is no crime unless a law specifically calls for its punishment. Nullum crimen poena sine lege. Another basic criminal law precept important to remember here is in dubiis reus est absolvendus - all doubts should be resolved in favor of the accused. Any criminal law showing ambiguity will always be construed strictly against the state and in favor of the accused.

These concepts signify that courts must not bring cases within the provision of law that are not clearly embraced by it. An act must be pronounced criminal clearly by the statute prior to its commission. The terms of the statute must clearly encompass the act committed by an accused for the latter to be held liable under the provision. Hence, it has been held:

For, it is a well-entrenched rule that penal laws are to be construed strictly against the State and liberally in favor of the accused. They are not to be extended or enlarged by implications, intendments, analogies or equitable considerations. They are not to be strained by construction to spell out a new offense, enlarge the field of crime: or multiply felonies. Hence, in the interpretation of a penal statute, the tendency is to subject

it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused. If the statute is ambiguous and admits of two reasonable but contradictory constructions, that which operates in favor of a party accused under its provisions is to be preferred. The principle is that acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such. Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment. The purpose of strict construction is not to enable a guilty person to escape punishment through a technicality but to provide a precise definition of forbidden acts (Dr. Emily D. De Leon, et al. v. Atty. Judith Luis, G.R. No. 226236, 06 July 2021).

For instance, the provision on the *Right to be secure in educational institutions* in HB 0256 and HB 02484 is clear on the prohibition against any member of the AFP, PNP, or CAFGU from entering the premises of an educational institution without the free, prior, and informed consent by the student council and school entries. Thus, any entry without the required consent is a clear violation of the right and may be penalized accordingly. However, the degree of specificity is not consistent across the provisions and between the bills.

While the bills endeavored to define what intimidation or reprisal is, there still appears to be a need to define certain terms to qualify them as valid penal provisions. The terms “*de facto* or *de jure* adverse discrimination, pressure, judicial harassment” may need further elaboration. HB 0077 enumerates acts through the use of information technology or computers any other arbitrary or abusive action or threat under the definition. The enumeration has a degree of specificity, but may be interpreted to be valid statements of criminal acts of intimidation or reprisal only with respect to such enumeration. A comparison of the definition is quoted below:

HB 0077 and SB 2447	HB 00256 and HB 002484
... any form of violence, threat, retaliation, <i>de facto</i> or <i>de jure</i> adverse discrimination, pressure, judicial harassment or any other arbitrary or abusive action or threat, including cyber-attacks, hacking, defacement of websites, distributed denial-of-service attacks and similar attacks related to a person’s status, work or activity as a human rights defender...	... any form of violence, threat, retaliation, <i>de facto</i> or <i>de jure</i> adverse discrimination, pressure, judicial harassment or any other arbitrary or abusive action or threat related to a person’s status, work or activity as a human rights defender...

A recent incident involving the Movie and Television Review and Classification Board (MTRCB) would be a good case for discussion and whether relief can be sought through the proposed HRD law. The controversy stemmed from

the X-rating that the MTRCB issued for the documentary *Alipato at Muog*. The film was produced and directed by Jose Luis Burgos, the brother of the documentary's subject. The documentary is about Jonas Burgos who is believed to be a victim of enforced disappearance and has been missing since 2007 (de Villa, 2024). The MTRCB gave the rating on the ground that the film "tends to undermine the faith and confidence of the people in their government and/or duly-constituted authorities" (de Villa, 2024).

Subject to the definition of HRDs to be ultimately established under the law, the film's director can be presumed to be an HRD advancing the rights of victims of enforced disappearance. Though the film's rating was later changed, for the sake of discussion, the MTRCB's X-rating and the ratio for such rating violates a number of rights in the proposed law, namely: the *Right to promote and protect human rights and fundamental freedoms*; the *Right to seek, receive, and disseminate information*; the *Right to represent and advocate*; and, the *Right against defamation, stigmatization, and vilification*. At least five rights were violated, but the question presented by this episode is whether any member of the MTRCB may be prosecuted for an offense in violation of the said rights under the proposed law.

Calibration of Penalties

Related to the immediately preceding discussion, the prescribed penalties in the proposed law should be calibrated. The acts constituting offenses in the bills are not specifically described, but merely refer to the violation of the rights enumerated. The penalties are also blanketly applied on the violation of the rights without distinction as to whether the violation of one right may be more grave than another.

Other Broad Provisions

There are other provisions in the bills, not relating to criminal liability, that call for further elaboration because of the overbreadth of the statement. One example is the first function enumerated for the Human Rights Defender Committee, that is, to "[p]rotect human rights defenders from intimidation and reprisals."

The creation of a Human Rights Defender Committee, as outlined in the bills, appears to have been taken from Section 34 of the Model Law recommending the Establishment of a Mechanism for the Protection of Human Rights Defenders. The Model Law establishes this mechanism within a competent authority as a coordinating body for the protection of HRDs. However, directly adopting these functions for the Human Rights Defender Committee poses a number of issues.

If the Committee is tasked with protecting HRDs from intimidation and reprisals, then such a broad function would appear to require police powers for the

Committee. It would then seem that the Human Rights Committee would have greater powers than the CHR. In any event, the specific measures by which it can protect HRDs from intimidation and reprisals should be clearly defined.

In this regard, passing an HRD Protection Law must be a deliberate and well-thought-out process. It would be an empty victory for HRDs if such law is passed, but is ineffective in actually stopping the violations of human rights and fundamental freedoms.

The Libel Conundrum

As of May 2022, or 10 years since the enactment of the Cybercrime Law, over 3,700 complaints had been filed with the DOJ. Of these, some 1,317 cases were filed in court and the rest were dismissed. The same dataset shows that only 12 cases resulted in convictions (Conde, 2022).

However, there has been a growing move to decriminalize libel. This is very apparent in the UN Human Rights Committee's General Comment 34. It was recommended that if ever libel or defamation continues to be considered criminal, it should only be for the most serious of cases (General Comment 34, 2011). Furthermore, the Human Rights Committee emphasized that imprisonment should never be a penalty for libel (General Comment 34, 2011). Libel, as a criminal act, is described as a relic of colonialism (Khan, 2024). In this regard, the Philippines' libel laws, which remain to be penal in nature, are contrary to international standards and the principles in General Comment 34 (Khan, 2024).

It appears that the Philippine Supreme Court adheres to this view, but is nevertheless tied up by statute. In Supreme Court Administrative Circular No. (AC) 08-2008, the Supreme Court cited a number of cases where only a penalty of fine was imposed on the accused found guilty of libel. The Supreme Court found that these cases established "an emergent rule of preference for the imposition of fine only rather than imprisonment in libel cases." While clarifying that its issuance does not prevent the imposition of imprisonment as a penalty, the Supreme Court nevertheless advised judges to take due regard of the circumstances of the case to determine whether imposing a fine already best serves the interest of justice.

The pending bills all establish as a right an HRD's freedom from defamation and stigmatization and also the right against vilification. The violation of these rights is punishable by imprisonment in the proposed law. Thus, by imposing penalties on speech and expression, the pending bills would contradict the decriminalization of libel.

During the FGD, this issue was discussed especially in light of the weaponization of libel against HRDs. To reconcile the competing stance on freedom of

expression, vilification, false labelling, and red-tagging should not be considered protected speech. It should not be equated to defamation or libel. The campaign towards decriminalizing libel is not necessarily inconsistent with penalizing violations of HRDs' rights.

On one side, decriminalizing libel, especially in light of how the State may use it against critics should be pursued. The Supreme Court has declared criticisms of government and public officers as protected speech:

Petitioner Tulfo reported on the alleged illegal activities of Atty. So in the exercise of his public functions. Our libel laws must not be broadly construed as to deter comments on public affairs and the conduct of public officials. Such comments are made in the exercise of the fundamental right to freedom of expression and the press.

Public officers are accountable to the people, and must serve them "with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." Speech that guards against abuses of those in public office should be encouraged. Petitioner Tulfo should be acquitted (Raffy Tulfo v. People of the Philippines and Atty. Carlos So, G.R. No. 187113, 11 January 2021).

Thus, HRDs' freedom of expression and their *Right against vilification*, *Right to participate in public affairs*, and *Right to represent and advocate* are preserved by this decision. HRDs should be free to exercise said rights and would have better confidence doing so if libel is decriminalized.

On the other extreme end are vilification, false labelling, red-tagging and threats against HRDs that should not enjoy protection as free speech. As already discussed, such acts are often precursors to killings of HRDs. Thus, they are different from the speech penalized under the present libel laws. The Supreme Court has likewise recognized the grim realities brought about by red-tagging; hence it had ruled:

Viewed from this perspective, this Court declares that red-tagging, vilification, labeling, and guilt by association constitute threats to a person's right to life, liberty or security, under the second paragraph of Section 1 of the Rules, which may justify the issuance of a writ of amparo (Siegfred D. Deduro v. Maj. Gen. Eric C. Vinoya, G.R. No. 254753, 04 July 2023).

Thus, the proposed HRD protection law should penalize red-tagging, vilification, labeling, and guilt by association. How these are committed should, nevertheless, be well-defined.

Possible Additional Provisions for a more Comprehensive HRD Law

Right to Adequate Funding

The Philippines has many social legislations in place, with various agencies and offices established to address the needs of the marginalized. However, many of these agencies are unable to fully perform their mandates and deliver prompt, effective services due to the lack of funds. This challenge would likely be the same for the proposed Human Rights Defenders Protection Committee, given the many functions it would be tasked with under the draft bills.

An overarching definition of HRDs require institutions like the CHR and the Human Rights Defenders Protection Committee. Unfortunately, despite being a creation of the 1987 Constitution, the CHR is not a constitutional commission and does not enjoy fiscal autonomy. The same limitation would apply to the Human Rights Defenders Protection Committee. This is one of the major chinks in the CHR's armor and a weakness commonly exploited by politicians with less than honest intentions.

Previously, the House of Representatives threatened to give the CHR a PhP1,000 budget (Cayabyab, 2017) and recently, Senator Jinggoy Estrada tried to leverage a stronger stance on abortion by threatening not to give the CHR any money (Abarca, 2023). Such actions undermine the principle of institutional independence enshrined in General Assembly Resolution No. 48/134, prescribing adequate funding for a national human rights institution (UN General Assembly, 1993). Adequate funding for an institution like the CHR ensures that it is "independent of the government and not subject to financial control which might affect its independence" (UN General Assembly, 1993).

To effectively safeguard HRDs, it is crucial to ensure stable and adequate funding for bodies like the CHR and the proposed Human Rights Defenders Protection Committee. The HRD law could include a provision guaranteeing that their annual budgets are not lower than the previous year, with a mandated annual increase to account for inflation and expanding needs. Such a measure would strengthen their operational capacity and reinforce their independence.

Right to Expunge and Right to Take Down

One of the rights and obligations sought to be established by the proposed HRD laws is for the victim to receive effective remedy and full reparation. The right to expunge may fall under the right to effective remedy and full reparation, but it may nevertheless be established as a separate right.

Many HRDs become victims of red-tagging, vilification, and criminalization. Statements made against HRDs, even if proven false, are recorded or imprinted in

official books and papers, or are saved in electronic or digital devices. These damaging statements persist, undermining the reputation and safety of HRDs. Beyond full reparation, there is need for restorative justice for HRDs. This could include the redaction or expungement of their names and false allegations from all records, and any form of media or device where the false statements are memorialized.

The Anti-Enforced or Involuntary Disappearance Act provides this remedy. Thus, this provision may be expanded under an HRD Law to address violations, particularly those relating to red-tagging, vilification, or criminalization. This approach would aim to erase the lasting harm caused by these acts and restore HRDs' dignity and credibility.

However, during the FGD, participants highlighted the challenges of implementing such measures in an online environment, as scrubbing the internet of red-tagging posts is nearly impossible due to the decentralized nature of the web and the permanence of digital records. In short, online and digital records cannot effectively be expunged. Nevertheless, a “right to take down” may be instituted and enforced against whoever posts and reposts the information and likewise against the media company.

Provision on Private Persons and Businesses

The obligations enumerated in the bills are primarily directed at the State. This is consistent with the stated goal of creating “an enabling environment wherein HRDs and public authorities could work together with mutual respect, trust, and support in upholding human rights and the rule of law.”¹⁴ Nevertheless, an HRD law could also recognize a tripartite relationship involving HRDs, the government, and relevant members of the private sector in the work required to uphold human rights.

The focus on State obligations also follows the principle that the obligation to respect the bill of rights falls primarily upon the State. It also addresses the fact that most violations against HRDs are perpetrated by State agents.

However, human rights organizations and bodies have highlighted that violations of HRDs’ rights are not exclusively perpetrated by State agents, but also by private actors. Private entities and persons have been complicit in the harassment, intimidation, and red tagging of HRDs. Abductions and detentions of HRDs and physical violence against them are also not committed exclusively by State agents. Articles 17 and 18 of the Declaration +25 document also advocate for extending responsibility to non-State actors and businesses as regards the treatment of HRDs.

¹⁴ Explanatory note, HB 077.

In HB 00256 and HB 04284, private actors are made criminally-liable, but only as conspirators to the governmental actors acting as principals. However, the experience of HRDs in the Philippines show that private actors, acting alone, likewise commit violations against HRDs.

It was also observed that businesses fail to protect HRDs from HRVs or they themselves perpetrate HRVs against HRDs (Lawlor Report, 2021). Since businesses may be made criminally-liable in evolving human rights law, companies that have a role in the commission of HRVs against HRDs should also be covered by any proposed HRD law. At the very least, the HRD law should hold erring companies culpable even for just the civil aspect of the violations of HRDs' rights.

Victims can claim civil damages and reparations from corporate actors under the present legal system. How to establish a company's liability and the amount of compensation is the tricky part of the process. To illustrate, a person red-tags an HRD on a social media post saying the HRD adheres to communist principles. The HRD complains to the social media company, but the social media company claims the post does not violate its community rules since having communist beliefs is not illegal in the country. The HRD is later physically assaulted and is hospitalized.

While *post hoc ergo propter hoc*,¹⁵ is a logical fallacy and cannot be the basis of liability in the legal system, experts have regarded red-tagging and threats as precursors to physical assault and killings (Lawlor Report, 2020). While the link between the red-tagging and the failure of the social media company to take down the post to the physical assault is a question of fact to be established by evidence, an HRD law can provide remedies to the HRD and assess damages against the poster and the social media company separately.

Freedom of expression and the chilling effect of regulation would always be an argument against limits on opinion expressed on any form of media. The crucial element in this equation is that an HRD is involved and red-tagging, vilifying, and criminalizing one often leads to a fatal consequence. A careful balancing of interests needs to be done by legislators. Nevertheless, the need for an HRD law covering private actors should be unquestioned.

An HRD law could go beyond imposing liability on private actors, by including provisions that encourage the active involvement of companies in promoting human rights, including those of HRDs. The law might mandate "human rights due diligence" as part of the Business and Human Rights (BHR)¹⁶ framework and encourage companies to adopt a model HRD policy. The Lawlor Report cites Adidas as one of the proactive companies as regards HRDs. Unilever also has a

¹⁵ Means "after this, therefore because of this." It is logical fallacy of assuming that one thing caused another merely because the first thing preceded the other.

¹⁶ See Discussion in Annex D.

specific policy that caters to HRDs. The passage of an HRD protection law is an opportunity to promote BHR in the mainstream.

Greater Emphasis on Threats

In the Lawlor Report, HRDs claimed that because of threats against them, they lived in constant fear (Lawlor Report, 2020). Thus, threats, by themselves are debilitating and adversely affect the work of HRDs (Lawlor Report, 2020). Threats are considered as human rights violations and even a form of torture (Lawlor Report, 2020). The seriousness of threats is underscored by the fact that many are a precedent to murder (Lawlor Report, 2020).

Thus, in defining acts that are penalized in the proposed law, threats to the violation of certain rights may be established as offenses. In this sense, threats can mean two things. One, is the utterance of a threat of inflicting harassment, psychological or physical harm, which is an actual violation. The other meaning is the likelihood of a violation of human rights based on the circumstances. These may take the form of threats to life and safety, liberty, and other rights enumerated in the bills.

The bills do not cover threats, as the penal provisions impose penalties only on actual violations of the enumerated rights. Hence, in defining the acts punishable under the law, it would be advisable to include threats.

Conclusion

The need for an HRD Protection Law should be unquestioned. A version of the proposed law has previously reached third and final reading in in the House of Representatives, reflecting legislative recognition of its importance. This fact also highlights the difficult process of legislation, as other HRD bills had been filed in previous Congresses.

Given the difficulty of enacting laws, it is imperative that the law should be effective and serve its underlying policy, purpose, and rationale. It should be carefully crafted and unambiguously worded to ensure that HRDs are truly protected and can readily access the reliefs and remedies provided by the law. HRDs, with their tireless work and unlimited sacrifice, continue to change the world. An HRD Protection Law should, in turn, change theirs. ■

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Annex A. Notes on Red-Tagging

“Red-tagging” became prominent during the Duterte administration. The term refers to the vilification of individuals or groups as members of the communist insurgents New People’s Army, branding them as criminals or terrorists. The vilification is not limited to government actors, but can be spread by private individuals through various media platforms, including print, radio, television, and the internet.

Labelling political opponents as a “communist” is not new. Before World War 2, communists were among the first to be interned in Nazi concentration camps (USHMM). Similarly, in post-war America, McCarthyism involved the persecution of left-leaning individuals under false accusations of being Soviet spies, creating a culture of paranoia.

This fear of communism extended to many countries, including the Philippines, when then President Ferdinand Marcos, Sr. accused many opposition members as communists, and by being so, supposedly committed treason. Marcos cited the spread of lawless elements who followed the Marxist-Leninist-Maoist doctrines as the basis for placing the Philippines under Martial Law (PD 1081). Marcos also issued Letter of Instruction No. 1 to seize control of media outlets who purportedly aided in spreading anti-government propaganda.

Red-tagging from the Martial Law era continued even after the 1986 EDSA Revolution. In 2007, the UN Special Rapporteur observed that State agencies viewed certain civil society organizations as threats for being fronts of the Communist Party of the Philippines (CPP) even though membership in the CPP is legal. This memetic view most likely was carried over from decades prior in that even members of Congress as party-list representatives were not immune to the mischaracterization. As observed by the UN Special Rapporteur:

Assertions that the CPP “fielded” such party-list groups as Bayan Muna, Anakpawis, and Gabriela are similarly vague and speculative. These assertions are based on circumstantial evidence — the personal histories of some leaders, apparent sympathies manifested during the CPP’s split in the early 1990s, the perceived political function of a group’s positions, etc. — read in light of the CPP’s avowed organizational techniques (Alston Report, 2008).

While false labeling had been happening, the massive red-tagging during the Martial Law era was resurrected in full force during the Duterte administration.

Red-tagging or labelling is serious, since the ramifications could be fatal. HRDs are threatened and killed as a result of placing a context of negativity upon them (UNDP, 2023). This is precisely the strategy employed by the AFP, PNP, and the NTF-ELCAC, particularly during the Duterte administration.

In the guise of an awareness campaign against terrorism, social media posts, by the PNP for instance, would contain unverified and unauthenticated photographs of civilians bearing arms (AHRC, 2024). The posts would label them as communists. The so-called awareness campaign does not create awareness, but rather hatred and violence against certain groups and persons (AHRC, 2024). As these are essentially random photographs, the persons in the posts are inordinately placed in danger of being arrested, detained, or even killed (AHRC, 2024). Such a threat to their security would even extend to their families or close associates (AHRC, 2024).

The red-tagging was not limited to on-line posts. In 2018, even before the Anti-Terrorism Act became law, posters branding certain HRDs as terrorists were placed in many places in the country. At least four of the HRDs in the posters were subsequently killed (AHRC, 2024).

There have also been reports where the AFP abused the Duterte government's Balik-Loob program. The program encourages rebels to surrender in exchange for incentives and livelihood support. However, the AFP was reported to have employed a scheme whereby members of red-tagged organizations were invited to a livelihood seminar, but were instead made to appear as rebel surrenderees (AHRC, 2024). Thus, these persons would inevitably be branded as rebels.

Recently, the Ateneo Human Rights Center (AHRC) released a report on red-tagging including incidents in the first six months of 2024. In the study, the AHRC found 456 incidents of red-tagging from January to June 2024 (AHRC, 2024). The report further distilled its data which showed the sector most targeted is civil society with 303 incidents or 68.4 percent of the red-tagging reported. Meanwhile, the youth are the second most targeted sector with 75 incidents or 16.9 percent (AHRC, 2024).

In its analysis, the report cited the number of targeted members of civil society as "a systematic effort to stifle dissent and weaken community organizing" (AHRC, 2024). As regards red-tagging members of the youth, it shows the attempt to prevent the voice of the next generation from emerging (AHRC, 2024).

Both are apparent in the red-tagging of Patreng Non and other organizers of community pantries during the height of COVID-19 lockdowns. Community pantries exhibited the *bayanihan* spirit of the Filipinos where members of communities would leave food and other supplies at a designated place for people adversely affected by the lockdowns (Bordey, 2022). Patreng Non started one along Maginhawa Street in Diliman, Quezon City. Soon, community pantries randomly sprouted in many places in the country. There was no coordinated effort nor organized launch of the pantries, as only the idea and altruism moved people to put up one in their respective communities.

However, without rhyme nor reason, the NTF-ELCAC's Lorraine Partosa described the community pantries in her posts, press releases, and interviews as fronts for recruitment by the NPA (Bordey, 2022). After being red-tagged, Patreng Non and the Maginhawa community were forced to stop their activities (Bordey, 2022). She experienced trauma and anxiety, as she also received rape and death threats after being red-tagged (Madarang, 2022). This experience prompted her to seek professional help (Madarang, 2022). Later, towards the end of the Duterte administration, Patreng Non's mother filed a complaint against Partosa before the Ombudsman for red-tagging her daughter (Bordey, 2022). Nevertheless, as it appears, damage has been done. A prospective leader from the youth sector has been stymied by red-tagging.

In 2023, 26 campus journalists were red-tagged. Each of them later received letters asking them and their parents to meet with unidentified personnel of the AFP (AHRC, 2024). Aside from again targeting the youth, this incident also shows that red-tagging continues with the present administration. In the AHRC's report, the red-tagging incidents monitored from January to July 2024 were mostly attributed to the AFP, PNP, and the NTF-ELCAC (AHRC, 2024).

The AHRC found that red-tagging is a complex operation that requires organization and coordination. It goes beyond online attacks, as the latter is supplemented by ground operations. The AHRC described the false labelling activities as a red-tagging web because of the intricate structure of operationalizing it (AHRC, 2024).

Part of this web is weaponizing laws against victims of red-tagging. One of the tools that have become handy to State agents is the Anti-Terrorist Act. Labelling persons as terrorists with relative ease through a legal procedure lends legitimacy to red-tagging. Another instrument utilized by State agents is freezing the accounts of red-tagged persons under the Anti-Money Laundering Act (AHRC, 2024).

The Supreme Court's observation on red-tagging underscores the trepidation experienced by its victims:

The foregoing accounts of red-tagging depict it as a likely precursor to abduction or extrajudicial killing. Being associated with communists or terrorists makes the red-tagged person a target of vigilantes, paramilitary groups, or even State agents. Thus, it is easy to comprehend how a person may, in certain circumstances, develop or harbor fear that being red-tagged places his or her life or security in peril (Siegfred D. Deduro v. Maj. Gen. Eric C. Vinoya, G.R. No. 254753, 04 July 2023).

The AHRC report underscores the need for an HRD Protection Law on the aspect of red-tagging. As shown above, the State, through many decades, has adopted red-tagging as a convenient tool to suppress opposition and criticism. An HRD Protection law will not magically make red-tagging disappear. Nevertheless, it is essential for the protection of HRDs and that victims of HRVs among HRDs are able to obtain relief.

Annex B. Land and Resource Conflict Monitoring (LRCM)

Overview of the LRCM Initiative

With the escalating frequency and intensity of land-related conflicts in Asia, particularly those affecting the marginalized communities, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) and CSO partners recognized the need for a systematic approach to documenting, analyzing and understanding the nature and prevalence of these conflicts and related incidents of human rights violations.

In 2014, the Philippine report focused on identifying the nature of resource conflicts occurring in the Philippines among agrarian lands, municipal waters, and ancestral domains through case field reports and secondary studies generated by CSOs and government agencies. In 2018, the initiative expanded to include recording of land conflicts reported by media, CSOs/NGOs, and Government. In 2020, a standardized Excel database tool was developed to streamline the data collection process. In 2021, a community case profile template was designed to collect data, enabling more detailed reporting at the local level. In 2023, the monitoring parameters, categories, and indicators were further refined and finalized in collaboration with Philippine and regional CSO and PO partners, ensuring a robust and comprehensive framework for tracking land-related conflicts.

Key findings of the LRCM reports

Over the years, the Land and Resource Conflict Monitoring Initiative in the Philippines has produced several reports providing critical insights into the nature and prevalence of land and resource conflicts in the country:

On the nature and prevalence of conflicts. The LRCM reports have highlighted the prevalence of land conflicts involving agrarian lands (57 percent of cases), municipal waters (nine percent), ancestral domains (22 percent), as well as the urban settlements (four percent). It was also consistently found that agrarian lands and ancestral domains were the two most frequently involved areas in conflicts, often between farmers and indigenous peoples against private companies engaged in private-led business enterprises.

On human rights violations. While the number of human rights violations recorded by the initiative in a given year varies, the findings reveal a persistent prevalence of such incidents against individuals and communities. These violations often include killings, displacements, threats, and labelling/red-tagging. Additionally, ecological threats, such as pollution and habitat destruction, have also been documented. The reported perpetrators of these HRVs are often linked to powerful individuals and landowners, private companies, and even government officials who have vested interests in the land and resources.

The LRCM initiative has provided insights into the complex dynamics of land and resource conflicts in the Philippines. This is significant, as many violations of HRDs' human rights and fundamental freedoms happen in the context of land and resource conflicts. The findings from the LRCM reports have not only informed ANGOC's advocacy efforts but have also contributed to the broader regional discussions on land rights and conflict resolution.

ANNEX C. Protection and available remedies to human rights defenders under the present Philippine legal framework

Philippine Constitution

Article III: Bill of Rights.

Section 1 states that “no person shall be deprived of life, liberty, or property without due process of law”, and ensures everyone equal protection under the law. These are the rights equally enjoyed by HRDs and the basis of protection from killings, arbitrary detentions, abductions, and criminalization.

Section 2 provides for the rights of the public against illegal search and seizures. A search warrant based on probable cause and issued by a court is necessary for any State agent to search a person or premises. A similar determination of probable cause is required before a warrant of arrest is issued. The Constitution also guarantees an HRD the right against detention solely by reason of his political beliefs and aspirations (Section 18 (1), Article III, PH Constitution).

Once arrested or detained, a person under custodial investigation enjoys the rights under Section 12. S/He has the right to remain silent and the right to be informed of such right. S/He has the right to independent and competent counsel of her/his choosing. If s/he cannot afford counsel, one will be provided by the State. None of these rights can be waived except in the presence of counsel (Section 12 (1), Article III, PH Constitution).

The same section prohibits torture, force, violence, threat, intimidation, or any other means which vitiate the free will to be done to any person in custody. It also prohibits secret detention places, solitary, incommunicado, or other similar forms of detention (Section 12 (2), Article III, PH Constitution). Any confession or admission obtained in violation of these rights or under these conditions are inadmissible in court (Section 12 (3), Article III, PH Constitution). The foregoing are the constitutional basis for Republic Act No 7438.

It should be mentioned that the Constitution also prohibits the imposition of degrading or inhuman punishment (Section 19 (1), Article III, PH Constitution). The infliction of physical, psychological, or degrading punishment against any prisoner or detainee is also a violation of one’s constitutional right (Section 19 (2), Article III, PH Constitution). It also provides that prisoners and detainees have rights against the use of substandard or inadequate penal facilities under subhuman conditions (Section 19 (2), Article III, PH Constitution).

Article XI: Accountability of Public Officers

Section 1 underscores that public office is a public trust. It further states that public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

Article XIII: Social Justice and Human Rights

Section 1 mandates Congress to pass laws that promote human dignity and eliminate all kinds of inequalities.

Writ of Amparo

In 2007, the Supreme Court issued The Rule on the Writ of Amparo (A.M. No. 07-9-12-SC). The writ of amparo is a remedy available to any person whose right to life, liberty, and security is violated or threatened with violation by an unlawful act or omission of any person, specifically instances or even threats of extralegal killings and enforced disappearances (Section 1, Rule on the Writ of Amparo). It may be filed before any Regional Trial Court where any of the elements of the act or threat was committed or the Sandiganbayan, the Court of Appeals, or the Supreme Court or any justice of these courts. Due to the urgency, the petition may be filed at any time on any day (Section 3, Rule on the Writ of Amparo). In succeeding order and in default of the preceding person, the petition may be filed by the victim, his immediate family, relatives within the fourth degree of consanguinity, and any concerned person or organization (Section 2, Rule on the Writ of Amparo).

The writ may immediately be issued if the petition shows cause to do so on its face. If the urgency demands it, the judge or justice may issue a handwritten writ (Section 6, Rule on the Writ of Amparo). The respondent has 72 hours within which to respond to the writ (Section 9, Rule on the Writ of Amparo). Thereafter, the court shall hear the case in a summary proceeding and conducted daily (Section 13, Rule on the Writ of Amparo). Once the case is submitted for decision, the court has ten days to render its judgment (Section 18, Rule on the Writ of Amparo).

Before the court issues a judgment, it may grant interim reliefs in favor of the victim or his/her immediate family or the officers of an organization. The Rules allow the court to grant a Temporary Protection Order where the subjects may be placed under the protection of a government agency or accredited private institution due to safety concerns (Section 14 (a), Rule on the Writ of Amparo). The court may also issue an inspection order to permit entry in any property to inspect, measure, survey, or photograph the property or any relevant object or operation that may be found there (Section 14(b), Rule on the Writ of Amparo). Similarly, the court may order any person in possession, custody or control of any documents, photographs, objects or tangible things, or objects in electronic form, which constitute or contain relevant evidence to produce and permit their inspection, copying or photographing (Section 14(c), Rule on the Writ of Amparo). The Rules also provide for a Witness Protection Order where the judge can refer a witness to the DOJ's Witness Protection Program, another government agency or private institution (Section 14(d), Rule on the Writ of Amparo).

Writ of Habeas Corpus

Rule 102 of the Rules of Court governs the issuance of a Writ of Habeas Corpus. The Writ is issued in cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled (Section 1, Rule 102, Rules of Court). It may be granted by the Supreme Court or any of its justices or any Regional Trial Court (Section 2, Rule 102, Rules of Court). The Writ is requested through a petition that may be filed by the party or any person on his behalf (Section 3, Rule 102, Rules of Court). In case of emergency, the judge may issue a handwritten writ and may depute any officer or person to serve it (Section 5, Rule 102, Rules of Court).

Philippine Statutes

- Revised Penal Code

The Philippine Revised Penal Code (RPC) defines felonies and appropriate penalties for the commission of the offenses. As criminal provisions, the elements of the offenses must be present in order to prosecute and prove the offenders guilty beyond reasonable doubt. Care must be taken in reading the provisions as there are distinctions on whether the offense may be committed by a private citizen or a public officer (State agent).

As defined under the RPC, public officers are those who, by direct provision of a law, popular election or appointment by competent authority, take part in the performance of public functions in the government of the Republic of the Philippines, including those who perform in any of its branches public duties as an employee, agent or subordinate official, of any rank or class (Article 203 RPC).

The RPC penalizes any public officer, or officer of the law, who, in dereliction of the duties of his office, maliciously refrains from instituting prosecution for the punishment of violators of the law, or shall tolerate the commission of offenses (Article 208, RPC). This provision does not concern public prosecutors of the DOJ alone, but also superiors of those public officers who commit offenses or crimes for failing to discipline them. Article 208 also concerns public officers' inaction for offenses or crimes committed by private persons.

HRDs who are arrested or detained by public officers without any legal ground may be charged with arbitrary detention. The penalty of imprisonment increases in duration depending on the period of arbitrary detention (Article 124, RPC).

If an HRD is arrested or detained for any legal ground, but is not timely delivered to judicial authorities, then the public officer is liable for delay in the delivery of the detainee to judicial authorities. The liability arises depending on the offense and the delay in terms of hours. For light offenses, the detainee should be delivered within 12 hours; 18 hours for offenses punishable by correctional penalties, and 36 hours for offenses punishable by afflictive and capital penalties (Article 124, RPC). The same scale is used in determining liability for any public officer who delays the release of a prisoner or detainee or unduly delays the service of the order of release (Article 125, RPC).

There are many types of harassment to which HRDs are subjected by State agents. State agents who enter a home without a search warrant or any other legal order against the will of the owner or enters the home surreptitiously and is asked to leave and refuses can be imprisoned for the offense of violation of domicile. The same offense is committed when without any legal authority the public officer searches a home for papers and effects without the consent of the owner (Article 127, RPC). If these are committed in the night time, a higher penalty is imposed upon the public officer (Article 127, RPC).

Article 129 penalizes a State agent for maliciously procuring a search warrant. A search warrant is maliciously procured if there is no just cause for it. This provision also penalizes the State agent who abuses the service of the warrant by exceeding his or her authority or employs unnecessary severity in implementing the warrant (Article 129, RPC).

HRDs suffer many violations of human rights that may be punished under the RPC and committed by any person, not only by State agents.

Philippine Statutes

Kidnapping (Article 267, RPC) and illegal (Article 267, RPC) or slight illegal detention (Article 268, RPC) are also punished under the RPC. However, it should be emphasized that such offenses, classified under crimes against personal liberty, are only committed by private persons. The elements of kidnapping include: detention of more than five days, public authority should have been simulated, serious physical injuries upon the victim, and the victim should be a minor, female or a public officer.

Killings of HRDs may be the subject of prosecutions for murder (Article 248 RPC) or homicide (Article 249 RPC). For pregnant HRDs who suffer miscarriages due to the acts of State agents and even private persons, they may file complaints for intentional or unintentional abortion (Articles 256 to 257, RPC).

HRDs who are subjected to torture or other atrocities may file cases against the perpetrators for physical injuries of either the serious (Article 263 RPC), less serious (Article 265 RPC) or slight (Article 266, RPC) variant. Mutilation is also punished under the RPC, though a higher penalty is imposed if the mutilation affects a reproductive organ (Article 262, RPC).

Administering injurious substances or beverages is an offense under the RPC (Article 264, RPC). The offense consists of giving injurious substances or beverages to the victim that results in physical injuries. It is important to note that there should be no intent to kill on the part of the offender.

While the infliction of injuries may be considered torture, the Anti-Torture Law is independent of the RPC. Thus, those who committed torture may also be prosecuted under the RPC.

Libel is defined and punished under the Revised Penal Code. It should be emphasized that cyber-libel as defined in R.A. 10175 merely clarifies that libel under the RPC may also be committed through computer systems or any similar means that may be devised in the future. Thus, no new offense is defined under R.A. 10175. HRDs victimized by red-tagging and vilification may file a complaint for libel.

Libel, under Article 353 of the RPC, is any “public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.” There is a presumption in law that every defamatory imputation is malicious (Article 354, RPC). Truth is usually not a defense in libel unless good intention and motives are shown (Article 354, RPC). Threatening a person to publish a libel concerning him or his parents, spouse, child, or other members of his family is also penalized by the RPC (Article 356, RPC). In addition, offering a person to prevent the publication of the libel for a compensation or money consideration is likewise punishable under the RPC (Article 356, RPC).

As in many cases of red-tagging, online harassment typically follows since State agents would post red-tagging statements on their social media accounts. The harassment would contain various degrees of threats including threats of killing and rape. Any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime may be penalized for grave threats (Article 282, RPC). If the threat to do wrong does not constitute a crime, it is considered a light threat if done with a demand for money or any other condition (Article 283, RPC).

Philippine Statutes

- An Act Defining Certain Rights of Persons Arrested, Detained or under Custodial Investigation as well as the Duties of the Arresting, Detaining, and Investigating Officers and Providing Penalties for Violations Thereof (Republic Act No 7438)

This law codifies the so-called Miranda rights and echoes provisions of the Constitution's Bill of Rights. The law also fills gaps in the RPC. For instance, it establishes the right of one arrested or under custodial investigation to be assisted by counsel at all times (Section 2 (a), R.A. 7438). It also mandates any person making an arrest to inform the person arrested of his right to remain silent and his right to counsel (Section 2 (b), R.A. 7438). These should be relayed to the person arrested in a language known to him or her (Section 2 (b), R.A. 7438). If he or she could not afford a lawyer, one will be provided (Section 2 (b), R.A. 7438). The lawyer should be one who is competent and independent (Section 2 (b), R.A. 7438).

The custodial investigation report must be in writing. It is void if the person arrested is made to sign or thumb mark it without the assistance of counsel or is not read to him and explained to him by his counsel in a language or dialect known to him (Section 2 (c), R.A. 7438).

If any person arrested, detained, or under custodial investigation confesses to an offense, his or her confession must be in writing and signed in the presence of his or her counsel. If he or she has no counsel, he or she may waive the presence of counsel, but he or she should sign the confession in the presence of either of his or her parents, older brother and sister, or spouse. It may also be signed in the presence of the municipal mayor or judge, district school supervisor, priest or pastor (Section 2 (d), R.A. 7438). A valid waiver must be in writing and signed in the presence of counsel (Section 2 (e), R.A. 7438). The confession would be inadmissible as evidence of it were not made in accordance with the foregoing (Section 2 (d), R.A. 7438).

The law also establishes the right to visitation. One who has been arrested, detained, or under custodial investigation may not be prevented from being visited by his immediate family. Immediate family in this sense includes spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward. He or she, or his or her immediate family, an NGO accredited by the CHR, or an international NGO accredited by the Office of the President may choose a doctor, priest, or religious minister to visit and such visit may not be prevented (Section 2 (f), R.A. 7438).

The law penalizes those who prevent or obstruct the enjoyment of the rights enumerated from fines to imprisonment of up to 10 years (Section 4, R.A. 7438).

- Anti-Torture Act of 2009 (Republic Act No. 9745)

The law explicitly prohibits torture and other cruel, inhuman, and degrading treatment or punishment. Freedom from such is established as an absolute right from which no derogation is allowed (Section 6, R.A. 9745). The law also bans secret detention places, solitary confinement, incommunicado or other similar forms of detention, where torture may be carried out with impunity (Section 7, R.A. 9745).

Philippine Statutes

Torture may be committed through any of the following:

- a. intentionally inflicting severe pain or suffering, whether physical or mental, on a person to obtain from him or her or a third person information or a confession;
- b. punishing the person for an act he or she or a third person has committed or is suspected of having committed;
- c. intimidating or coercing the person or a third person; or,
- d. when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of a person in authority or agent of a person in authority for any reason based on discrimination of any kind (Section 3 (a), R.A. 9745).

For further guidance, the law provides specific acts of torture under Section 4, which may be either physical or mental or psychological. Physical torture includes food deprivation (Section 4 (a) (2), R.A. 9745), electric shock (Section 4 (a) (3), R.A. 9745), and forced extraction of the teeth (Section 4 (a) (9), R.A. 9745). Mental or psychological torture includes solitary confinement (Section 4, (b) (3), R.A. 9745), sleep deprivation (Section 4, (b) (9), R.A. 9745), and shame infliction (Section 4 (b) (10), R.A. 9745).

Other deliberate and aggravated treatment or punishment that are not enumerated in Section 4 are considered cruel, inhuman, and degrading treatment or punishment. However, there is a qualification that such treatment or punishment must have been inflicted by a person in authority or agent of a person in authority against a person under his or her custody and that it is of a level of severity that causes suffering, gross humiliation or debasement on the person in custody (Section 3 (b) and Section 5, R.A. 9745).

The law also establishes the right of any person arrested, detained, or held in custodial investigation to be informed of the right to demand physical examination by an independent and competent doctor of his or her choice. He or she will be provided a doctor by the government if he or she can not afford one. He or she also has the right to immediate medical treatment. The medical report arising from such examination or treatment shall be attached to the custodial investigation report (Section 12, R.A. 9745).

Any confession extracted from a person in custody in violation of the prohibitions on torture and other cruel, inhuman and degrading treatment or punishment is inadmissible in evidence (Section 8, R.A. 9745).

Violators of the law may be imprisoned up to 30 years (Section 14, R.A. 9745). In addition, torture may not be absorbed in any other offense committed at the same time or in the same act and will be treated as an independent crime (Section 15, R.A. 9745). Thus, violation of the law does not prevent the prosecution for murder, physical injuries, or other related offenses under the RPC or another law. Torture is also excepted from those crimes subject to amnesty or exempting circumstances (Section 16, R.A. 9745).

In filing a complaint under the law, the CHR and the Public Attorney's Office (PAO) are mandated to assist in the investigation and preparation of the complaint (Section 11, R.A. 9745). In addition, the victim is entitled to protection and security from harassment and threats. Such protection and security will be provided by the government and extended to the victim's lawyer, relatives, and witnesses (Section 9, R.A. 9745). Victims and their families have a right to claim compensation (Section 18, R.A. 9745).

Philippine Statutes

- Anti-Enforced or Involuntary Disappearance Act (Republic Act No. 10353)

The law establishes the specific Right Against Enforced or Involuntary Disappearance (Section 4, RA 10353). Furthermore, it provides for its non-derogation. This means that even when there is political instability, war, or public emergency, the right continues to exist and may not be suspended (Section 4, R.A. 10353).

Section 3(b) of the law defines “enforced or involuntary disappearance.” Such constitutes the arrest, detention, abduction or any other form of deprivation of liberty. It is committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State. Thus, private persons can commit violations of the law. The enforced or involuntary disappearance is also characterized by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law.

Section 5 authorizes any subordinate officer receiving an order to commit enforced or involuntary disappearance to disobey such order. Section 14, meanwhile, provides for the criminal liability as principal of the immediate superior officer or commanding officer of the PNP or AFP.

Victims, who survive, are entitled to monetary compensation, rehabilitation, and restitution of honor and reputation (Section 26, R.A. 10353). To restore the victim’s honor and reputation, any derogatory record, information or public declaration, or statement on his or her person, personal circumstances, status, and/or organizational affiliation may be expunged or rectified not only by the relevant government agency, but by private organizations as well (Section 26, R.A. 10353). For victims who have disappeared, their relatives up to the fourth degree of consanguinity are entitled to compensation (Section 26, R.A. 10353).

Violators are subject to criminal liability and may be imprisoned for various periods depending on their culpability and participation in the offense (Section 15, R.A. 10353). Significantly, the law provides independent liability for the perpetrators (Section 18, R.A. 10353). Thus, they may likewise be prosecuted and tried for violating R.A. 7438 and R.A. 9475 even if their violations arise from the same act (Section 18, R.A. 10353). This is an established exception under the criminal law principle.

ANNEX D. Other international instruments and documents for reference

- The Sustainable Development Goals

The Philippines is committed to achieve the Sustainable Development Goals (SDGs). The SDGs is a set of 17 goals that are essential towards eradicating poverty and inequality. Even though committing to the SDGs is not legally binding, it should be emphasized that the SDGs were adopted in 2015 by all members of the United Nations. The SDGs are also based on the UDHR (UN General Assembly, 2015).

For instance, SDG 16 is a seeming summary of the global aspiration for respect for human rights. SDG 16 seeks to “[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels.” One of the indicators that the goal is achieved is the number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention, and torture of journalists, associated media personnel, trade unionists, and human rights advocates.”

Reading through the goals, it is apparent that HRDs would have inevitably dipped their feet in efforts to achieve each of the SDGs. The peculiarity of HRDs’ circumstance calls for the enforcement of the same rights for them that they advance on behalf of others. The same is true for the SDGs.

The Sustainable Development Goals

1. End poverty in all its forms everywhere;
2. End hunger, achieve food security and improved nutrition, and promote sustainable agriculture;
3. Ensure healthy lives and promote well-being for all at all ages;
4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all;
5. Achieve gender equality and empower all women and girls;
6. Ensure availability and sustainable management of water and sanitation for all;
7. Ensure access to affordable, reliable, sustainable and modern energy for all;
8. Promote sustained, inclusive, and sustainable economic growth, full and productive employment and decent work for all;
9. Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation;
10. Reduce inequality within and among countries;
11. Make cities and human settlements inclusive, safe, resilient, and sustainable;
12. Ensure sustainable consumption and production patterns;
13. Take urgent action to combat climate change and its impacts;
14. Conserve and sustainably use the oceans, seas, and marine resources for sustainable development;
15. Protect, restore, and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss;

16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels;
17. Strengthen the means of implementation and revitalize the global partnership for sustainable development.

Source: UN General Assembly, *Transforming our world: The 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1

- Business and Human Rights

The Lawlor Report found that in many cases, businesses failed to prevent attacks on HRDs or worse, businesses were the perpetrators of the violations of HRDs' rights. Hence, the role of business cannot be discounted in protecting HRDs. This is nowhere truer than land and resource conflicts where aggression towards HRDs are most common (Lawlor Report, 2021). Large investments by businesses are often involved in land and resource conflict; thus, emphasizing the application of the BHR framework in the case of protecting HRDs.

In 2007, the UN General Assembly categorically adopted the principle that under international law, "States have a duty to protect against non-State human rights abuses within their jurisdiction, and that this duty extends to protection against abuses by business entities" (Ruggie Report 2007). This statement underscored a State's "Duty to Protect" in what would later be one of the three pillars in a framework on business and human rights. This Duty to Protect was also cited in the Human Rights Committee's General Comment 31 stating that the obligations under the International Convention on Civil and Political Rights (ICCPR) would only be fully discharged if the duty to protect against violations of the ICCPR extends to private actors (Ruggie Report, 2007).

The international legal system was also evolving and shedding the idea that corporations could not be subjects of international law (Ruggie Report, 2007). Thus, they may now be held responsible for their corporate actions (Ruggie Report 2007). New realities point to corporations having duties and responsibilities in international law in light of their increased and active involvement in the international plane (Ruggie Report, 2007).

Moreover, with international criminal tribunals expanding, individual responsibility and domestic statutes assigning responsibility to corporations for international crimes, corporate responsibility to respect human rights are becoming more established (Ruggie Report, 2007).

With corporations' responsibility for human rights having been established, the natural consequence of such development is the need to answer the question of enforcement. Standards regulating corporate action would be for naught if there were no processes for investigation, punishment, and redress of violations of human rights (Ruggie Report, 2007). Thus, there should be judicial and non-judicial, and public and private means for victims to file their grievances or access to remedies.

The Ruggie Report, released in 2008, underscored the incompleteness of human rights instruments, as these did not cover compliance by businesses (Lubbers, et al., 2008). This report established the Protect, Respect, and Remedy Framework (Lubbers, et al., 2008).

Gaps in the human rights legal framework as regards corporations are partially filled by specific human rights enjoying *jus cogens*¹⁷ status. In theory, the peremptory nature of such rights directly impels corporations to respect and comply with human rights standards (Lubbers, et al., 2008). In any event, many gaps remain as many continue to question the legal status of the so-called third generation human rights.

Margaret Sekagya, once the Special Rapporteur on the situation of human rights defenders, concluded that transnational corporations and business enterprises' responsibility to respect human rights extends to HRDs (Sekagya Report, 2010).

In 2011, after numerous consultations, the UN Guiding Principles on Business and Human Rights (UNGPs) were released. While geared towards addressing many of the gaps involving compliance by enterprises with human rights standards, it should be noted that the UNGPs do not create new obligations under international law, as they are merely normative.

Consistent with BHR, the Declaration +25 that was prepared by international human rights organizations and experts pushes for the responsibility of business in respecting the rights of HRDs.

Other Documents

Given that the goal is to craft and establish a legal regime that would protect HRDs and provide them or their relatives remedies and relief, reference may be made to other available resources. It is not necessary that the Philippine legislature follow only documents to which the Republic of the Philippines is a party or signatory. The drafting of the law allows the Philippines to craft its own set of protections for HRDs and also import effective measures that have aided HRDs in other jurisdictions.

- Declaration +25

The Declaration+25 document was prepared by human rights organizations and experts to supplement the Declaration of Human Rights Defenders (HRD Declaration). It is essentially a private document, but its content is aimed at being adopted by States. The document is geared to be more responsive to the changes and developments that have happened in the 25 years since the HRD Declaration was signed. Declaration +25 acknowledges that the HRD Declaration is not comprehensive. It also recognizes the massive stigmatization affecting HRDs because of electronic media that was not as prevalent 25 years ago.

Article 7 of Declaration +25 provides for the Comprehensive Protection of Human Rights Defenders at Risk. The provision mandates that protections for HRDs also consider their mental health. Thus, not only HRDs' physical security should be ensured by the government, but also the digital security of HRDs. On another aspect, HRDs who have been subjected to threats or who are survivors of physical assaults should receive proper psychological treatment for their trauma.

¹⁷Overriding principle of international law, consisting of customary law that cannot be set aside by treaty or acquiescence; a peremptory norm from which no derogation is permitted (Brownlie, 2008).

Declaration +25 also expands the protection that needs to be accorded to HRDs. Its Article 8 also provides for the protection of relatives, associates, representatives, and communities of HRDs. The reason for this is that these groups that have a close relationship to an HRD may also become targets or collaterally attacked as part of the adverse reactions of persons the HRD is opposing.

Article 9 takes into account technological advancements in information and communication technologies. It mandates both access to ICT and protection from ICT-facilitated violations. This article goes beyond the common experience in the Philippines of harassment, vilification, and intimidation and misinformation and disinformation through the internet. It also addresses mass surveillance through ever improving ICT devices. Article 9 also views artificial intelligence, if not used in accordance with human rights principles, as a threat to HRDs.

The Declaration +25 document also includes non-State actors within the coverage of the Declaration.

- Convention on Enforced Disappearances (CED)

The International Convention for the Protection of All Persons from Enforced Disappearance (CED) was first ratified in 2007. The Republic of the Philippines was not and remains to be a non-signatory of the treaty. The Philippines' non-adherence to the convention is surprising given the number of desaparecidos in the country even dating back to the Martial Law era. In any event, the Philippines had passed the Anti-Enforced and Involuntary Disappearance Act of 2012 (RA 10353).

Article 1, in plain and unequivocal language, states that no person "shall be subjected to enforced disappearance." The second paragraph of Article 1 explicitly prohibits derogation from the prohibition against enforced disappearance no matter the circumstances, even in times of war. The convention further classifies widespread and systematic enforced disappearance as a crime against humanity (Article 5, CED).

- Esperanza Protocol

The Esperanza Protocol is a tool to develop public policy as regards HRDs. It provides guidance on how to investigate threats and prosecute them. It is not an international document, but a regional document in the Americas.

The Esperanza Protocol underscores the significance of threats and provides policy in addressing them even though no tangible harm has beset an HRD. It defines threats as "an intentional conduct that indicates a future harm or that intimidates an HRD, their family, or community."

- Aarhus Convention

The Aarhus Convention deserves mention even though the Philippines is not a party and those countries that ratified it have some relationship with the Economic Commission of Europe. The complete title of the convention is Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters. From this title, it can be deduced that this convention advances the interests of HRDs,

particularly those involved in environmental rights. It is thus a good reference for developing legislation on protecting HRDs.

The convention's objective states:

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention (Article 1, Aarhus Convention).

Towards this objective, the Parties have committed themselves to provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation (Article 3 (4), Aarhus Convention). The Parties also ensure that persons exercising their rights in conformity with the provisions of the convention are not penalized, persecuted or harassed in any way for their involvement (Article 3 (8), Aarhus Convention).

- Escazu Agreement

The Escazu Agreement applies mostly to American and Caribbean States. Its full name is the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. It was ratified on 04 March 2018.

It is a relevant reference material as its Article 9 refers to HRDs in environmental matters. It requires Parties to provide a safe and enabling environment for HRDs so that they are able to act free from threat, restriction, and insecurity (Article 9 (1) Escazu Agreement). What is crucial in this provision is that the States are not only made to guarantee a safe environment for HRDs, but it should also be enabling for them. Similarly, such an environment should also be free from insecurity.

The State Parties are also obliged to provide appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidation against HRDs (Article 9 (3) Escazu Agreement).



We Effect is a non-profit organization based in Sweden advancing gender-equality, cooperative principles, and the rights-based approach to development.

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In 1998, the UN General Assembly adopted the Declaration on Human Rights Defenders (Resolution 53/144), which recognizes individuals and groups who peacefully promote and protect human rights and fundamental freedoms. The Declaration mandates that States respect and protect human rights defenders without discrimination, safeguard them from arbitrary actions due to their legitimate activities, ensure remedies for violations, and conduct impartial investigations into alleged abuses. States are also urged to create an enabling environment for their work through legislative, administrative, and institutional measures, including public education and independent human rights bodies.

Currently, there are five pending bills in the Philippine legislature that aim to establish protections for Human Rights Defenders (HRDs): four in the House of Representatives and one in the Senate.

This paper seeks to initiate discussions, gather viewpoints, and develop strategies for drafting an effective HRD Protection Law.

