
**QUESTIONNAIRE FOR STATES AND CIVIL SOCIETY TO ASSIST IN THE PREPARATION OF A REPORT ON
THE CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS THROUGH THE MISUSE OF CRIMINAL LAW**

The Inter-American Commission on Human Rights (IACHR) has paid special attention to the situation of human rights defenders in the region and has recognized the vital importance of their work in the universal implementation of human rights, the consolidation of democracy, and the rule of law.

As part of its ongoing monitoring efforts, the IACHR has received information in recent years through public hearings and visits, among other forums, and according to such information, criminal law is allegedly being used against human rights defenders in some countries in the hemisphere in retaliation for their work in defending and promoting human rights.

Regarding this issue, the Commission, in its *Second Report on the Situation of Human Rights Defenders in the Americas*, expressed its concern regarding the issue of criminalization, understood as opening groundless criminal investigations or judicial actions against human rights defenders which not only has a chilling effect on their work, but can also paralyze their efforts to defend human rights since their time, resources, and energy must be devoted to their own defense.

As noted by the Commission, criminalization of the defense of human rights is a complex phenomenon that may be perpetrated in different ways, by both state and individual actors. According to the information received by the IACHR, in some States both public officials and private individuals – including businesses or employees of private companies, for example– reportedly use criminal law to subject human rights defenders to legal proceedings in order to repress or discourage social protest or criticism of public officials. Often, these cases are said to be based on criminal charges devised in ways that run contrary to international law. Moreover, in some States, legal bodies reportedly issue precautionary measures in criminal cases, such as pretrial detention or bond, presumably in order to discourage and restrict the efforts of human rights defenders during critical junctures in the causes they are defending.

Additionally, based on the information received, in some States in the region, government officials have allegedly lodged groundless accusations in public against human rights defenders claiming they have committed crimes or are members of lawless groups, without any legal judgments having been issued to that effect. On occasion, this has reportedly led to unwarranted criminal cases being brought against human rights defenders and has endangered their lives and physical safety.

Given the seriousness of the situation, and in recognition of how important it is to raise this issue's profile, the IACHR's Rapporteurship on Human Rights Defenders has developed the following questionnaire in order to compile relevant information from States and civil society for the purpose of preparing a report on the criminalization of human rights defenders through the misuse of criminal law. The aim is to encourage the member states of the Organization of American States to fully implement international standards with regard to the lines of action to be pursued to surmount this obstacle.

The Inter-American Commission invites States and civil society to respond to the questionnaire and provide as much information as possible so that such data may be analyzed in the framework of the

preparation of the report. Responses to the questionnaire may be sent to the following address until October 16*, 2014 (**please indicate “Questionnaire on Criminalization” in the subject of the email**):

Inter-American Commission on Human Rights
Organization of American States
1889 F Street, NW
Washington DC 20006
cidhdefensores@oas.org

* The deadline to respond to our questionnaire was extended on September 17th.

QUESTIONNAIRE

A. Regarding the Issue of Criminalization

1. Has the misuse of criminal law as a means to criminalize human rights defenders for the work they do been identified as a problem in the State? If so, indicate:
 - a) In what ways do you think such criminalization is carried out?
 - b) In what contexts does it reportedly occur?
 - c) Who is involved?
 - d) What would be the main causes or factors prompting it?
2. Are you aware of any situations in which agents of the State have leveled groundless accusations of criminal activity against human rights defenders in order to discourage, obstruct, and/or limit their work? What crimes have human rights defenders allegedly been unjustly accused of committing and in what contexts has criminalization reportedly occurred? Where possible, provide examples.
3. Have there been situations in which private individuals have leveled groundless accusations of criminal activity against human rights defenders in order to discourage, obstruct, and/or limit their work? What crimes have human rights defenders allegedly been unjustly accused of committing and in what contexts has this reportedly occurred? Where possible, provide examples.
4. What effects (psychological, physical, family-related, social, and economic) do you believe criminalization has on human rights defenders? Where possible, provide examples.

B. With respect to the misuse of Criminal Law against Human Rights Defenders

5. Identify and list the types of criminal charges provided for under your laws that serve to protect, either expressly or implicitly, the honor or reputation of public servants, or public figures or private individuals who have voluntarily become involved in matters of public interest (for example: insult, contempt, libel, sedition, defamation, incitement, slander). Where applicable, indicate whether the criminal offenses that fall into this category have been used to prosecute human rights defenders for engaging in their work. Where applicable, indicate whether you are aware of any of these charges having been used to criminalize the freedom of expression of human rights defenders.
6. Identify and list the types of crimes provided for under your laws having to do with safeguarding “public order”, “peace,” or “national security” (for example: rebellion or blocking of roads, terrorism, sabotage, conspiracy, public disturbance, attacks against State security, sedition, insurrection, destabilization). Where applicable, indicate whether you are aware of any of these charges having been used to criminalize social protest by human rights defenders.

7. Identify and list, where applicable, any other types of criminal charges you are aware of that have been used to criminalize human rights defenders.
8. Are you aware of any requests for precautionary measures in criminal cases –such as pretrial detention or bond– whose aim is to discourage, obstruct, and/or limit the work of human rights defenders? Where possible, provide examples.
9. Are you aware of human rights defenders having been detained by state agents so as to restrict their personal liberty at crucial times in the causes they represent?
10. Identify and provide information regarding mechanisms available for investigating and punishing potential cases of abuse of power in which criminal law has been wrongfully used against human rights defenders.

C. Regarding the Response by the State with Respect to the Phenomenon of Criminalization

11. What has the State's response been when human rights defenders report having been criminalized through the opening of groundless criminal investigations or judicial actions against them for purposes of hindering their work? Specifically,
 - a) What authority could they appeal to?
 - b) What procedure would be followed?
 - c) What type of punishment could be imposed against state agents or individuals who wrongfully use criminal law to prevent the work of human rights defenders?
 - d) Provide the corresponding legal instruments or basis.
 - e) Where applicable, provide examples of punishments imposed.
12. Do administrative or other types of sanctions exist for public officials who use their offices to issue statements that stigmatize or hinder the work done by human rights defenders, or that increase the level of risk to which such individuals may be exposed by virtue of the work they do, for example, situations in which even though no legal judgments may have been issued against human rights defenders, they have nonetheless been publicly accused of having committed crimes? If so, provide the legal provisions that govern such sanctions.
13. Provide examples of rulings issued by the State's courts that have identified criminal statutes that have been used to limit efforts to defend and promote human rights. For example:
 - a) Finding criminal charges that punish an activity in defense of human rights to be unconstitutional or a violation of the Convention;
 - b) Finding criminal charges to be unconstitutional or a violation of the Convention that, because they are vague or ambiguous, may be used to punish activities to defend human rights.
 - c) Dismissing criminal cases due to lack of grounds that were originally brought for purposes of limiting the human rights defense work being done by the human rights defender being prosecuted or criminally investigated.

D. Regarding Best Practices to Avoid Criminalization

14. Indicate good practices and/or public policies that have been implemented in the State to prevent the criminalization of human rights defenders through the misuse of criminal law. Where applicable, provide examples of individuals who have benefitted from a state measure to prevent the State's punitive power from being used by authorities and third parties for purposes of criminalizing human rights defenders.
15. What measures do you believe should be implemented in order to eliminate the criminalization of human rights defenders?
16. Include any other relevant information in connection with the criminalization of human rights defenders.