



**Advocacy kit on the mandate of
the Special Representative of the
Secretary-General on Human
Rights Defenders**

International Service for Human Rights
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1. Introduction

This advocacy kit focuses on the important role of the Special Representative of the Secretary-General on the situation of human rights defenders (the Special Representative) in protecting human rights defenders and promoting their rights.

We have worked closely with the mandate since its establishment and this advocacy kit is based on our experiences with the mandate and our concerns in relation to the review of all the special procedures and its impact on the effectiveness and independence of the system of special procedures in general and on this mandate in particular.

All of the special procedures are currently being reviewed by a working group of the Human Rights Council. A number of proposals have been put forward during the discussions in the working group that would seriously undermine the independence and effectiveness of the special procedures. Please refer to our reports on the working groups for a detailed overview of the discussions.¹

We have also put together an advocacy kit on the review of special procedures that covers many of these proposals and what NGOs can do to counter them. We encourage you to consult it in relation to some of the proposals that are not discussed in this kit, in particular on election of mandate holders and individual review of mandates. These proposals would seriously undermine the independence and effectiveness of the special procedures.²

This advocacy kit gives particular focus to the possible impact of some of the proposals that would restrict the working methods of the special procedures on the work of the Special Representative.

The current Special Representative, Ms. Hina Jilani, has underlined that the effectiveness of the mandate relies on its parameters not being reduced during the review process and on restrictive methodology not being imposed on the Special Representative.

2. The role of human rights defenders

Human rights defenders - that is anyone who promotes or protects human rights - are vital agents in securing compliance with human rights standards both nationally and internationally. Many United Nations human rights mechanisms depend on reports and other first-hand information provided by human rights defenders within the countries concerned. As such, the ability of human rights defenders to work safely and freely has direct consequences for the effectiveness of the international system for human rights protection as a whole. As the Special Representative has stated: “when defenders are

¹ Report of the discussions in the working group in November 2006, available at http://www.ishr.ch/hrm/council/wg/wg_reports/wg_review_sps.pdf

² Advocacy kit on the review of special procedures, March 2007.

silenced and prevented from undertaking their activities, the goals of protecting peace, security and human rights are seriously undermined.”³

For more information, please see extracts of the statements delivered by States during the first session of the Council in the Annex.

3. The mandate of the Special Representative

The mandate of the Special Representative was created in 2000⁴, following the adoption of the *UN Declaration on Human Rights Defenders*⁵, to monitor and report on the situation of defenders in all parts of the world. The mandate calls upon the Special Representative to: gather information on the situation of human rights defenders; enter into dialogue with governments and other interested actors; and recommend effective strategies to better protect defenders and follow up on these recommendations. The Special Representative conducts country visits, takes up individual cases of concern with governments and reports to the Human Rights Council and the General Assembly on common trends affecting human rights defenders.

While many special procedures only focus on human rights violations, the mandate on human rights defenders has a broader focus. It encompasses the physical protection of defenders from violations, the protection of their right to defend human rights as well as, more broadly, the existence of favourable conditions for activities directed towards the defence of human rights. For example, the Special Representative has intervened in a case where the police raided the offices of an NGO and arbitrarily arrested staff members and all persons present on the premises.⁶ The case raised concerns regarding both the safety and liberty of the persons arrested and the attempt by the authorities to hinder the activities of a human rights organisation.

4. Importance of the mandate of the Special Representative

Addressing individual cases of concern

The Special Representative plays an essential role in supporting and protecting human rights defenders. “[T]he Special Representative addresses individual cases of human

³ See report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, A/60/339, 7 September 2005

⁴ Commission on Human Rights *Resolution 2000/61* (E/CN.4/RES/2000/61), 26 April 2000. See *infra* Section 3.

⁵ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Internationally Recognized Human Rights and Fundamental Freedoms* (commonly known as Declaration on Human Rights Defenders), General Assembly *Resolution 53/144* (A/RES/53/144), 8 March 1999.

⁶ Commission on Human Rights, Report of the Special Representative of the Secretary-General on human rights defenders (2005), E/CN.4/2005/101/Add.1, para 315.

rights violations committed against human rights defenders with the State(s) concerned. Information on such cases is received from a variety of sources, and [...] the Special Representative identifies concerns to be raised with States and recommends to States how to ensure compliance with the Declaration".⁷ The Special Representative makes contact with the government of the State where the alleged violation is said to have occurred through a letter that provides details of the victim, the human rights concerns and the alleged events. The primary objective is to ensure that State authorities are informed of the allegation as early as possible and that they have an opportunity to investigate it and end or prevent any human rights violation taking place.

Since the establishment of the mandate in 2000, the Special Representative has sent more than 1,500 communications. These communications dealt with the cases of more than 1,137 defenders and 279 organisations working to promote and protect human rights. During the past year, the Special Representative sent 372 communications to 78 countries. Of these, 40 countries had provided her with responses to one or more of her communications.⁸

The Special Representative's communications to governments has frequently led to tangible outcomes, such as the release of defenders from prison or the prevention of attacks against them.

In June 2005, the Special Rapporteur on freedom of expression, the Special Representative on human rights defenders and the Special Rapporteur on violence against women sent a communication concerning the case of a women human rights activist against whom defamation charges were brought for having publicly criticised family court judges. After the joint communication was sent, the court dropped all charges ruling that the case had been brought against her illegally by the public prosecution.⁹ In June 2005, the Special Representative on human rights defenders sent a communication concerning the killing of two human rights activists working in defence of workers' rights. The Government informed the Special representative that two individuals responsible for the killing had been identified and arrested. Investigations were continuing to identify if others were involved.¹⁰

In the context of the review of the special procedures, some States have suggested that specific criteria should be introduced with regard to the admissibility of individual communications. In particular, they have proposed a requirement that domestic - or even

⁷ Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, to the General Assembly, in accordance with General Assembly resolution 60/161, 5 September 2006, A/61/312.

⁸ Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, 24 January 2007, A/HRC/4/37.

⁹ See Special Procedures of the Commission on Human Rights, Facts and Figures on 2005 Communications

<http://www.ohchr.org/english/bodies/chr/special/Facts%20and%20figures%20on%202005%20Special%20Procedures%20communications.pdf>.

¹⁰ See Special Procedures of the Commission on Human Rights, Facts and Figures on 2005 Communications

<http://www.ohchr.org/english/bodies/chr/special/Facts%20and%20figures%20on%202005%20Special%20Procedures%20communications.pdf>.

regional - remedies be exhausted before a communication can be accepted.¹¹ This means that, before requesting the intervention of the Special Representative, the victim of the violation should try to use all effective remedies available at the national level, for example by making formal complaints - administrative or judicial - and waiting for the outcome of the process, which may be a very lengthy procedure. Only after the victim has resorted unsuccessfully to all reasonably available and effective national remedies would a complaint to special procedures then be admissible.

However, the communication is not a decision on the part of the Special Representative on whether the State is complying with its international obligations. It is simply in most cases a request for information. Moreover, the strength of the Special Representative, which has made it an effective protection tool, is its very lack of formality, which allows for quick response by the special procedures themselves and by States to situations where persons may be at risk of suffering human rights violations.

The requirement of exhaustion of domestic remedies would add a serious burden on victims and complainants and on the Special Representative and her very limited staff and would make this procedure much less effective and accessible to victims of violations and other people at risk.

Interaction with the media

The Special Representative can also issue press releases in relation to allegations of violations of the rights of human rights defenders. Press releases or other forms of interaction with the media are effective tools that the Special Representative may use to draw broader attention to potentially serious situations, particularly in cases of severe and immediate human rights violations. They are especially useful where there is a need for urgent action to prevent or end a serious violation of human rights.

Since the beginning of the mandate, the Special Representative has issued 21 press releases. Nine of them were in connection with official country visits or other activities of the Special Representative. The remaining 12 were issued in light of grave concern about the situation of individual defenders or groups of defenders in particular countries. Of these 12 press releases, 9 were sent jointly with other mandate holders.¹²

During her visit to Brazil, the Special Representative “expressed her appreciation of the government’s understanding of the problems and its efforts to overcome the hurdles in improving the environment for the effective functioning of human rights defenders and for their protection. She noted the comprehensive policies and initiatives on human rights adopted by the government,

¹¹ The introduction of the requirement of exhaustion of domestic remedies has been supported by a number of countries, including the United States (exhaustion of “reasonable” domestic remedies), and the African and Asian Groups in their position paper presented at the OHCHR seminar on the special procedures, *supra* note 31.

¹² Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, to the General Assembly, in accordance with General Assembly resolution 60/161, 5 September 2006, A/61/312.

in its efforts for better implementation of the strong legal framework provided by the Constitution for the protection of human rights."¹³

Press releases are also used to highlight positive developments concerning the situation of human rights defenders in a particular country.

Some States have suggested that special procedures should not be permitted to make public statements or speak with the press concerning alleged human rights violations unless the allegation has previously been discussed with the State concerned with adequate time for investigation, reply, and action.¹⁴ However, restricting the special procedures' ability to engage the media as they think appropriate means depriving them of a powerful tool and would compromise the effectiveness of the system.

Visiting countries

The Special Representative is also mandated to conduct country visits to States. These visits provide an opportunity to examine in detail the role and situation of human rights defenders in the country, to identify particular problems and to make recommendations on how these could be resolved. The process is intended to provide an independent and impartial assessment, which will be of use to all actors in strengthening both the contribution of defenders to human rights work and their own protection. Country visits usually take place over a period of 5 to 10 days, during which the Special Representative meets with heads of State and Government, relevant government ministers, independent human rights institutions, United Nations agencies, the media and human rights defenders themselves, among others.¹⁵

Through country visits and close relationships with human rights defenders, the Special Representative has a unique perspective on the human rights situation in many countries. The Special Representative therefore has the ability to warn of and even prevent potential widespread human rights violations. Moreover, through the Special Representative, human rights defenders themselves have the possibility to channel information to and warn the international community about possible widespread human rights violations.

Regular monitoring and reporting on human rights situations by human rights defenders identifies and calls attention to threats and changes in peace and security before they deteriorate into armed conflict, providing the Security Council and the Commission on Human Rights with opportunities to take preventive action. For example, human rights defenders in Rwanda

¹³ See OHCHR, Special Representative of the Secretary General on Human Rights Defenders, Press releases <http://www.ohchr.org/english/issues/defenders/index.htm>.

¹⁴ OHCHR seminar on the special procedures, supra note 31, position of the United States. The Asian Group also argued for the adoption of guidelines for special procedures' interaction with the media.

¹⁵ Information concerning the Special Representative of the Secretary-General on Human Rights Defenders has been excerpted from *Human Rights Defenders: Protecting the Right to Defend Human Rights, Fact Sheet No. 29*, Office of the United Nations High Commissioner for Human Rights.

*documented systematic human rights abuses against ethnic minority populations within the country for many years before the 1994 genocide.*¹⁶

Following the visit to a country, the Special Representative releases a report containing conclusions and recommendation concerning legislative, judicial, administrative or other measures that States can take to improve the situation of human rights defenders. In this regard, country visits and the reports that follow provide an excellent opportunity to establish and foster cooperation and a dialogue with the State.

*During the second session of the Human Rights Council, the Special Representative presented a report with a number of recommendations to the government of Nigeria, including the need to review some provisions and the implementation of the Public Order Act to ensure that the right to freedom of assembly is fully respected and to streamline the registration procedures for NGOs.*¹⁷ *Following her presentation, the Nigerian delegation expressed their willingness to meet with the Special Representative to discuss the Public Order Act and the registration of NGOs as well as other issues included in the report.*

Some States have expressed the view that the preparation of country visits, including its scope, programme and schedule of meetings, should be the subject of negotiation with the State concerned. Others have questioned the principle of ‘unhindered access’, i.e. that special procedures should be allowed to visit any part of the country, enter places of detention, and meet individuals in private.

These proposals, if approved, would have the effect of undermining the effectiveness and usefulness of country visits by allowing States to control strictly the programme of the visit as well as the actors the Special Representative meets with.

Moreover, by limiting the Special Representative’s scope of action in relation to country visits, her ability to submit concrete and practical recommendations to assist the State concerned in the implementation of its human rights obligations would be compromised.

Monitoring international standards

In addition, the Special Representative monitors the implementation of the 1998 UN Declaration on Human Rights Defenders. The Declaration reaffirms and clarifies the existing rights of human rights defenders, such as the right to meet and assemble peacefully; to form, join and participate in NGOs; to hold and publish information about human rights; to complain about the policies and actions of officials and government bodies; and to enjoy unhindered access to international bodies. Currently, there is no other UN mechanism that monitors the implementation of this instrument in a systematic and comprehensive way. The existence of the mandate of the Special Representative

¹⁶ Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, to the General Assembly, in accordance with General Assembly resolution 59/192 and Commission on Human Rights resolution 2005/67, 7 September 2005, A/60/339.

¹⁷ Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, 30 January 2006, E/CN.4/2006/95/Add.2.

ensures that the rights enshrined in the Declaration, notably the “right to promote and protect human rights”, are supported within the UN system in a practical manner.

6. Human rights defenders and the Universal Periodic Review

In consideration of the special role of human rights defenders and the factual link between the ability of defenders to operate freely in a particular country and its human rights record, States could use the evaluation of the situation of human rights defenders during the Universal Periodic Review as an essential indicator of compliance with human rights standards and respect of the rule of law.¹⁸ This suggestion, advanced by the current Special Representative, has been supported by the representatives of Argentina and Norway during the second session of the Human Rights Council.

It is important that the Universal Periodic Review considers information available in the UN system, and in particular analysis and recommendations by special procedures. This could be an important tool to ensure effective follow up to and implementation of the recommendations by the special procedures.

¹⁸ E/CN.4/2006/95, 23 January 2006, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G06/103/68/PDF/G0610368.pdf?OpenElement>

Annex

1st session of the Human Rights Council

Item 4: Implementation of General Assembly resolution 60/251 of 15 March 2006 entitled “Human Rights Council”

References to human rights defenders¹⁹

Pakistan (on behalf of OIC)

The Islamic countries recognise the valuable contributions of the human rights defenders for the promotion and protection of human rights as well as the prevention of human rights violations. In view of their important role in the field of human rights, we support calls for continuing efforts for combating impunity and intimidation against human rights defenders.

Argentina

Pensamos que el nivel de protección que se les brinde y el nivel de libertad para ejercer sus funciones, brindadas a los defensores de los derechos humanos, constituyen auténticos « indicadores » del grado de vigencia de los derechos humanos. Creemos que esta materia será un pilar fundamental del futuro ejercicio del examen periódico universal.

En estos mismos momentos, en algunos lugares del mundo, hay defensores de los derechos humanos que no pueden cumplir acabadamente con sus funciones por obstáculos de hecho o de derecho, o peor aun, sufren la intimidación o persecución. Por tal motivo, consideramos que esta materia debería estar entre las cuestiones esenciales, permanentes, de la labor del Consejo.

Seguramente en la sesión de septiembre tendremos la ocasión de examinar el informe de la Representante Especial del Secretario General y, consecuentemente, el Consejo aprobara las decisiones que corresponda. Mas alla de ello, y por la amplitud y gravedad de la cuestión, donde las dilaciones suelen conllevar efectos irreparables, deseamos que todos los procedimientos especiales y grupos de trabajo incluyan entre sus preocupaciones principales la consideración del grado de aplicación de la Declaración sobre los defensores de derechos humanos aprobada por la Asamblea General el 9 de diciembre de 1998.

Mexico

Desde la adopción de la Declaración sobre el Derecho y el deber de los individuos, los grupos y las instituciones de promover y proteger los derechos humanos y las libertades fundamentales universalmente reconocidos los gobiernos hemos reconocido que la promoción y defensa de los derechos humanos, requieren de la protección de la ley y de las instituciones nacionales. Para mi gobierno, la categoría, defensores de derechos humanos es muy amplia e inclusiva, pero creemos que la protección debe ser mas vigorosa cuando se trata de defensores de los derechos tanto de la mujeres como de los pueblos indígenas.

El respeto de Estado de Derecho sin duda debe ser una exigencia para toda persona que ejerza cualquier profesión en las democracias contemporáneas, sin embargo, ello no puede ser entendido como una limitación al ejercicio de los derechos que se reconocen en la Declaración sobre defensores. Tampoco situaciones de emergencia o de suspensión de derechos puede justificarse

¹⁹ The following extracts are taken from the statements delivered by States during the discussion of agenda Item 4 at the first session of the Human Rights Council. They are available on the extranet page of the Council, reachable from OHCHR website (www.ohchr.org).

como limitación al derecho a realizar las actividades que garantizan la vigilancia y la defensa de todos los derechos humanos. Por ello, se deben erradicar estigmatizaciones o difamaciones de los defensores de derecho humanos, que les impida desempeñar su noble trabajo o, peor aun, que los ponga en situación de mayor riesgo.

Quisiera aprovechar esta oportunidad para externar el total apoyo de mi gobierno a los trabajos de la Representante Especial del Secretario General sobre la cuestión de los defensores de derechos humanos, Sra. Hina Jilani y confiamos en que la manera tan responsable con la que ha desempeñado sus funciones redundara en un efectivo cumplimiento por parte de todos los Estados, de la Declaración de Defensores. Es por ello que México respalda dicho instrumento y le gustaría que el Consejo de Derechos Humanos promueva su cumplimiento alrededor del mundo.

Canada

Canada salutes the vital but dangerous work of human Rights defenders and democracy promoters such as Daw Aung San Suu Kyi, Akbar Ganji and Arnold Tsunga as well as Ramón Jahanbegolu, a defender of the Freedom of Expression, recently jailed in Tehran. All make enormous sacrifices struggling for the most basic human rights.

As well, Canada salutes the many anonymous human Rights defenders and democracy promoters whose names will never be heard in this Council but whose efforts are invaluable in achieving its goal at the national level, on the ground.

It is imperative to support and protect human rights defenders and democracy promoters to guarantee space to advocate in an environment free of threats, impunity and media restrictions.

The work of the Special Representative of the Secretary-General for Human Rights Defenders is vital in this protection role. We commend her report on the main areas of progress and remaining challenges that need to be addressed in the implementation of the Declaration.

We ask that at its September session, the Council receive an update on recent developments and a presentation of her last report.

Austria (on behalf of the EU)

The role of human rights defenders in the promotion and protection of human rights is an issue that requires careful and permanent attention of the Human Rights Council. The unanimously adopted UN Declaration on Human Rights Defenders is our basis. The European Union pays tribute to the role and courage of human rights defenders and expresses its sincere admiration for their invaluable contribution to advancing respect for human rights worldwide. They also play a central role by providing insights and information to the Council.

A strong civil society can ensure that the needs of the weakest and most vulnerable members of society are taken into account. This is essential for a climate of inclusion and socio-economic progress.

We warmly welcome the progress made in many states where civil society is vibrant and freedom is being consolidated. At the same time we are concerned about reported intimidation, harassment, threats and detention of human rights defenders in many countries. Restrictions on freedom of expression, including on the Internet, limit their ability to speak out on behalf of victims. In several countries, governments are also introducing or amending legislation and policies negatively affecting the work of NGOs. Some countries use the criminal justice system to curtail the activities of human rights defenders. The European Union raises these issues with the

countries concerned in an ongoing manner, and, where appropriate, publicises these contacts more widely.

The European Union calls on all states to undertake all necessary measures to establish a safe environment to enable human Rights defenders to carry on their important work.

Japan

We are gravely concerned by continuing violations committed against persons engaged in promoting and defending human rights and fundamental freedoms around the world. We are also concerned that in a number of countries in all regions of the world, impunity for threats, attacks and acts of intimidation against human rights defenders persist and that this impacts negatively on the work and safety of human rights defenders. Supporting victims of human rights violations is also one of the most important tasks of human rights defenders to be assisted. These efforts can alleviate suffering of victims, and should be intensified. Japan highly values the crucial role that certain individuals, non-government organisations and groups play in promotion and protection of human rights and fundamental freedoms.

Switzerland

Le rôle des défenseurs des droits humains est à notre avis primordial. Nous soutenons dans ce contexte les recommandations très valables de la Représentante Spéciale, Madame Hina Jilani, émises dans son sixième rapport de janvier de cette année. Nous aimerions en particulier soulever le rôle essentiel de la justice pour garantir un environnement sécuritaire au travail des défenseurs. Ces derniers sont souvent victimes de persécutions, criminalisations et harcèlement en raison de leurs activités. Il est donc essentiel que les auteurs de telles violations –qu'ils soient étatiques ou non étatiques- soient poursuivis, de manière de mettre fin à l'impunité.

Germany

I know myself in complete agreement with Mr. Guenther Nooke, the German Commissioner for Human Rights, when I reiterate the strong believe that the role of civil society and especially of human rights defenders in the promotion and protection of human rights cannot be overestimated. After all, it was also their courage and perseverance that has contributed to the fall of the Iron Curtain across Europe.

Today, we are deeply worried about reported cases of harassment and intimidation of human rights defenders and attempts to restrict their freedom of expression and association in many places in the world. We call on all states to ensure a secure environment for human rights defenders which guarantees conditions conducive to facilitating their endeavours.

Malaysia

Malaysia appreciates the work being undertaken by individuals and organisations that seek to promote and protect human rights and fundamental freedoms everywhere. We too would like to consider that every man and woman who speaks up for human rights and human dignity, as we are all doing today, as those who defend human rights. At the same time, we should be mindful that the words we utter and the actions we take should be within the confines of the rule of law.

Azerbaijan

We recognise the importance of the role of human rights defenders, through dialogue, openness, participation and justice, in the prevention of violence and the promotion of sustainable peace and security.

We emphasise the important role that individuals, NGOS and groups play in the promotion and protection of human rights and fundamental freedoms.

We very much hope that the Council will be able to further develop this topic that becomes more topical as we move along, and elaborate on all aspects in a comprehensive manner in a way to benefit the progress has been made at the time by the Commission on Human Rights.

Sri Lanka

Mr. President, Sri Lanka has been an original co-sponsor of the resolution on human rights defenders adopted by the Commission on Human Rights. The role of human rights defenders is a core element in the national and international human rights architecture. Every human being with a conscience is also a human rights defender, as human beings are both the beneficiaries and promoters of human rights. In this regard, we recall the contribution made by Mr. Neelan Thiruchelvam, a leader of the oldest Tamil political party in Sri Lanka and a member of the UN Working Group on Minorities, an internationally recognised human rights and peace advocate who was killed in a suicide attack by the LTTE in 1999.

The recent assassinations, mine attacks and ambushes carried out by the LTTE even against non-combatant security forces under flag of the International Monitoring Mission underlies the dilemma Sri Lanka faces of having to negotiate with a groups that is yet to renounce terrorism and violence. However, we remain firm in our commitment to a negotiated political solution that respects human rights and ensures the democratic rights of all our citizens.

Indonesia

We would like to express out appreciation to the work of human rights defenders. Indonesia supports their invaluable work in their endeavour towards the promotion and protection of human rights. In this context, it is essential to underline that we in Indonesia always involve our national civil societies, including human rights defenders in our efforts to formulate as well as implement human rights-related program and policies. This constructive synergy can be demonstrated in the recent collaboration during the preparation of government's reports on human rights international instruments ratified by the government.