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The Special Representative of the Secretary-General on human rights defenders¹

Mandate holder

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Mandate

The mandate was created in 2000² and focuses on the protection of persons acting individually or in association with others, to promote and protect human rights and fundamental freedoms, and of their right to do so. The Special Representative is mandated to monitor the actual situation of human rights defenders by seeking, receiving, examining and responding to information; strengthen the implementation of the *Declaration on Human Rights Defenders* (the Declaration) by establishing cooperation and dialogue with governments and other actors; and identify themes that are considered to have a fundamental bearing on the role and situation of human rights defenders, such as democratisation, the impact of security legislation, emergency situations and women.

Activities

- The Special Representative sent 310 communications on more than 351 cases regarding some 799 defenders and 316 organisations. These were sent to 68 countries, 48 of which replied;
- The Special Representative or her staff participated in events organised by the Organisation for Security and Cooperation in Europe (OSCE) in Kazakhstan and Azerbaijan, a UN workshop for Iraqi civil society, and the International Consultation on Women Human Rights Defenders held in Sri Lanka;
- The Special Representative held discussions with the European Parliament's Subcommittee on Human Rights, representatives from the European Union's (EU) High Representative for foreign and security policy's office, the Political and Security Committee of the European Council of Ministers;
- The Special Representative continued to interact with civil society, notably in Tunisia and Germany;
- The Special Representative present her annual report to the General Assembly in October;
- Mission to Nigeria from 3 to 12 May 2005;
- Mission to the Occupied Arab Territories from 5 to 11 October 2005;
- Mission to Brazil from 5 to 20 December 2005;
- Compilation of developments in the area of human rights defenders

Annual Report³

Scope

The report provides an account of the activities undertaken by the Special Representative in the past year; gives an overview of the development and implementation of the mandate since its creation in 2000; and examines the key developments and major constraints in the implementation of the Declaration and the protection of human rights defenders over the past six years.

¹ Summaries prepared by Cléa Thouin, Intern, ISHR, supervised and edited by Meghna Abraham, Information Program, ISHR.

² Commission *Resolution 2000/61*.

³ E/CN.4/2006/95, 23 January 2006.

Summary and key conclusions

The mandate

- The creation of the mandate has played an essential role in the **dissemination** and **implementation of the Declaration** and in **raising awareness** about the urgent need to create a favourable environment for activities for the defence of human rights. The added value of this mandate exceeds any possibility of duplication with other special procedures of the Commission;
- The Special Representative has adopted a **comprehensive approach** that also considers the surrounding conditions that threaten or impede the work of human rights defenders. The mandate has also acted as a **channel of communication** between Governments and human rights defenders and for relaying civil society concerns at the international level;
- In devising a **methodology**, the Special Representative focused on ensuring wide accessibility, enhanced dialogue, prompt response and effective initiatives and identified issues requiring special attention;
- The Special Representative has maintained **regular contact with States**, the **UN system**, **intergovernmental organisations** and **NGOs**. While all these actors have been quite responsive, setting up regular working relationships, notably with UN bodies, has proven difficult;
- The Special Representative has used a **broad definition of human rights defenders** in her work, based on activities rather than status. She has affirmed that activities guaranteeing the monitoring and defence of internationally recognised rights and situations of limitation and derogation of rights can neither be restricted nor suspended;
- The Special Representative has devised **strategies aimed at guaranteeing the security of human rights defenders**: communications to Governments regarding both individuals and laws and policies; promotion of international civil society networks; prioritisation of studies about repressive trends and practices; and specific recommendations during country visits;
- The number of **communications** transmitted has dramatically increased since the establishment of the mandate, reflecting the increased visibility of the mandate, as well as a continued need for protection;
- The Special Representative has conducted ten **country missions** to Kyrgyzstan, Colombia, Guatemala, Macedonia, Thailand, Angola, Turkey, Nigeria, Israel and the Occupied Palestinian Territories, and Brazil;
- **Challenges** that remain in the implementation of the mandate include insufficient material and human resources; uneven Governmental support and collaboration with regard to visits and communications; and continued threat to human rights defenders that have cooperated with international mechanisms.

Key developments and major constraints

- While several Governments have publicly recognised the status and role of human rights defenders, and created regular spaces for consultation, many others have delivered **defamatory statements** about them. In some countries, public opinion has been very negative;
- The current trend in many countries is to pass **legislation**, notably security or anti-terrorism legislation, **restricting the space for human rights activities**. National laws regulating the functioning of NGOs often impose severe restrictions on their registration, funding, management and operation and are used arbitrarily;
- There is an alarmingly **weak knowledge of the Declaration** in a majority of countries, both among State authorities and the human rights activists community;
- The Special Representative has not received much information about concrete measures aimed at the **protection of human rights defenders as a group**;
- In an overwhelming majority of violations against human rights defenders, **impunity prevails**;
- At the **regional level**, a Unit for Human Rights Defenders was created in 2001 in the Inter-American Commission for Human Rights; the African Commission on Human and Peoples' Rights has appointed a Special Rapporteur on Human Rights Defenders; the EU adopted Guidelines for the protection of human rights defenders in 2004; a Unit on Freedom of Association was created in the OSCE; and the Council of Europe has given NGOs a proper legal basis;
- The field offices of the UN have submitted valuable information to the Special Representative, but in some countries **UN entities** supported initiatives that may create unfavourable conditions for defenders;
- **Cooperation by OHCHR** has been particularly important in broadening the impact of the mandate, notably through the publication of Fact Sheet No.20 on human rights defenders, field presences, and the establishment of a task force to strengthen partnership with civil society;
- Findings of **treaty bodies**, particularly of the Human Rights Committee, have been valuable sources of information and the treaty bodies have highlighted concerns about the situation of human rights defenders on many occasions;

- At the **national level**, **human rights defenders** have engaged in dialogue with governments; reviewed policies; and undertaken monitoring and reporting functions. Governments have often actively obstructed their activities and civil society recommendations have rarely been reflected in policies and legislation;
- Human rights defenders have also created **geographic** and **thematic networks** at the regional and international level, which unquestionably have positive value.

Key recommendations

- Governments should adopt laws and policies that **recognise the legitimacy of peaceful action**, including as a form of resistance to threatened human rights violations and to attain economic, social and cultural rights;
- The **judiciary** should involve itself more in ensuring a safe environment for the work of human rights defenders, notably through human rights-sensitive interpretations and application of the law;
- Governments should ensure that laws and policies reflect the right of defenders to **access information and sites of alleged violations**;
- There should be **uniformity at all levels of the Government** in implementation of initiatives protecting human rights defenders and their work;
- States should ensure **prompt investigation of allegations**, as well as prompt and effective **accountability** of human rights violators;
- The development of legal and normative frameworks for **accountability of non-State entities** and creation of appropriate mechanisms should be an essential part of the agenda of OHCHR;
- **Human rights defenders** should be ascribed a **role in peace negotiations and agreements**;
- The **reformed Commission** should use the evaluation of the situation of human rights defenders as an essential indicator for the assessment of compliance with human rights standards.

Summary of cases transmitted to Governments and replies received⁴

Scope

The report provides summaries of the communications on specific cases addressed by the Special Representative to Governments, as well as summaries of the replies by Governments and observations thereon. It covers cases reported between 9 December 2004 and 9 December 2005.

Summary

The Special Representative sent communications to Afghanistan; Algeria*; Argentina*; Australia; Azerbaijan*; Bahrain*; Bangladesh*; Belarus*; Bolivia*; Brazil*; Cambodia; Cameroon; Chad; Chile*; China*; Colombia*; Côte d'Ivoire*; Cuba*; the Democratic Republic of Congo*; the Dominican Republic; Ecuador; Egypt*; El Salvador*; Eritrea; Ethiopia*; Georgia; Guatemala*; Honduras*; India*; Indonesia*; the Islamic Republic of Iran*; Iraq*; Israel*; Jamaica; Kazakhstan; Kenya; Kuwait*; Kyrgyzstan*; Lebanon*; the Libyan Arab Jamahiriya; Malaysia*; Maldives*; Mexico*; Mongolia; Morocco*; Myanmar*; Nepal*; Niger*; Nigeria; Pakistan*; Paraguay*; Peru; the Philippines*; Poland; the Russian Federation*; Saudi Arabia*; Serbia and Montenegro; Sierra Leone; Sri Lanka*; the Sudan*; the Syrian Arab Republic*; Thailand*; Togo*; Tunisia*; Turkey*; Uganda; the United States of America; Uzbekistan*; Venezuela*; Vietnam* and Zimbabwe*.

Please note that countries marked with an asterix have replied to the Special Representative's current or previous communications.

Mission to Nigeria⁵

Scope

The report covers a mission to Nigeria during which the Special Representative met with senior Government officials, a wide range of human rights defenders and representatives of intergovernmental organisations and States.

⁴ E/CN.4/2006/95/Add.1, 22 March 2006.

⁵ E/CN.4/2006/95/Add.2, 30 January 2006.

Summary and key conclusions

- Human rights defenders in Nigeria were systematically targeted during the oppressive military regime in the 1990s, notably through extra-judicial killings, arbitrary detention, ill-treatment and torture. It is widely recognised that the resilience of defenders was a significant factor in bringing about civilian rule;
- **Significant improvements** to the environment for defenders were amongst the immediate gains of Nigeria's transition to civilian rule but the transition to democracy also brought **different and new challenges** for the human rights movement and the **necessity to adjust its strategies**;
- Most defender activities focus on **training, education and advocacy on law reforms**, rather than public mobilisation and public action. Central concerns of human rights organisations currently include amendments to the Constitution, legislation on the freedom of information, electoral reform, and legislative reform for the protection of women's rights;
- Many NGOs work in **cooperation with government agencies** on legislative reform and human rights education and training;
- A number of **Government initiatives** in the field of human rights have created an improved framework and better prospects for the promotion and protection of human rights and defenders;
- The **National Human Rights Commission** has been strengthened but institutional safeguards of independence are still insufficient, it does not have investigative powers, and funding is inadequate;
- **New initiatives** include the development of a national plan of action on human rights; the creation of senior advisory positions on human rights (with which defenders have yet not been able to develop working relationships); Parliamentary committees (to which the Government has not been very responsive); state-level initiatives, such as Directorates of Citizens' Rights; as well as human rights training for the police;
- A number of serious **shortcomings** have persisted in **federal laws**, which results in an environment that falls short of being fully conducive to the work of defenders, and has sometimes put their safety at risk;
- Despite apparent liberal legislation, in practice the **registration process** for NGOs can be difficult, expensive and very long. Organising protests on human rights issues has repeatedly proven arduous and the Public Order Act, and its broad interpretation by the police, severely restricts **freedom of assembly**;
- There is no **freedom of information** legislation and existing laws and practices restrict public access to information. In practice for example, there is no uniform policy of granting access for independent monitors to places where abuses occur;
- Defenders unanimously deplored the **dearth of public statistics, data and information** on the objectives and implementation of State policies, which limits NGOs in their monitoring and assessment activities;
- **Economic, social and environmental rights activists** encounter difficulties, particularly in Nigeria's delta region where the main oil and gas industries are located. They receive no response from authorities and policymakers to their expressions of concern and their work is limited by the lack of redress mechanisms, as the Nigerian legislative framework regulating these rights remains weak;
- **Women rights activists** also face an adverse situation, particularly when they raise issues of women's rights in the context of religion or traditional practices;
- The Special Representative expressed concern over the situation of **defenders working in particular areas**, such as journalists working on corruption and good governance, trade unions and labour activists. Defenders complained that the Government wishes to "box" civil society into working only on specific issues;
- Indeed, arrests of **journalists** are a common practice and newspaper premises and offices of human rights organisations have been subjected to sporadic raids by security forces;
- The Government appears to consider **trade unions** as a threat and their activities are consistently repressed in law and in practice. The policing of rallies remains an area of grave concern in Nigeria;
- Generally, there is a lack of response from the authorities to the issues raised by human rights defenders and the level of **impunity** remains high, which greatly increases defenders' vulnerability and results in self-censorship.

Key recommendations

- The Government should further **strengthen the National Human Rights Commission**;
- The Government should streamline and ease the **registration procedures for NGOs** and review any plans to adopt legislation that limit **freedom of association** or limit the autonomy and independence of NGOs;
- The Government should review the Public Order Act to ensure that the right to **freedom of assembly** is fully respected and that unreasonable limits are not placed on collective and public action;

- The Government should expedite the process of adopting an adequate legislative framework for **freedom of information** and to set up adequate **mechanisms to collect** and **publish data** on public policies;
- The Government should take immediate measures to address **impunity**;
- The Government should develop appropriate measures for the **adequate protection of election monitors** and **journalists** in view of the **2007 elections**;

Mission to Israel and the Occupied Palestinian Territories⁶

Scope

The report covers a mission to Israel and the Occupied Palestinian Territories (OPT), during which the Special Representative met with senior officials of the Government of Israel and the Palestinian National Authority (PA), human rights defenders and representatives of international and intergovernmental organisations.

Summary and key conclusions

- Human rights defenders in Israel and the OPT carry out their activities against a backdrop of occupation, conflict, military operations in Palestinian civilian centres, and terrorism. Security-driven laws and practices have created an environment in which activities for the defence of human rights have not escaped suspicion and repression and human rights defenders are highly vulnerable;
- The dominant concern for human rights defenders, even in Israel, is the violation of the human rights of the Palestinian population under Israeli occupation and there is strong **solidarity** and **cooperation between defenders in Israel and in the OPT**;
- **Human rights defenders in Israel** that focus on the rights of Palestinians offer a broad range of services, including legal assistance to prisoners, advocacy, monitoring of violations of human rights and provision of humanitarian assistance to refugees. **Defenders in the OPT** conduct monitoring, advocacy and reporting activities covering the human rights concerns arising from the regime of occupation.

Defenders working in Israel

- The Government of Israel **generally respects the rights of Israeli human rights defenders** and there is no systematic policy of restraining their activities within Israel. The same defenders however face difficulties in promoting and protecting the rights of minorities, and there is even **less tolerance of their activities for the protection of the rights of the Palestinian population** in the OPT or criticism of the occupation;
- The **registration process** for NGOs is under the jurisdiction of the Ministry of the Interior and has become longer and more complex. NGOs advocating for the rights of Palestinians in Israel find it almost impossible to register themselves and generally Arab NGOs in Israel face more challenges than other NGOs;
- The **Supreme Court of Israel** deliberates on human rights cases filed by human rights activists, but in the majority of cases it has held that there was a justified military necessity for the action or policy in question.
- An **NGO committee** has been formed **in the Knesset**, but no concrete initiatives have yet been taken.

Defenders working in the OPT

- The practices and policies of the occupation result in conditions that place human rights defenders operating in the OPT at grave risk and present serious obstructions in every aspect of their work;
- There are many allegations of **systematic targeting of human rights activists** by the Israeli Defence Forces. **Administrative detention** is also used against defenders: the basis for arrest is usually secret evidence and detention is often repeatedly extended. There are also reports of ill-treatment and torture during detention;
- **Restrictions on the freedom of movement** resulting from the Wall and other checkpoints, requirement of permits to travel and bans on travel are particularly problematic. They endanger and delay the work of defenders and produce major difficulties in terms of coordination and interaction with Israeli NGOs;
- In the wake of the 'disengagement', these restrictions also mean that human rights defenders in Gaza are becoming more vulnerable because of their isolation;
- Other problems include the use of **excessive force on peaceful action** to protest and various forms of **harassment, intimidation** and **humiliation**, notably by settlers;

⁶ E/CN.4/2006/95/Add.3, 10 March 2006.

- It is also increasingly difficult for members of humanitarian and development agencies operating in the OPT to carry out their work effectively because of an intensification of Israeli **military restrictions on humanitarian access** to civilian populations;
- Difficulties for human rights defenders are compounded because of the **failure of the PA to respect human rights** and the **rule of law**. **Conditions of lawlessness** and **impunity** for human rights violations have affected the security of defenders, especially those exposing violations committed by security personnel;
- Protections contained in the Palestinian law are not implemented effectively and there is a lack of genuine commitment on the part of the PA to enforce human rights;

Key recommendations

- Israel must **end the occupation** of the OPT and until then it should respect the resolutions of the UN bodies and **accept its obligations** under international human rights and humanitarian law;
- Israel should amend laws, regulations, policies and practices that obstruct or punish the exercise of the right to **freedom of assembly** and the **right to protest or resist violations**;
- Israel should consider revising its **security-related legislation** to ensure that its security concerns are met within the boundaries of international law;
- Israel should abandon the practice of **administrative detention** and should accept **independent monitoring of detention facilities**;
- Israel should refrain from imposing **restrictions on travel** of defenders to or from Israel and the OPT;
- The PA should ensure **respect for human rights** and the **rule of law** and should take immediate measures to **end impunity** for human rights violations;
- The **Palestinian Independent Commission on Citizens Rights** should be strengthened.

Mission to Brazil⁷

Scope

The report contains the preliminary conclusions and recommendations of the Special Rapporteur and a complete report will be submitted in the course of 2006. The Special Rapporteur met with government authorities, members of federal and state legislatures and the judiciary, and human rights defenders.

Summary and key conclusions

- The human rights movement in Brazil is **vibrant** despite difficult circumstances and the Special Rapporteur noted their number, enthusiasm and level of **collective organisation**. Brazilian defenders come from **varied backgrounds** including human rights activists, members of the clergy, relatives of victims, trade unionists, students, academics, lawyers, journalists and some civil servants;
- While organisations initially focused on civil and political rights, they have **expanded the scope of their work** to economic, social, environmental and cultural rights and to discrimination based on race, sexual discrimination and gender;
- Human rights defenders' activities are mostly rooted in grass-roots social movements at the state and federal levels. A number of human rights networks have been established;
- The defenders involved in **social movements** have developed modes of social action and participation and rules of engagement that limit the possibility of the use of violence;
- The Government has made a **number of efforts to improve the conditions of work of defenders**. The work of human rights defenders is generally respected within the governmental structures and authorities seek civil society participation in the design and implementation of human rights initiatives;
- The Government has provided positive responses to civil society demands for the establishment of the **Special Secretariat on Racial Equality** and for the restoration of the **Special Secretariat for Human Rights**;
- Serious concerns persist because of a wide **gap between the declaration of policy** and its **implementation** on the one hand, and the **creation of mechanisms** and their **effectiveness** on the other;
- There have also been **serious incidents of violence** and **threats** against human rights defenders, which perpetuate a climate of distrust and lack of faith in existing mechanisms and initiatives;

⁷ E/CN.4/2006/95/Add.4, 14 March 2006.

- Much of the violence against defenders is founded in conflicts over land and environment protection and is perpetrated by powerful non-State actors, who sometimes benefit from collusion of local State authorities;
- The practice of **criminalisation of social action** by defenders is also problematic, with defenders subject to unfair and malicious prosecution, repeated arrests and vilification;
- There are also reports that defenders are accused of forming criminal gangs and creating public disorder when they organise and mobilise for collective action. Generally peaceful public action has frequently been met with disproportionate use of force, such as the use of 'non-lethal weapons'.

Key recommendations

- There is a need for more **uniformity of commitment** and **complementary efforts** to implement human rights policies by the federal and state governments;
- Positive constitutional interpretation and judicial action is needed to **ensure equal respect for economic, social and cultural rights**;
- The **legislature** as an institution needs to be **more sensitive to human rights issues** and assign more priority to the protection of activities for the defence of human rights;
- The Government should adopt **more comprehensive strategies for the protection of defenders** and for ending impunity for violations affecting them by articulating support for their activities;
- The Special Secretariat for Human Rights and the Government should jointly collect and analyse the cases brought against human rights defenders in order to propose legislation or policy guidelines to **prevent prosecution of human rights defenders** for carrying out their work;
- The State should take a more **proactive role in addressing social conflict** and in legitimising defenders' participation and intervention on behalf of local movements;
- There should be a **review of the existing mechanisms for the monitoring and accountability of the State security apparatus**, particularly the State military police.

Compilation of developments in the area of human rights defenders⁸

Scope

The report contains a compilation of the developments to the situation of human rights defenders and the implementation of the Declaration in 118 countries over the past six years. The country assessments are primarily based on the responses received to a questionnaire, contained in the annex to the report, sent to all Governments, United Nations Residents Coordinators, relevant intergovernmental organisations, National Human Rights Institutions (NHRIs) and non-governmental organisations (NGOs).

Summary and key conclusions

The countries included in the report are Afghanistan (p.8); Albania (p.11); Algeria (p.14); Angola (p.16); Argentina (p.20); Armenia (p.22) Australia (p.25); Azerbaijan (p.27); Bahrain (p.32); Bangladesh (p.35); Belarus (p.38); Bolivia (p.43); Bosnia and Herzegovina (p.45); Botswana (p.46); Brazil (p.49); Bulgaria (p.51); Burundi (p.52); Cambodia (p.54); Cameroon (p.57); Central African Republic (p.59); Chad (p.60); Chile (p.62); China (p.65); Colombia (p.71); Costa Rica (p.75); Côte d'Ivoire (p.77); Croatia (p.79); Cuba (p.81); Democratic Republic of the Congo (p.83); Denmark (p.87); Dominican Republic (p.89); Ecuador (p.90); Egypt (p.92); El Salvador (p.97); Equatorial Guinea (p.99); Eritrea (p.101); Estonia (p.103); Ethiopia (p.105); European Union (p.108); Fiji (p.110); Finland (p.112); France (p.112); Gambia (p.113); Georgia (p.115); Guatemala (p.117); Guinea Bissau (p.122); Haiti (p.124); Holy See (p.126); Honduras (p.127); Hungary (p.130); India (p.131); Indonesia (p.133); Iran (p.136); Ireland (p.140); Israel (p.141); Jamaica (p.148); Jordan (p.149); Kazakhstan (p.151); Kenya (p.154); Republic of Korea (p.156); Kuwait (p.158); Kyrgyzstan (p.160); Lebanon (p.162); Liberia (p.163); Libyan Arab Jamahiriya (p.165); Macedonia (p.166); Malaysia (p.168); Maldives (p.172); Mali (p.174); Mauritania (p.176); Mauritius (p.178); Mexico (p.179); Moldova (p.186); Mongolia (p.188); Morocco (p.191); Myanmar (p.194); Namibia (p.197); Nepal (p.199); Nicaragua (p.204); Niger (p.206); Nigeria (p.208); Norway (p.212); Pacific Islands (p.214); Pakistan (p.219); Palestine (p.223); Panama (p.226); Paraguay (p.227); Peru (p.230); Philippines (p.232); Poland (p.233); Portugal (p.234); Qatar (p.237); Russian Federation (p.238); Rwanda (p.243); Saudi Arabia (p.245); Serbia and Montenegro (p.247); Slovakia (p.250); Spain (p.253); Sri Lanka (p.254); Sudan (p.256); Sweden (p.260); Switzerland (p.261); Syrian Arab Republic (p.264); Tajikistan (p.267); Tanzania (p.271); Thailand (p.273); Togo (p.277); Tunisia (p.280); Turkey (p.284); Turkmenistan (p.288); Uganda (p.292); Ukraine (p.294);

⁸ E/CN.4/2006/95/Add.5, 6 March 2006.

United Kingdom of Great Britain and Northern Ireland (p.296); United States of America (p.297); Uzbekistan (p.299); Venezuela (p.303); Vietnam (p.307); Zambia (p.309); and Zimbabwe (p.311).

- The aim is to identify the **main areas of progress** and the **remaining challenges** that need to be addressed in relation to the implementation of the Declaration;
- This report is a first step towards a thorough revolving analysis of the situation of human rights defenders and the implementation of the Declaration globally and will provide a **clear basis for action by the Special Representative's successor**;
- 31 Governments, 25 United Nations offices and 13 NHRIs formally replied to the questionnaire and NGOs provided specific information on 45 countries;
- The Special Representative also used information received over the course of the mandate, notably allegations in communications and responses to these, State party reports to UN treaty bodies, findings of other Special Procedures of the Commission, as well as reports by the OHCHR and other UN bodies and international bodies.

The country assessments are divided in four sections:

- **Description of the national human rights community**, including the number of NGOs and the main challenges they are facing;
- **Analysis of the juridical framework** within human rights defenders carry out their work in a country, both in terms of domestic legislation and the international legal framework;
- **Examination of specific measures** taken at the country-level to ensure the implementation of the Declaration;
- **Examination of communications** sent to the Government, responses received and **additional information** received, as well as overview of the categories of defenders, their types of work and the kind of violations reported;
- In many cases the information available did not allow for a comprehensive assessment of trends as there are many factors that can impact the number and types of communications received, such as the relative openness of the country or the extent to which defenders are worried about retributions.