

Defending Human Rights Defenders

A Short Guide



by the International Service for Human Rights



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Is there a right to defend human rights?

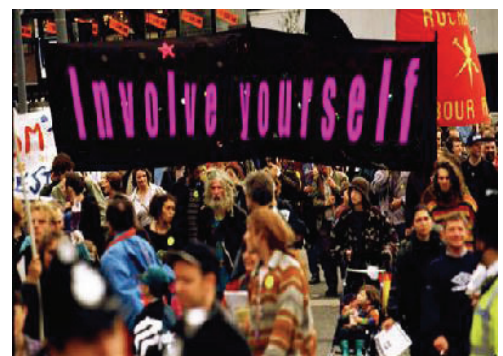
Although many human rights defenders are often the target of violations and abuses because of their activism, the right to defend human rights exists and is protected internationally.

After years of debate and long negotiations, in 1998 the UN General Assembly adopted 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*”, commonly known as “*Declaration on Human Rights Defenders*”.

The main purpose of the Declaration is to protect human rights defenders and their activities. It clarifies defenders’ rights as well as States’ obligations to protect these rights. The Declaration legitimises human rights activism and recognises that individuals and groups are entitled to carry out human rights work without fear of reprisals.

The aim of this leaflet is to examine the rights contained in the Declaration and:

- To learn how rights contained in internationally binding human rights instruments apply to defenders;
- To illustrate through cases how human rights defenders are targeted and how their rights are violated;
- To inform defenders about the mechanisms currently available to protect their rights.



PART ONE: THE UN DECLARATION ON HRD

Why a Declaration on Human Rights Defenders?

The Declaration on Human Rights Defenders was adopted by the UN General Assembly in 1998. The need for an instrument to protect **human rights defenders** arose from the recognition that defenders often become the **target of violations** and abuses because of the nature of the activities they carry out and the issues they raise.

The Declaration recognises that **defending human rights is a right in itself**. It clarifies **how human rights apply to defenders**. Even though it is not a binding instrument, the legal strength and authority of the Declaration is twofold: first, it is based on rights that are already protected in other legally binding instruments; second, it has been adopted by all UN member States in the General Assembly. Its added value with regard to other human rights treaties is that the Declaration articulates existing rights and elaborates on their content and scope with specific regard to human rights defenders. The abuses to which defenders are subjected to include killings, death threats, torture, arbitrary arrest, criminal prosecution, harassment, defamation and

other various forms of attacks, often coupled with impunity for the perpetrators of these acts.

The high 'risk' factor:

As activists, **women human rights defenders** face the same gamut of risks faced by all human rights defenders, when they challenge repressive state machinery, for example, or when they raise demands for freedom of opinion and expression from authoritarian states. However as women they are also exposed to or targeted for gender-based violence and gender-specific risks. Women throughout the world who work for the protection and promotion not only of women's rights, but also of human rights in general, are placed at risk by social norms and assumptions about women's primary role as being located within the private/domestic sphere. The isolation and silencing of women imposed by patriarchal structures plays a critical role in making women more at risk to abuse and violations. The manipulative use of culture, tradition, custom and religion by conservative and right-wing forces to justify human rights abuses of women makes the task of women human rights defenders working for the protection and promotion of women's rights in these arenas most complex and difficult. Promoting and protecting rights located within these arenas can lead to additional risks for women activists, since the assertion of such rights is seen as disruptive of cultural values and traditions.

(from Political Perspective Paper, Women Human Rights Defenders Campaign)

DID YOU KNOW?

According to the World Organisation Against Torture, in 2004 1154 human rights defenders and more than 200 organisations (including NGOs, trade unions and local civil society organisations) in more than 90 countries were targets of repression!

http://www.omct.org/pdf/observatory/2005/report/suimary_obs_annual_report_2004_eng.pdf

SOME EXAMPLES OF CASES TAKEN UP BY THE UN SPECIAL REPRESENTATIVE ON HUMAN RIGHTS DEFENDERS

In 2001 Ms. **Eren Keskin**, Turkish prominent lawyer, leading member of the Human Rights Association (IHD) and founder of the Legal Aid Project for women who have been raped or sexually abused in custody, has been receiving threatening telephone calls, including death and rape threats, after investigating into the disappearance of two members of a Kurdish political party.

In October 2000 five armed men entered the office of **Asociación Mujer Vamos Adelante** (AMVA), in Guatemala City, an organization working for the promotion of women's rights and violence against women. 15 women were forced into a room and locked in it, and the attackers subsequently raped a young woman before leaving.

(Report of the SRSG on HRD to CHR 2002, E/CN.4/2002/106, para. 365 and 173, available at <http://www.ohchr.org/english/issues/defenders/annual.htm>).

Who is a Human Rights Defender?

The Declaration provides a very broad scope of who may be considered as a human rights defender. Article 1 refers to **anyone who, individually or in association with others, promotes and strives for the protection and realization of human rights** and fundamental freedoms (Article 1).

Thus, “human rights defender” is not a formal qualification that may be granted or acquired, nor does it require possession of special prerequisites. The key element of the definition given by the Declaration is the **activity** of promoting and protecting human rights. Accordingly, any person can be protected by the Declaration, regardless of his or her personal status, if he or she suffers reprisals for a human rights activity.

Hence, a human rights defender can be a single individual acting independently or as member of an association as well as of groups only occasionally gathered together such as during a public

protest. A defender can be a person working full-time in a human rights context in a professional capacity, or a volunteer dedicating just part of his or her time to the human rights cause. Since the key element is the human rights character of the activity undertaken, on some occasions a person not working in a human rights-related field can also be protected under the Declaration. So, for example, the Special Representative of the Secretary-General on Human Rights Defenders (SRSG on HRD) has taken up the case of a journalist –whose work cannot be defined as having a human rights character– who suffered reprisals for reporting on human rights abuses (*see box on the next page*). Another example is that of a policeman who denounces abuses by his or her fellow colleagues and suffers reprisals because of it.

The human rights character of the activity undertaken is not, however, sufficient. The Declaration also provides for two **conditions** to be complied with in order to be defined as human rights defender: acceptance of the principle of universality of human rights and the peaceful character of the activity undertaken (*see box on the left*).



Clashes between students and the military in Tiananmen Square (China) in 1989

COMMITMENTS REQUESTED OF HUMAN RIGHTS DEFENDERS

According to the Declaration, a human rights defender, to be considered as such, must accept and respect two principles:

UNIVERSALITY and NON-VIOLENCE

What is Universality?

Respecting the principle of universality means accepting that all human beings have the same rights without distinction of any kind, such as race, ethnic origin, gender or sexuality. A person cannot be defined as human rights defender if, while working to defend the rights of a group or individual, he or she denies that other groups or individuals are entitled to the same rights.

What is non-violence?

The principle of non-violence requires that any actions taken by human rights defenders must be peaceful. Violence cannot be used to protect or promote human rights under any circumstances.

In brief:

Anyone, from any profession and background, acting independently or as part of an organisation, can be protected under the Declaration if (s)he is *acting for the promotion and protection of human rights with peaceful means and accepts the principle of universality of human rights.*

SOME FURTHER EXAMPLES OF DEFENDERS

The following are some further examples of persons acting outside any professional human rights context who can nevertheless be protected under the Declaration if suffering reprisals resulting from their defence of human rights:

- A *student* who organises a protest to stop human rights violations;
- A person in a rural community who coordinates a demonstration against environmental degradation of their farmland by factory waste;
- A *politician* who takes a stand against endemic corruption within a government, for his or her action to promote good governance;
- A *witness* in court cases to prosecute the perpetrators of human rights abuses, for his or her action in bringing perpetrators to justice and redress human rights violations.

The term '**women human rights defenders**' encompasses both women active in human rights defence who are targeted for who they are as well as all those active in the defence of women's rights who are targeted for what they do.

(Political Perspective Paper, Women Human Rights Defenders Campaign)

SOME EXAMPLES OF CASES TAKEN UP BY THE UN SPECIAL REPRESENTATIVE ON HRD

In April 2004, **Mrs. Sumi Khan**, a journalist and Chittagong correspondent of the magazine *Weekly 2000*, was stabbed and critically wounded in the Nandan Karon area in Chittagong (Bangladesh). Three men in an auto-rickshaw attempted to drag her into their vehicle, but she resisted and they stabbed her several times. The assailants threatened that she would be killed if she did not stop writing. Three policemen stood by while the attack was taking place, yet they did not intervene. Sumi Khan had written a number of investigative articles about human rights violations suffered by the Hindus and the involvement of local politicians and religious groups in attacks on members of this community, kidnapping and land grabbing by some landlords. Sumi Khan is being targeted for her work as a journalist, in particular for her articles raising human rights concerns.

Report of the SRSG on HRD to CHR 2005 (E/CN.4/2005/101/Add.1), para 52, available at <http://www.ohchr.org/english/issues/defenders/annual.htm>

In February 2004, in Aceh Central District, in Indonesia, **Iwan Irama Putra, Harlina, Nursida, Nova Rahayu** and **Syafruddin**, were beaten and arrested on the same day in different locations. Three of them have disappeared since their arrest. They were all students aged between 22 and 23 and member of the Network of Linge Students (IMPEL), whose work has included providing assistance to internally displaced people, or of the Acehese Democratic Women's Organization (ORPAD), which carries out activities for women's education and empowerment, or of the educational and human rights organization Student Solidarity for the People (SMUR).

Report of the SRSG on HRD to CHR 2005 (E/CN.4/2005/101/Add.1), para 310, available at <http://www.ohchr.org/english/issues/defenders/annual.htm>

The Right to Freedom of Expression

Article 6(b-c): Everyone has the right, individually and in association with others [...] freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms [and] to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

The Declaration exemplifies and protects different ways in which the right of freedom of expression may be exercised by defenders, including publication of information –for example in the form of articles, reports, books, flyers, and so on. Explicit reference is made to human rights-related communication, which is the obvious focus of human rights defenders' freedom of expression. This includes discussing and disseminating information concerning respect by the government of and compliance with its human rights obligations as well as generating public debate on human rights issues. The provision supports and legitimises one of the core functions of human rights defenders: raising awareness and influencing public opinion. A function that is the main reason why many States tend to restrict defenders' ability to operate.

CURRENT CHALLENGES: SECURITY LEGISLATION

The right to freedom of expression has suffered the most severe and adverse impact of restrictions imposed by national security or anti-terrorism laws despite protection under international and regional human rights instruments and national constitutions.

States have claimed that reports of alleged human rights abuses by members of a governing political party, or statements critical of the human rights impact of government security policies are a threat to national security.

Charges brought against defenders have included 'defamation of authorities', 'insulting the security forces', and 'tarnishing the image or reputation of the state', all of which have been portrayed as damaging national security and provide for severe penalties, including fines, arrest and detention.

A protest in Zimbabwe against restrictions to freedom of expression



DID YOU KNOW?

To conform to international standards, national legislation should deal with libel and defamation cases under civil *–not criminal–* law.

(Report of the UN Special Rapporteur on Freedom of Expression to CHR 2005, E/CN.4/2005/64, para. 69)

AN EXAMPLE OF DOCUMENTED VIOLATION OF DEFENDERS' RIGHT TO FREEDOM OF EXPRESSION

In 1994 **Lindsey Collen**, a writer and trade union and women's movement activist in Mauritius, suffered intimidation and harassment by religious groups as well as politicians following publication of her novel, *The Rape of Sita*, interpreted as an attack on the Hindu goddess Sita. Sita is a common name in Mauritius and the novel intended to show that women who are raped do not necessarily lose their "virtue." It was denounced and banned by the Prime Minister, who called for Collen's prosecution.

<http://www.hrw.org/reports/1995/WR95/HRWGEN-07.htm>

The Right to Criticise

Article 8: Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs. This includes, inter alia, the right, individually and in association with others, *to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals* for improving their functioning and to draw attention to any critical aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

Recognising the right to participate in the conduct of public affairs, the Declaration clarifies that this includes the right to speak out and criticise governments. Criticism is thus recognised as a legitimate tool that can be used by defenders. This right also includes presenting proposals and ideas with regard to any aspect of public authorities' activities that may hinder the full realisation of human rights. The right to raise criticism can also be construed as protected by the right to freedom of expression, which -within the permitted limitations- allows for the expression of any idea or opinion, regardless of whether or not it is in line with the government's view. In this case, the Declaration elaborates on the traditional definition of an existing right according to the special needs and situations that characterise human rights defenders.

With regard to the right to participate in the government and in the conduct of public affairs, this provision complements the affirmation that the State has the primary responsibility for the protection and promotion of human rights, contained in Article 2 of the Declaration. Ideally, the State and human rights defenders should work together to this end.

- Not all governments are willing to listen to criticisms of their policies or actions and many of them take retaliatory measures against any criticisms.
- Many governments label the information or criticisms as 'anti-government', as being against national interest or subversive.
- Next time your government reacts negatively to the criticism of its policies or actions remind them that they recognised your right to criticise governments when negotiating the UN Declaration.

A US civil liberties protest



SOME EXAMPLES OF DOCUMENTED VIOLATIONS OF THE RIGHT TO CRITICISE

In 1992 **Maria Elena Cruz Varela**, a prize-winning Cuban poet, was sentenced to two years of imprisonment for her criticism of the government's failure to tolerate democratic discussion. Prior to her arrest, she was visited in her apartment by a "neighborhood committee", who harassed and beat her in front of her children.

http://www.liberal-international.org/editorial.asp?ia_id=704

In January 2002, **Filiz Kalayci**, a Turkish lawyer, made statements in a national newspaper, *Cumhuriyet*, advocating the reform of the prison system. A few days later, the Ankara Public Prosecutor's Office commenced an investigation into her statements and indicted her on charges of insulting the Ministry of Justice and professional misconduct, despite amendments to the penal code legalizing statements critical of State institutions where there is no intention to insult.

Report of the SRSG on HRD to CHR 2004 (E/CN.4/2004/94/Add.3), available at <http://www.ohchr.org/english/issues/defenders/annual.htm>

The Right to Protest and to Freedom of Peaceful Assembly

Article 5(a): For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.

Article 12(1): Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

The Declaration reaffirms that defenders have the right to participate in peaceful activities to protest against violations, for example by organising public demonstrations.

Those taking part in such activities are entitled to protection against any action by the State that may harm them. In this regard, the State has an obligation to ensure protection against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of the legitimate exercise of this right, as well as of any other right protected by the Declaration. This explicitly includes effective protection under national law when reacting against or opposing the State's acts or activities that result in human rights violations (Article 12(2) and (3)).

National legislation establishing burdensome procedures and requirements that in fact impair the right to protest and freedom of assembly do not conform to international standards. The same can be said of actions by the State that disrupt peaceful meetings or prevent defenders from peacefully protesting against human rights violations.

Finally, since the right to protest and freedom of assembly is an individual right, which can be exercised "individually and in association with others", according to international law an NGO does not necessarily need to be registered in order to organise or take part in a demonstration.



Women Protesting in Morocco



Police using tear gas to break up a protest

SOME EXAMPLES OF CASES TAKEN UP BY THE UN SPECIAL REPRESENTATIVE ON HRD

In 2004 52 women, members of **Women of Zimbabwe Arise** (Woza), were arrested near Harare during a protest march against new legislation banning foreign human rights groups and local advocacy groups from campaigning on "issues of governance", and allowing restrictions to human rights organizations work.

In 2003, the non-governmental organization **Mothers against the Death Penalty and Torture** organized a conference on the death penalty in Tashkent. The conference, however, was prevented from taking place at the authorities' initiative on the ground that it had been organized by an unregistered association.

In 2001 Ms. **Nimet Tanrikulu**, a member of *Insan Haklari Derneği* (IHD), the Turkish Human Rights Association, was arrested and charged with breaching the Law on Demonstrations. She was arrested when taking part to a ceremony to lay a wreath in front of the Democratic Left Party headquarters in Istanbul to protest against recent prison raids.

Report of the SRSG on HRD to CHR 2005 (E/CN.4/2005/101/Add.1), para 622 and 585, and 2002 (E/CN.4/2002/106), para 364, available at <http://www.ohchr.org/english/issues/defenders/annual.htm>

The Right to Access Information

Article 6: Everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

Article 14(2): [The State has the responsibility to take measures for] the publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments [and for ensuring] full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official report of these bodies.

Easy access to information is an indispensable factor for human rights defenders to carry out their monitoring and advocacy role. This includes being able to collect data on human rights violations, to publish reports and to obtain information by the government on specific human rights issues as well as more generally on how the State is implementing its human rights obligations at the domestic level.

Often, however, legislation on internal security has been used to deny the right to access information to defenders and to prosecute their efforts to seek and disseminate information on the respect of human rights standards. With insufficient information, defenders' capacity to analyse and draw conclusions on particular human rights situations is severely limited.

The Declaration strengthens the role of defenders as the watchdog of the domestic implementation of human rights by ensuring that they also have access to the reports that States submit to international human rights monitoring bodies. Defenders should be able to verify the information submitted by their government to international monitoring bodies and to submit alternative information and reports. The Declaration recognises that defenders can use the reports issued by such bodies as advocacy tool at the domestic level .

EXAMPLE OF A DOCUMENTED CASE RELATING TO THE RIGHT TO ACCESS INFORMATION

After the fatal shooting of the Brazilian **Jean Charles de Menezes**, mistaken for a suicide bomber, in London in July 2005, letters published in September 2005 revealed that the Metropolitan Police Chief in London had suppressed information that should have been passed to the Independent Police Commission (IPCC). The police claimed the investigation must first be examined under counter-terrorism grounds.

<http://newvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/uk/4297532.stm>

JURISPRUDENCE FAVOURING ACCESS TO INFORMATION FOR HUMAN RIGHTS PURPOSES

A judge in New York has ruled that pictures of Iraqi inmates abused by US troops should be released. The judge decided after a request by the American Civil Liberties Union for access to 87 unseen images. District **Judge Alvin Hellerstein** rejected government arguments that this could fuel anti-US feelings. In his 50-page ruling, the judge explained: "My task is not to defer to our worst fears, but to interpret and apply the law, in this case, the Freedom of Information Act, which advances values important to our society, transparency and accountability in government. "Our struggle to prevail must be without sacrificing the transparency and accountability of government and military officials," he added.

http://news.bbc.co.uk/1/hi/world/middle_east/4295324.stm

A protest in Canada against a deportation order issued under anti-terrorism legislation



The Right to Access Funding

Article 13: Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

The inclusion of this right in the Declaration was very controversial during the negotiations. Some States strongly opposed its inclusion, for the very reason that impeding NGOs from accessing funding may easily lead to the paralysis of their functioning. Further, States claimed that allowing NGOs to receive funding from abroad would open room for foreign interference within the domestic sphere. However, where domestic sources are lacking, foreign funding is the only source many NGOs can access. Traditionally, access to financial resources has been construed as implied in the right to freedom of association. Article 13 of the Declaration is thus of utmost importance because, for the first time, this right is set forth as a **self-standing right**, and not as part of the right to freedom of association.

This provision does not mean, however, that States are obliged to provide funds to organisations. States have to ensure that organisations are able to request, receive and use funds without restrictions, as long as funding is used for human rights purposes and for peaceful activities.

Existing restrictions range from absolute prohibitions on receiving funds from abroad, to a regime of prior government authorisation or a requirement to regularly report to government authorities on how funds are used. Increasingly, tax regulation is also being used for the same purpose. In all cases, the result of such restrictions is to stop human rights organisations from operating or to tighten government control over them.

Against this trend, a provision protecting access to funding as a self-standing right becomes a precious tool for human rights defenders' advocacy efforts.

SOME EXAMPLES OF CASES TAKEN UP BY THE UN SPECIAL REPRESENTATIVE ON HRD

The **Belarusian Association of Women Lawyers**, based in the western city of Brest, came under particular scrutiny in 1998. At that time the human rights organization was receiving a number of foreign grants for human rights promotion. Despite a tax audit lasting around five months, the tax authorities claimed the NGO committed irregularities and heavily fined it.

In June 2000, **Saadeddin Ibrahim**, an independent human rights activist, was arrested by the Egyptian State security investigation bureau and some of his documents were confiscated. Mr. Ibrahim and 27 other individuals faced charges including accepting foreign funds without government authorization.

Report of the SRSG on HRD to CHR 2002 (E/CN.4/2002/106), para 27 and 51, available at: <http://www.ohchr.org/English/issues/defenders/annual.htm>

EXAMPLES OF DOMESTIC LEGISLATION

In **Egypt** legislation regulating NGOs allows the government to block foreign funding and dissolve NGOs by administrative order, without judicial scrutiny. These restrictions are compounded by burdensome registration procedures and the extra-legal efforts of the security services to harass human rights activists. (<http://www.ned.org/about/carl/carl082905.html>)

In **Venezuela** members of a local NGO are being tried on treason charges for having received a small grant for the purpose of conducting workshops on electoral rights from a foreign organisation. (<http://www.ned.org/about/carl/carl082905.html>)

In **Belarus** legislation provides measures to control foreign aid including preventing NGOs from using this aid to organize meetings, demonstrations or picket lines, as well as to draft and circulate propaganda documents or to engage in other types of political activities.

(Report of the SRSG on HRD to CHR 2005, E/CN.4/2005/101/Add.1)

The Right to Access International human rights protection bodies

Article 5(c): For the purpose of protecting and promoting human rights and fundamental freedoms, everyone has the right individually and in association with others, at the national and international level, to communicate with non-governmental or intergovernmental organizations.

Article 9(4): [...] in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with other, to unhindered access to and communication with international bodies with general or specific competence to receive and consider communications on matters of human rights and fundamental

Being able to communicate with international human rights mechanisms is essential for human rights defenders. Defenders need unhindered access to those mechanisms in order to submit individual cases to competent regional or international bodies, or to submit alternative reports or other information when the human rights situation in their country is examined by such bodies.

The right to access international human rights mechanisms was very controversial and generated much debate during the negotiations of the Declaration. Many States proposed to include the condition that domestic remedies be exhausted before a complaint is brought to an international body. However, this condition is not at all required for drawing the attention of monitoring bodies or special procedures to a country-specific situation or an individual case respectively.

It is not uncommon that human rights defenders have been target of reprisals after having been in contact with international bodies. This occurs not only in relation to the actual use of

a specific procedure, but even when defenders have simply contacted international or regional human rights institutions. This is reflected in the text of the Declaration, which refers both to the use of complaint procedures and to the ability to communicate with international institutions.



The UN Commission on Human Rights, in Geneva.

SOME EXAMPLES OF CASES TAKEN UP BY THE UN SPECIAL REPRESENTATIVE ON HRD

Natalia Shabunts was followed and intimidated by security service agents after complaining about the human rights situation in Turkmenistan to the Organization for Security and Co-operation in Europe (OSCE).

Lybkan Bazayeva was attacked in October 1999 by a group of 20-25 armed men wearing camouflaged uniforms who broke into her house. The attack occurred after she filed a complaint against Russia to the European Court of Human Rights concerning events in Chechnya.

In September 1999, **Rebiya Kadeer**, a prominent advocate of women's rights and of the rights of Uighur ethnic group, was charged with "providing secret information to foreigners" after discussing human rights issues with members of the United States Congress visiting China. In March 2000, Rebiya Kadeer was sentenced to eight years of imprisonment.

Report of the SRSG on HRD to CHR 2005 (E/CN.4/2005/101/Add.1), 2004 (E/CN.4/2004/94/Add.3) and 2003 (E/CN.4/2003/104/Add.1), available at: <http://www.ohchr.org/english/issues/defenders/annual.htm>

The Right to Develop New Ideas

Article 7: Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Many human rights ideas that we take for granted today took years of debate, before they were accepted. It took 13 years to adopt the Declaration on Human Rights Defenders. Every day, activists propose new human rights ideas and new approaches to old issues. It was only recently that mass rape is considered a crime against humanity.

The Declaration recognises the right of human rights defenders to promote new ideas. When doing so, one of the main obstacles that defenders face is the perception by others that such ideas challenge tradition and culture.

Female genital mutilation (FGM) is a case in point. “Culture” is used to deny that FGM constitutes a serious human rights violation on the assumption that women should not be free to decide about their sexuality.

Sexual orientation provides another example: LGBT defenders are often harassed, discriminated against, prosecuted and killed simply because they defend an idea of sexuality

which does not conform to the established social norms. Well-known is the case of Fanny Ann Eddy, from Sierra Leon. In September 2004 she was found dead in the Sierra Leone Lesbian and Gay Association’s offices. She was raped repeatedly, stabbed and killed for her activism within a LGBT organisation. “We face constant harassment and violence from neighbors and others”, she told the UN Commission on Human Rights. “Their homophobic attacks go unpunished by the authorities, further encouraging their discriminatory and violent treatment of lesbian, gay, bisexual and transgender people”.

FEMALE GENITAL MUTILATION

According to Amnesty International,

135 million girls and women have had FGM,

2 millions girls a year are at risk – 6000 per day

Women human rights defenders find it very difficult to protest against FGM because in many countries girls are thought to be ‘unclean’ and not suitable for marriage if they have not had FGM.

www.amnestyusa.org/women/violence/female_genital_mutilation.html

AN EXAMPLE OF DOCUMENTED CASE OF VIOLATION

In Mali, where about 80 per cent of girls and women reportedly undergo FGM, activists working towards eradication have received death threats. **Fatoumata Sire** said: “I have had death threats against me, there have been attempts to burn down my house, I have been in three car crashes and every day Islamic radio here in Bamako broadcast curses against me.”

http://news.bbc.co.uk/1/hi/programmes/crossing_continent/662565.stm

SEXUALITY

In many countries throughout the world LGBT human rights defenders are subjected to discrimination, persecution and even death for the issues they raise.

In over 80 countries throughout the world homosexuality is criminalised.

In 7 countries sex with same-sex partners is punishable by death.

In 19 countries activists have been the target of attacks leading to serious injury or death.

http://www.ilga.info/Information/Legal_survey/ilga_world_legal_survey_introduction.htm

Other Rights: Using the Justice System

Article 9: 1. [...] everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of a violation of rights.

2. [...] everyone whose rights or freedoms are allegedly violated has the right [...] to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision providing redress [...].

3. [...] everyone has the right [...] to complain about the policies and actions of individual officials and government bodies with regard to violations; to attend public hearings and trials; to offer professionally qualified legal assistance or other relevant advice or assistance [...].

The Declaration reaffirms the fundamental right to have access to an effective remedy, so that human rights violations can be redressed and the rights of all protected.

The Declaration also refers to other aspects of the right to a fair trial and due process. It

specifically recognises human rights defenders' role in ensuring the respect of human rights guarantees in the judicial setting. It recognises that defenders have the right to observe public trials and to have their own opinion on whether the State has complied with its obligations under both national and international law during these trials. It also recognises the right of human rights defenders to provide legal advice and assistance to victims of human rights violations. Accordingly, all qualified individuals or groups must be allowed to help victims of human rights abuses by providing them with legal assistance and other forms of advice.

DID YOU KNOW?

In 2005 the UN Commission on Human Rights adopted the "*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*".

They constitute an important means for ensuring that States comply with their obligations to guarantee an effective remedy and reparations. They demonstrate the international community's concern for and solidarity with victims of human rights violations and constitute a milestone in the fight against impunity.

The principles can be found at: <http://ap.ohchr.org/Documents/E/CHR/resolutions/E-CN.4-RES-2005-35.doc> (CHR Res. No. 35, E/CN.4/RES/2005/35)

SOME EXAMPLES OF DOCUMENTED CASES OF VIOLATIONS

A Muslim human rights lawyer, **Somchai Neelapaijit**, was abducted on 12 March 2004 by people suspected of being members of the police. He had received anonymous death threats prior to his disappearance for providing legal assistance to Muslims arrested for alleged involvement in Jemaah Islamiyah (JI), an Islamist group in Southeast Asia.

<http://web.amnesty.org/library/Index/ENGASA390072004?open&of=ENG-THA>

In Beirut, **Samira Trad** has been arrested and questioned several times for providing legal assistance and advice to non-Palestinian refugees. She has been interrogated and accused of tarnishing the State of Lebanon and founding an illegal organization.

Report of the SRSR on Human Rights Defenders to CHR 2004 (E/CN.4/2004/94/Add.3)

Mr. **Osman** was detained in Dabak prison, a small prison north of Khartoum, for his work with the Sudanese Organization Against Torture (SOAT). Mr. Osman's work with SOAT included providing legal aid to victims of human rights abuses. His detention appeared to be in reprisal for his legal defence of human rights and was only part of the ongoing series of abuses occurring in the Darfur region of Sudan.

http://www.humanrightsfirst.org/defenders/hrd_sudan/alert062304_osman.htm

State responsibilities under the Declaration

Article 2: 1. Each State has the prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms [...].

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 9(5): The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred [...].

Article 12(2): The State shall take all necessary measures to ensure the protection by the competent authorities of everyone [...] against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

Article 12(3): Everyone is entitled [...] to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

The Declaration also sets out the responsibilities of States with regard to defenders. The responsibility of States is threefold: first, they have a general responsibility for the respect and implementation of all human rights; second, Article 2 affirms their responsibility for the respect and implementation of the rights referred to in the Declaration, i.e. for the protection of human rights as they specifically apply to defenders. A third level of responsibility is set out in several other provisions of the Declaration, and includes:

- Protection of everyone against any violence as a consequence of the **legitimate exercise** of the rights protected under the Declaration. Specific reference is made to protection in reacting against or protesting States' activities and acts attributable to States that result in violations of human rights ". So, the State has to ensure that human rights defenders do not suffer any violations as a result of their activity and that they enjoy protection particularly when –as often is– their protests and action are directed against States' policies or acts.
- The obligation to ensure protection of defenders also includes protection from the acts of private **non-State actors**. This is particularly important with regard to women human rights defenders, because the attacks they suffer often originate in their own community or from other non-State actors.
- When a violation against defenders has taken place, a prompt and impartial **investigation** must be carried out by the competent State authorities. (Article 9(5)).

Further provisions also affirm the responsibility that States have to promote human rights education and human rights training for lawyers, law enforcement officials and other public officials (Article 14(1) and 15 respectively).

PART TWO: UN MECHANISM

THE UN SPECIAL REPRESENTATIVE ON HUMAN RIGHTS DEFENDERS

The first international mechanism to protect human rights defenders was created in 2000. Following the adoption by the UN General Assembly of the Declaration on Human Rights Defenders in 1998, the UN Commission on Human Rights requested that the Secretary-General of the UN appoint a Special Representative on human rights defenders.

Hina Jilani, a noted human rights attorney from Pakistan, was the first person appointed to this office. Her mandate was extended in 2003 for further three years. (*see box below*)

The **mandate** of the Special Representative includes:

- Submitting yearly reports on the situation of human rights defenders to the UN Commission on Human Rights and the General Assembly;
- Seeking and examining information on the situation of human rights defenders;
- Encouraging dialogue and cooperation with governments on the effective implementation of the Declaration;
- Defining strategies and making recommendations towards the full implementation of the Declaration.

The Special Representative acts independently of any State or organisation. She is an expert working on an honorary basis and not a UN employee.

The activities she undertakes include:

- **Contacts with human rights defenders, States and other relevant actors:** in her expert capacity the Special Representative is accessible to defenders and their organisations as well as to States and any other relevant actors such as inter-governmental organisations, national human rights institutions and national parliaments.
- **Individual cases:** the Special Representative takes up individual cases of human rights violations concerning human rights defenders. She may receive information alleging violations from a variety of sources, including NGOs, UN agencies, the media and State authorities. If the information received is reliable and the case falls within the mandate, the Special Representative sends a letter of allegation or an urgent action letter to the

Who is Hina Jilani?

An attorney of the Supreme Court of Pakistan, she has been a human rights defender for many years. She has worked, particularly, in favour of the rights of **women, minorities and children**.

She was a co-founder of the first all-women law firm in Pakistan in 1980 and she also founded Pakistan's first legal aid centre in 1986.



Hina Jilani, Special Representative on HRD

government in question seeking clarification of the situation in case. (see box below)

- **Country visits:** by undertaking fact-finding mission in-country the Special Representative is able to gather first-hand information on the situation of human rights defenders in a specific country and to identify the specific problems they face. The country visit is an opportunity to meet and have dialogue not only with defenders, but also with the government and other relevant actors, such as national human rights institutions, UN agencies and the media. (see box on the left)
- **Reporting:** the Special Representative submits annual reports to the Commission on Human Rights and the General Assembly on activities undertaken, trends and concerns identified during the year and her recommendations. The reports focus both on specific country situations and on thematic issues.

COUNTRY VISITS

In order for the Special Representative to undertake a country visit, the consent of the State concerned is needed.

The Special Representative meets a wide range of people, including the country's leaders, relevant government ministers, national human rights institutions, NGOs and other human rights defenders, and the media.

A country visit usually lasts between 5 and 10 days and is an opportunity for civil society to raise the profile of issues affecting defenders' rights.

The Special Representative has visited the following countries: Israel/OPT (Oct 2005), Nigeria (May 2005), Angola (Aug 2004), Turkey (Oct 2004), Thailand (May 2003), Macedonia (Jan 2003), Guatemala (May 2002), Kyrgyzstan (Aug 2001), Colombia (Oct 2001).

In December 2005, the Special Representative will visit Brazil.

INDIVIDUAL CASES: URGENT ACTION AND ALLEGATION LETTERS

When there is an imminent threat of violation against defenders, or a violation is taking place, or has already occurred but the State fails to conduct investigation, the person concerned may submit the case to the Special Representative. The communication should specify all relevant circumstances of the case. If the case falls within the mandate and the information received is reliable, the Special Representative sends a letter of allegation or an urgent action letter to the government in question seeking clarification of the situation in case.

Who the letter is sent to?

The letter is sent to the Minister for Foreign Affairs of the State concerned and copied to its diplomatic mission to the UN in Geneva.

What is the content of the letter?

The letter provides details concerning the victim, what is said to have happened or to be about to happen, and a request for information, investigation and action to prevent or redress the violation.

What is the aim of the letter?

The aim of the letter is to ensure that States are made aware of the allegation as soon as possible so that they have the opportunity to look into it and to end or to prevent any human rights violations from occurring.

HOW TO CONTACT THE SPECIAL REPRESENTATIVE:

Special Representative of the Secretary General for Human Rights Defenders,
Office of the High Commissioner for Human Rights (OHCHR),
Palais des Nations (UNOG)
CH-1211 Geneva 10, Switzerland

To submit an allegation of violation, send an e-mail to: urgent-action@ohchr.org

PART THREE: REGIONAL MECHANISMS



AMERICAS: Inter-American Commission on Human Rights (IACHR),
Office of the Executive Secretary, Human Rights Defenders Unit

AFRICA: African Commission on Human and People's Rights
(ACHPR), Special Rapporteur on Defenders

EUROPE: European Union (EU) Guidelines on Human Rights Defenders

Inter-American Commission for Human Rights: Human Rights Defenders Unit

In 2001 the Executive Secretary of the Inter-American Commission decided to create a Human Rights Defenders Functional Unit, following a resolution of the General Assembly of the Organisation of American States (OAS) in which it requested that the Commission pay due attention to the situation of human rights defenders and consider preparing a comprehensive study in the area.

The main functions of the Human Rights Defenders Unit include:

Liaising with:

- Human rights organisations, groups of people and other persons who can provide them information;
- State institutions responsible for human rights policies and any other agencies that can provide information;
- The UN Special Representative on Human Rights Defenders.

The Unit is also responsible for:

Coordinating the work of the Executive Secretariat on the situation of human rights defenders.

Encouraging the Commission to adopt precautionary measures to protect threatened human rights defenders in this area.

Preparing:

- Reports on the situation of human rights defenders based on the information received;
- Analysis of the precautionary measures that the Commission adopts for human rights defenders in specific cases.



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HOW CAN THE HUMAN RIGHTS DEFENDERS UNIT HELP YOU?

It issues press releases to express concern regarding threats, killings, kidnappings or other abuses against human rights defenders, and on the situation of human rights defenders in general in the Americas.

It can also ask the Commission to request precautionary measures. The Commission can then request States parties to adopt precautionary measures to prevent harm to people.

The Unit can also carry out country visits to assess the situation of local human rights defenders. This is very important for gathering information that will then be used to prepare the reports on the situation of human rights defenders in the Americas.

African Commission on Human and People's Rights Special Rapporteur on Human Rights Defenders

The African Commission on Human and People's Rights created the mandate of African Special Rapporteur on Human Rights Defenders in 2004.

The Special Rapporteur has been mandated to:

- Seek, receive, examine and act upon information on the situation of human rights defenders in Africa;
- Submit reports at every ordinary session of the African Commission on the situation of human rights defenders in Africa;
- Cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders, human rights defenders and other stake holders;
- Develop and recommend effective strategies to better protect human rights defenders and to follow up on his/her recommendations;
- Raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa.



CONTACT :

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Web site: www.achpr.org

HOW CAN THE SPECIAL RAPPORTEUR HELP YOU?

The Special Rapporteur is available to receive information from human rights defenders, including allegations of human rights violations committed against them.

The Special Rapporteur can issue urgent appeals regarding violations against human rights defenders in the region and make press releases.

The Special Rapporteur can be invited to participate in meetings to discuss the risks and challenges that defenders face.

The Special Rapporteur can also carry out official country visits to assess the situation of human rights defenders in specific countries.



The first person to occupy the position of Special Rapporteur was Commissioner Jainaba Johm from The Gambia. Commissioner Johm has served as Special Rapporteur from 2004 – 2006.

European Union Guidelines on Human Rights Defenders

On 15 June 2004 the European Union adopted its Guidelines on Human Rights Defenders. The Guidelines set out the Union's policy towards defenders in countries outside the EU and contains examples of action that EU mission can take to help protect defenders.

According to the Guidelines, the measures that EU missions can take include, amongst others:

- Maintaining suitable contacts with human rights defenders, including receiving them in Missions and visiting their areas of work;
- Providing, where appropriate, visible recognition of human rights defenders, through the use of appropriate publicity, visits or invitations;
- Attending and observing, where appropriate, trials of human rights defenders.

« The work of human rights defenders often involves criticism of government's policies and actions. However, governments should not see this as negative. The principle of allowing room for independence of mind and free debate on a governments policies and actions is fundamental ».

Point 5 European Union Guidelines on Human Rights Defenders



How can the EU help you?

If you need the EU to intervene in a defenders case or you seek EU assistance to enhance protection of defenders contact the EU Mission and Embassies in your home country and use the Guidelines to advocate for EU action.

The full text of the Guidelines can be found by searching on the EU web site: http://ue.eu.int/cms3_fo/index.htm

The EU guidelines also provide practical support for Human Rights Defenders including through the Development Policy.

In particularly the EU is committed to:

- Assisting the establishment of networks of human rights defenders;
- Seeking to ensure that human rights defenders in non-EU member countries can access resources, financial and otherwise, from abroad.

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