

Human Rights Defenders Protection Act of 2021

DRAFT FOR COMMENT

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The Problem: Repression of human rights defenders has reached alarming levels around the world. Thousands of attacks occur each year. They occur in many forms, including killings, judicial harassment, arbitrary detention, enforced disappearances, torture, sexual violence, smear campaigns, intimidation, and death threats. These attacks are having a chilling effect on civic space and are rarely investigated by governments. U.S. foreign policy should protect those who are on the frontlines promoting human rights, environmental protection, and racial justice.

Documentation by international organizations of these attacks include:

- Front Line Defenders documented 304 killings of human rights defenders in 2019. Of these, 40 percent were of people defending land, the environment, and indigenous rights.¹
- Global Witness documented 212 killings of environmental and land defenders in 2019. They found that “countless more have been silenced by violent attacks, arrests, death threats, or lawsuits.”²
- The Business and Human Rights Resource Center documented 572 attacks in 2019 against human rights defenders raising concerns about business-related human rights abuses. Almost half of these attacks involved judicial harassment of defenders.³

The U.S. government is not responding effectively: U.S. embassies have played an important role in protecting human rights defenders, especially when the defenders cannot look to their own governments for protection. But the State Department does not have a coordinated approach on this issue, and as a result, U.S. embassies have a mixed track record engaging in countries where urgent support is needed. In recent years, U.S. embassies have backed economic, political and military activities that cause significant harm to human rights defenders.

The Solution: The Human Rights Defenders Protection Act would create a more consistent, coordinated, and elevated U.S. government response to these attacks. The law would: (1) require the State Department to develop detailed, public-facing guidelines that establish clear, open and sustained lines of communication between U.S. embassies and human rights defenders; (2) strengthen coordination and information sharing on this issue within the State Department; and (3) encourage the systematic tracking of patterns of attacks as part of the annual Human Rights Reports.

¹ Frontline Defenders, *Global Analysis 2019*,

https://www.frontlinedefenders.org/sites/default/files/global_analysis_2019_web.pdf.

² Global Witness, “The climate leadership of land and environmental defenders is more vital than ever,” 18 Sept. 2020, <https://www.globalwitness.org/en/blog/climate-leadership-land-and-environmental-defenders-more-vital-ever>.

³ Business & Human Rights Resource Center, “Human Rights Defenders & Business – Annual Snapshot,” Jan. 2020, <https://www.business-humanrights.org/en/human-rights-defenders-business-annual-snapshot>.

SECTION 1. DEFINITIONS

- (a) In this Act, the term “human rights defender” means an individual, group, or organization that uses nonviolent action, in either a personal or professional capacity, to promote or protect human rights.⁴
- (b) In this Act, the term “environmental and land defender” means a human rights defender who—
- (1) Advocates for the protection of the environment, public health, Indigenous rights, or community land rights; or
 - (2) Investigates, exposes, or raises awareness of harm or corruption related to natural resource use.
- (c) In this Act, the term “reprisal” refers to—
- (1) Any action, communication, or threat made against a human rights defender that causes or has the intent to cause physical, legal, financial, psychological, or reputational harm.
 - (2) Denial of a human rights defender’s access to medical or other health-related services, water, food, or other resources.
 - (3) Employment-based retaliation against a human rights defender.

SEC. 2. HUMAN RIGHTS DEFENDER GUIDELINES

- (a) Within six months of the passage of this Act, the Secretary of State shall develop comprehensive and specific guidelines for the U.S. State Department to protect human rights defenders from reprisals.
- (b) The Secretary shall develop these guidelines in consultation with a broad range of civil society organizations in the United States and in countries that host U.S. diplomatic embassies and missions, including civil society organizations that do not receive U.S. government funding, that are based outside of capital cities, that are based in rural areas, that focus on a diversity of issues, and that promote the rights of marginalized groups.
- (c) The guidelines shall account for the variations in vulnerability that can occur with respect to human rights defenders working on environmental protection and land rights, gender, racial

⁴ The UN Declaration on Human Rights Defenders defines human rights defenders as individuals, groups, and associations “contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.” UN Declaration on Human Rights Defenders, General Assembly Res. A/RES/53/144 (1988), <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

justice, LGBTQ rights, labor rights, the rights of Indigenous and Afro-descendent peoples, and other issues as relevant.

(d) The guidelines shall affirm support for human rights defenders as a foreign policy priority of the U.S. government, and shall describe in detail:

- (1) U.S. embassy processes for establishing and maintaining clear, secure, and open lines of communication with human rights defenders;
- (2) Tools and strategies that the State Department will use to provide support and protection for human rights defenders who face reprisals and credible threats of reprisals, such as speaking out publicly and privately in defense of those facing reprisals, visiting the offices and communities of human rights defenders, improving protection mechanisms, visiting human rights defenders in jail to monitor conditions, or attending court hearings in the case of spurious charges;
- (3) Tools and strategies that the State Department will use to help prevent and mitigate threats against human rights defenders before violence occurs;
- (4) Tools and strategies that the State Department will use to encourage host governments to investigate and prosecute those responsible for the planning and implementation of reprisals against human rights defenders;
- (5) Tools and strategies that the State Department will use to strengthen the accountability of businesses when reprisals against human rights defenders are linked to their operations, supply chains, subsidiaries, subcontractors, or investments;

(e) Within six months of the passage of this Act, the Secretary shall publish and maintain a copy of the guidelines on the website of the State Department and the website of each U.S. embassy and diplomatic mission, translated into local languages.

SEC. 3. COORDINATION WITHIN STATE DEPARTMENT

(a) Within six months of the passage of this Act, the Secretary of State shall:

- (1) Designate an Ambassador at Large for Human Rights Defenders to coordinate with each of the six regional bureaus of the State Department and the Bureau of Democracy, Human Rights and Labor on the implementation of this Act;
- (2) Designate at least one staff member at each U.S. embassy and diplomatic mission as a human rights defender focal point, provide contact information for reaching the focal point on each embassy's website and through appropriate social media channels, and keep this designation up to date.

(b) Within six months of the passage of this Act, the Secretary shall develop and implement a coordinated procedure and protocols to:

- (1) Operationalize the guidelines described in Section 2;
- (2) Ensure that all U.S. embassy personnel are aware of the guidelines described in Section 2 and of emergency assistance resources available to human rights defenders in each country;
- (3) Identify and hold businesses accountable when reprisals against human rights defenders are linked to their operations, supply chains, subsidiaries, subcontractors, or investments;
- (4) Identify and respond to cases where U.S. security assistance or cooperation is being provided to foreign security forces that have participated in reprisals against human rights defenders, including through official and unofficial ties to paramilitary and organized crime groups;
- (5) Ensure that all relevant U.S. Government agencies share data collected on reprisals against human rights defenders on a regular and timely basis.

(c) In consultation with civil society organizations, the Secretary shall develop and provide training to State Department personnel as needed to implement this chapter.

(d) The Secretary shall present an annual report to the Senate Foreign Relations Committee and the House Foreign Affairs Committee on progress and lessons learned in implementing this Act.

SEC. 4. TRACKING AND REPORTING PATTERNS OF ABUSE

In conjunction with the annual human rights reports mandated by 22 U.S. 2151n, 2304 and 19 U.S.C. 2464, 2467, the Secretary shall instruct the State Department's Bureau of Democracy, Human Rights, and Labor to present a public report annually to Congress describing:

(a) For each country, evidence of reprisals and patterns of reprisals against human rights defenders, presented in a manner that differentiates between human rights defenders working on environmental and land issues, labor rights, racial justice, women's rights, the rights of Indigenous and Afro-descendent communities, LGBTQ, and other relevant categories of human rights defenders; and

(b) Any evidence by country that justice sector, security sector, or law enforcement personnel have:

- (1) Used excessive force against human rights defenders;
- (2) Participated in deliberate or premeditated human rights violations against human rights defenders, such as extrajudicial killings, enforced disappearances, and torture;
- (3) Participated in abusive legal processes against human rights defenders and other acts of criminalization, including the arrest or charge of such individuals on false charges;
- (4) Conducted illegal surveillance or carried out digital attacks or threats against a human rights defender;
- (5) Failed to investigate threats against human rights defenders by either the direct perpetrator of such threats or those that aid and abet such perpetrators; or
- (6) Failed to investigate credible allegations of corruption, including intimidation of witnesses, victims, public officials, or judges.

SEC. 5. SECURITY ASSISTANCE

Section 2304 of title 22 is amended to:

- (a) Strike “section” from subsection (d) and replace with “title”.
- (b) Strike “and” from subsection (d)(1) and insert “excessive use of force in a systematic manner, abuse of legal process against individuals who advocate for fundamental freedoms.”

[For reference, here is [22 U.S.C. 2304](#)]

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