

# Redefining the Risk Approach

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*The risk approach has become an integral tool for addressing the protection of women and men human rights defenders (W/HRDs\*) around the world.* It is repeatedly used and considered by W/HRDs, the United Nations General Assembly, UN Special Rapporteurs, the Inter-American Commission and the Inter-American Court of Human Rights, regional human rights organizations, as well as constitutional courts in various countries. It has been included in numerous manuals, applied by public policies for the protection of W/HRDs in several countries, and is being used by a growing number of practitioners and consultancies. Its adoption has been rapid, partly linked to the fact that the risk approach has been permeating many facets of the society for decades, and partly due to the fact that *it offers simple and easily applicable tools for conducting a situated analysis for W/HRDs under threat, offering a pathway towards effective decision-making.* However, its simplicity, applicability, and indiscriminate use have also shown shortcomings and limitations that need to be addressed.

After 15 years of implementing the risk approach for the protection of human rights defenders,<sup>1</sup> seasoned experts working with W/HRDs from around the world came together to develop a concrete list of recommendations for how governments should frame their protection work. *The Risk Approach Recommendations listed below are meant to set minimum standards for how a risk analysis should be conceptualized, how it should be approached, and how it can be translated into a suitable protection plan.* As a diverse community of protection actors, *we saw a need for standards concerning how these analyses should be conceived and applied—as well as what should be avoided—so that they are empowering, situated, intersectional, and, ultimately, W/HRD-centric.* These Recommendations are meant to act as a reference framework for defenders, governments, agencies and human rights practitioners, and this tool is intended to provide a foundation for streamlining actions that can better ensure the protection of W/HRDs and their diversity in a variety of situations and conditions. Each of the recommendations listed has been drafted for simplicity, while also maintaining the necessary technical language for specificity. This list is not meant to be exhaustive, but rather we expect it will expand and evolve over time. Certain explicative phrasing has been drafted intentionally in order to ensure the highest degree of accuracy when translating this document into different languages.

The Recommendations draw upon fundamental, well-established human rights standards and principles. In essence, *this document works to express the importance of ensuring that steps taken to safeguard W/HRDs' right to life do not disproportionately, unnecessarily, or unlawfully infringe upon the many other rights that all persons are entitled to enjoy*—such as the freedom of expression, the right to assembly, that no one should be subjected to arbitrary interference with their privacy, family, home or correspondence, nor to attacks upon their honour and reputation, etc. Protection measures should empower defenders, not silence them. *The entire process should inform the defenders so that they are able to make the best possible choices for themselves.* All interventions should operate in alignment with the Do No Harm principles, avoiding that W/HRDs are exposed to additional risks through any action implemented to protect them.

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<sup>1</sup> Protection International's researchers first launched the risk approach for protection in 2005.

## Key terms and overarching frameworks:

Human rights defender	A term used to describe people who, individually or with others, act to promote or protect human rights. ( <a href="#">United Nations</a> ) *W/HRDs stands for women and men human rights defenders; the term W/HRDs is intended to encompass many different identities and therefore inclusive of LGBTI+ (Lesbian, Gay, Bisexual, Trans and Intersex); this term may refer to an individual defender, a group of defenders, an organization, or a community.
Differential approach	The act of making visible the different forms of discrimination affecting different people (and responding accordingly). The differential approach sets the scene, and a gendered and intersectional approach operationalizes it.
Intersectional approach	The understanding that a human rights defender's situations and conditions within society are uniquely and simultaneously shaped by multiple factors. These factors include sex, sexual orientation, gender identity, ethnic identities, caste, social constructions of race or gender roles, place of origin, political ideologies, religious beliefs, disability conditions, economic or social status, marital status, work condition/status, migration status, poverty, and age or illness, among others. Regardless of any combination of these factors, all persons have a right to non-discrimination and States have an actionable obligation to not discriminate. As described by the scholar who coined the term, <a href="#">Kimberlé Crenshaw</a> , intersectionality is the "lens through which you can see where power comes and collides, where it interlocks and intersects."
Psychosocial approach	The integration of different dimensions that affect a human rights defender's mental health, including emotional, physical, mental, spiritual, and economic wellbeing. ( <a href="#">Müller and Correa, University of York</a> )
Gendered approach	The understanding that socially constructed identities based on gender require that risk analyses and protection programmes for human rights defenders are designed, implemented and monitored in consideration of the different experiences and cultural contexts of men, women, and non-conforming persons. Applying this approach means addressing women's or LGBTI+ persons' specific needs in accordance with the different phases of their lives, from childhood to old age. ( <a href="#">Social Protection &amp; Human Rights</a> )

## What is the risk approach?

As explained in the [New Protection Manual](#), human rights defenders' work could negatively impact the interests of powerful actors or aggressors, and this can in turn put defenders at risk. *It is therefore important to stress that risk is an inherent part of defenders' lives in certain countries.* Aggressors are considered to be those that have the will, the means and, in some cases, the impunity to put threats into action. *The risk approach is a comprehensive and contextualised way to work towards the protection of W/HRDs, by focusing on the reduction of threats and conditions of vulnerability, while also increasing capacities of the W/HRDs.* Risk is present when there is a reasonable possibility<sup>2</sup> of a threat to the right to life.

It is important to note that in order for these recommendations to be most effective, States must first provide adequate legal and administrative frameworks that work to prohibit and prevent violence against defenders, as well as provide effective redress for when acts of violence occur.

<sup>2</sup> Please note that "reasonable possibility of" establishes a lower legal threshold than the "likelihood of" a threat to life, which has been extrapolated from refugee case law.

## What is a risk analysis?

Those who defend human rights in hostile environments are often attacked for their work. A risk analysis is a process by which one tries to establish:

- Who are the (potential) aggressors?
- What conditions of vulnerability affect the W/HRDs in confrontation with these possible attacks?
- What possible attacks could happen?
- What impact would these attacks have on W/HRDs?

## What is a protection plan?

*A protection plan must have the ultimate objective of making it possible for W/HRDs to continue exercising their right to defend human rights, without fear of aggression or reprisals.* Therefore, the protection plan must work to mitigate the risk detected in the analysis. If, in some cases, the analysis establishes that it is not possible to mitigate risk because the risk is too high given the existing situation, the evacuation of the W/HRD may be organized--even though this situation does in fact imply a violation of the right to defend human rights.

Like any plan, a protection plan has an objective (the one indicated above), expected results, a series of activities and protection measures, and a series of follow-up, monitoring and evaluation activities.

## How were these Recommendations agreed upon?

Over 65 human rights defenders and experts (from human rights organizations, UN agencies, regional organizations, donors, state protection mechanisms and academia, with representation from the Americas, Europe, the Middle East and North Africa, Sub-Saharan Africa, and Southeast Asia) modified an initial text proposed by Protection International,<sup>3</sup> voting on the preferred changes and ultimately coming to a consensus after reviewing several hundred comments. After two full rounds of analysis and several virtual conferences,<sup>4</sup> a very high level of consensus was achieved. The end result is this list of recommendations.

## Who are these Recommendations for?

- **Government officials**, particularly those in charge of public policy or protection mechanisms, providing them guidance on the bare minimum standards for W/HRD-centric risk analyses and protection plans
- **Human rights defenders and human rights organizations** in general, offering them a concrete reference for what they should expect from the State
- **Human rights practitioners**, who can advocate for improved legislation and national standards for public policies that are W/HRD-centric
- **International organizations and consultants** that work within the human rights defender protection field so that they can apply, when applicable, best practices that are W/HRD-centric

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<sup>3</sup> The initial document was drafted by Enrique Eguren, a Senior Adviser for Protection International, who was originally involved in launching the risk approach for the protection of W/HRDs in 2005.

<sup>4</sup> Organized and facilitated by Protection International, led by Meredith Veit and Enrique Eguren.

# Risk Approach Recommendations

## PART I: Cross-Cutting Recommendations

Recommendation 1: The State, and not the W/HRDs, has the obligation to and bears the principal burden of reducing the risk that W/HRDs may face.

Recommendation 2: A risk analysis and protection plan are most effective when elaborated with the active participation of, and ultimately accepted by, the W/HRDs concerned.

Recommendation 3: W/HRDs have the right to a safe, transparent, and clearly understandable risk analysis and protection planning process, even for non-experts. The informed consent of the W/HRDs should be obtained prior to initiating the process and any resultant information must be confidentially kept and safely stored for a limited time. W/HRDs have the right to know what information is being collected about them as well as the ability to reasonably opt-out of procedural elements they are uncomfortable with, without this action invalidating the process.

Recommendation 4: A risk analysis and protection plan should be carried out with a non-discriminatory (or differential), gendered, intersectional, and psychosocial approach. They should be culturally acceptable and accessible, and they should be adjustable to the actual conditions W/HRDs face in a variety of situations. They should recognize the diversity of W/HRDs and the multiple ways in which a person's sex, gender identity and sexual orientation, ethnic identities, socially constructed race or gender roles, caste, skin colour, language, place of origin, political ideologies, religious beliefs, disability conditions, economic & social status, marital status, work condition/status, migration status, poverty, age or illness, among other conditions, intersect with each other and influence the risk of W/HRDs.

Recommendation 5: A risk analysis and protection plan should adopt a comprehensive approach, taking into account other possible sources of aggression that may impact the W/HRDs' ability to carry out their work, despite the fact that they may not be directly related to the work of the W/HRDs. Additional risk may be present due to the context in which the W/HRDs are immersed, and may include: any kind of sexual or gender-based violence, such as domestic violence; human trafficking and migrant smuggling; forced and bonded labour; violence in jails or any kind of detention centre; armed conflict; religious fundamentalism; and being a target of organized and common crime, among others, which often result in a continuum of aggressions.

Recommendation 6: Planning, developing, and implementing a risk analysis and protection plan for W/HRDs is the responsibility of the State; therefore, public policies must be clearly established and the appropriate resources, both in budget and personnel, must be availed for their proper execution. W/HRDs or third parties should not have to contribute with any cash or in-kind contributions.

## PART II: Risk Analysis Recommendations

Recommendation 7: A risk analysis should identify the actual or possible aggressors because they are the main source of threat.

Recommendation 8: A risk analysis should recognize that there may be risk without the occurrence of recent threats or other explicit signs. The aggressors' willingness and ability to act may not be apparent because not all aggressors make threats before acting against a W/HRD. A risk analysis encompasses

factual and contextual information and constitutes a forward-looking assessment about possible future harm.

Recommendation 9: A risk analysis should cover individual, organizational, and collective dimensions, as needed. For individual cases, the analysis should be extended to family members, close associates, and people directly linked to the work of the W/HRD, when those people can share the risk or be subjected to retaliation due to the W/HRDs' work. For cases concerning an organization or a community, the analysis should extend to the organizational and collective level when they might also share the risk.

Recommendation 10: A risk analysis should include, in addition to attacks on life and physical integrity, aggressions of all kinds as well as how those aggressions accumulate according to the W/HRDs' situation. This includes, but is not limited to, possible attacks on property or information held by W/HRDs, verbal or psychological aggressions, damage to one's emotional integrity or well-being, digital attacks, the potential for misuse of the justice system, or damage to reputation and image (such as defamation, smear campaigns or stigmatization) against W/HRDs.

Recommendation 11: A risk analysis must be context-driven, putting the W/HRDs and their communities at the centre. Clear and adequate criteria concerning how to analyse risks in a variety of different situations should be applied. A risk analysis should be updated and evaluated periodically, following sensible deadlines, and when there is reason to believe that the risk has changed.

Recommendation 12: A risk analysis should be qualitative and deliberative in character because there is no proven socio-scientific basis for mathematically quantifying the risk that W/HRDs may face. Instead, a risk analysis must set well-founded and sustained assertions that delineate possible scenarios, which can then be debated to reach a final agreement.

Recommendation 13: All necessary measures should be taken to guarantee that W/HRDs can meaningfully and effectively participate in their risk analysis process. This includes overcoming barriers that may be due to intersecting conditions listed in Recommendations 4 and 5. W/HRDs may be accompanied by third parties upon the explicit request of the W/HRDs. The risk analysis is preferably carried out within the environment where the W/HRDs carry out their human rights work (if the W/HRD agrees, if it is reasonably feasible, and if it is safe for all parties).

Recommendation 14: A risk analysis should not be considered an investigation, but rather it is an evaluation in which the testimony and experiences of the W/HRDs affected are pivotal. The presumption of the W/HRDs' good faith, the veracity of their claims, and Do No Harm principles should always be applied. A risk analysis conducted by State actors should not be used against W/HRDs to incriminate them.

Recommendation 15: Conducting a risk analysis and estimating the risk level are two connected but differentiated steps in the overall assessment. Estimating the risk level cannot be carried out without a prior risk analysis. Both are important for assessing the risk that W/HRDs may face.

Recommendation 16: A risk analysis should be carried out by people with specific training in risk analyses for W/HRDs and follow existing best practices, including the application of a human rights, gendered, and psychosocial-informed approach in order to avoid revictimization. W/HRDs should be able to contest their risk analysis results and request an alternative analysis by a trusted entity.

Recommendation 17: A risk analysis should serve as the foundation for creating an adequate protection plan.

### **PART III: Protection Plan Recommendations**

Recommendation 18: The ultimate aim of the protection plan is to ensure W/HRDs can carry out their human rights activities in the best conditions possible by preventing further aggressions, tackling the root causes of risks, and combating impunity. One of the key objectives must be to reduce the threats against W/HRDs—that is, to reduce the intent and ability of the potential aggressors to act. Any proposed security-based limitation to the activities of the W/HRDs should be well-motivated, necessary, legal, proportional to the level of risk, and kept for as short a period of time as possible. W/HRDs are expected to collaborate as much as possible with the stipulations of the protection plan.

Recommendation 19: A protection plan should have clear, expected results for the different prioritised risk situations. The plan should be informed by the particularities of the W/HRDs' conditions of vulnerability and by the estimation of the risk level. A protection plan should be updated and evaluated periodically, following established deadlines, and when there is reason to believe that the risk has changed. The protection plan should be in place until the risk has been significantly reduced, to the point where the State is no longer legally obliged to intervene.

Recommendation 20: A protection plan should be comprehensive and adapted to the work of W/HRDs. It should prevent and address different sources of aggressions and their consequences, including, but not limited to, physical and psychological aggressions, actions against property or information, actions against their image and reputation, actions against digital privacy and security, or the misuse of the justice system. It also should consider any additional risk posed by the context in which the W/HRDs are immersed (including, but not limited to, those listed in Recommendation 5). If the entity in charge of the protection plan is not able to attend to any of these situations, the entity should coordinate the referral of the W/HRDs to other existing entities that are able to better assist, as well as provide the necessary follow-up.

Recommendation 21: Since the State is the principle duty-bearer for implementing the protection plan, State bodies must take the necessary measures—including establishing public policies, regulatory reforms, coordination mechanisms, etc.—so that all national and local public entities, within the framework of their competences, systematically mobilise to effectively contribute to the implementation of the protection plan.

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