Commentary to 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

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Historical background
In the year 2000, the Commission on Human Rights requested the Secretary-General to establish a mandate on human rights defenders. The Commission's intention was to give support to implementation of the Declaration on human rights defenders and also to gather information on the situation of human rights defenders around the world (see Resolution 2000/61 establishing the mandate).

In August 2000, M. Hina Jilani was named by the Secretary General as Special Representative of the Secretary-General on the situation of human rights defenders. Her mandate was renewed by the Commission in 2003 (Resolution 2003/64) and by the Human Rights Council in 2007 (Resolution 5/1). In March 2008, the Human Rights Council, with Resolution 7/8, decided to renew the mandate on human rights defenders for a period of three years. The Human Rights Council appointed Ms. Margaret Sekaggya as Special Rapporteur on the situation of human rights defenders.

Mandate
The mandate on human rights defenders is broad and stipulates that the Special Rapporteur's main roles are:

- seek, receive, examine and respond to information on the situation of human rights defenders;
- establish cooperation and conduct dialogue with governments and other interested actors on the promotion and effective implementation of the Declaration;
- recommend effective strategies better to protect human rights defenders and follow up on these recommendations;
- integrate a gender perspective throughout her work.

In its resolution, the Human Rights Council urges all governments to cooperate with the Special Rapporteur and to provide all information requested. The Governments are also urged to implement and follow-up on her recommendations.

Working methods
In the fulfillment of the mandate, the mandate holder:
- Presents annual reports to the Human Rights Council and the General Assembly on particular topics or situations of special importance regarding the promotion and protection of the rights of human rights defenders;
- Undertakes country visits;
- Takes up individual cases of concern with Governments.

Mandate holders
Mrs. Margaret Sekaggya, Uganda (since 1 May 2008)
Mrs. Hina Jilani, Pakistan (2000-2008)

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Introduction

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 is an international instrument for the protection of the right to defend human rights. The Declaration reaffirms rights that are instrumental to the defence of human rights, including, *inter alia*, freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to gain access to information, to provide legal aid and to develop and discuss new ideas in the area of human rights. Implementing the Declaration is a precondition for the creation of an environment that enables human rights defenders to carry out their work (A/63/288 Annex para 2).

The mandate notes that some Governments have made efforts to ensure that domestic legislation reflects State obligations contained in the Declaration and other international human rights standards (E/CN.4/2006/95 para 49). Notwithstanding some positive developments, the information received by the mandate suggests that the current trend in many countries is to pass laws and regulations restricting the space for human rights activities. Numerous national laws continue to be or have become incompatible with international standards and with the Declaration in particular. While most national Constitutions formally guarantee human rights, secondary laws have subsequently restricted rights that are pivotal for the full implementation of the Declaration. In many cases, States have used these domestic laws to legitimize violations of human rights and to seriously impair the work of human rights defenders. In addition, even where efforts are made to adopt laws that are in line with international standards, their inefficient implementation in practice remains a recurrent problem. (E/CN.4/2006/95 para 50).

The Special Rapporteur believes that further efforts are needed to improve understanding of the responsibilities[1] enshrined in the Declaration on human rights defenders. More than a decade after its adoption by the General Assembly, the Declaration is not an instrument that is sufficiently familiar either to those who bear the principal responsibility for its implementation—namely, Governments—or to its rights-holders, human rights defenders (A/63/288 para 60).

The purpose of this commentary is to fill this gap by enhancing States' understanding of the responsibilities contained in the Declaration, as well as to increase awareness of this instrument among relevant non-state actors that can

[1] Although not a legally binding instrument, the Declaration on human rights defenders contains rights that are already recognized in many legally binding international human rights instruments, including the International Covenant on Civil and Political Rights. The Declaration specifies how the rights included in major human rights instruments apply to human rights defenders and their work. In addition, the Declaration was adopted by consensus by the General Assembly, which consequently represents States' strong commitment towards its implementation.

contribute to the development of a conducive environment for the work of defenders. Additionally, this commentary aims to enhance the capacity of human rights defenders to ensure respect for the rights to which they are entitled under the Declaration. This commentary is based on the analysis of information received and reports produced by both mandate holders- Mrs. Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders, and her predecessor Ms. Hina Jilani, Special Representative of the Secretary General on the situation of human rights defenders.

The commentary is divided into 10 chapters, each addressing one of the rights provided for in the Declaration, namely: The right to freedom of opinion and expression; the right to freedom of association; the right to freedom of assembly; the right to protest; the right to access funding; the right to access and communicate with international bodies; the right to be protected; the right to an effective remedy; and the right to develop and discuss new ideas in the area of human rights. A final chapter addresses permissible derogations from these rights.

Each chapter describes the legal framework where the particular right is recognized, not only in the Declaration, but also in other regional and international instruments. It further analyses what the different rights entail and the different aspects necessary to ensure their implementation. Each chapter also includes a section describing the most common violations faced by defenders and a set of good practices and recommendations aimed at facilitating State's implementation of that particular right. Mindful that the Declaration is not an isolated instrument and that its implementation must draw support from the body of international law and human rights norms, the commentary includes many references and legal analyses from other regional and international bodies.

In accordance with the Special Rapporteur's mandate to integrate a gender perspective throughout her work, this commentary pays particular attention to the specificities of the situation of women human rights defenders and the particular challenges they face. In this regard, both mandate holders have reiterated on several occasions that women defenders are more at risk of suffering certain forms of violence and other violations, prejudice, exclusion, and repudiation than their male counterparts. This is often due to the fact that women defenders are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society. Their work is often seen as challenging "traditional" notions of the family, which can serve to normalize and perpetuate forms of violence and the oppression of women. This can, in certain contexts, lead to hostility or lack of support from the general population, as well as from the authorities (A/HRC/16/44 para 23).

The term women human rights defenders in this commentary refers to women who, individually or in association with others, act to promote or protect human

rights, including women's rights. Because of the similarities of the situations that they face, the term women human rights defenders can also refer to male human rights defenders working on women's rights as well as on gender issues more generally (A/HRC/16/44 para 30).

Chapter I The right to be protected

- *Where is the right protected?*
- *The right to be protected and the Declaration on human rights defenders*
- *What does the right to be protected entail?*
- *Common restrictions and violations*
- *Best practices and recommendations*

Where is the right protected?

The State's duty to protect the rights of defenders is derived from each State's primary responsibility and duty to protect all human rights, as established in:

- The Universal Declaration of Human Rights (Article 2),
- The International Covenant on Civil and Political Rights (Article 2),
- The Convention on the Elimination of All Forms of Discrimination against Women (Article 3),
- The European Convention on Human Rights (Article 1),
- The African Charter on Human and Peoples' Rights (Article 1), and
- The American Convention on Human Rights (Article 1).

The right to be protected and the Declaration on human rights defenders

The State's duty to protect human rights defenders is provided for in the preamble to the Declaration as well as in its articles 2, 9 and 12:

> Article 2
>
> 1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.
>
> 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.
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> Article 9
>
> 1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
>
> […]
>
> Article 12
>
> 1.[…]

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, 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.

As the Declaration on human rights defenders contains a series of principles and rights that are based on human rights standards enshrined in other legally binding international instruments, such as the International Covenant on Civil and Political Rights, the State's duty to protect all human rights includes the protection of the rights of human rights defenders. Thus, for instance, the right to life, the right to privacy, and the rights to freedom of association and expression should be protected from violations not only by State agents, but also by private persons or entities. This duty should apply at all times (A/65/223 para. 31).

What does the right to be protected entail?

- **State's obligation to protect**

States bear the primary responsibility for protecting individuals, including defenders, under their jurisdiction, regardless of the status of the alleged perpetrators (A/HRC/13/22 para. 42). The State's duty to protect the rights of defenders from violations committed by States and non-State actors is derived from each State's primary responsibility and duty to protect all human rights, as enshrined in article 2 of the International Covenant on Civil and Political Rights, which establishes the obligation of States to guarantee to all individuals within their territories and subject to their jurisdiction the rights recognized in the Covenant without discrimination (A/65/223 para 30).

The obligation to protect and the principle of non-discrimination

Article 3 of the Convention on the Elimination of All Forms of Discrimination against Women establishes guarantees of basic human rights and fundamental freedoms for women: "States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."

The obligation on States to protect includes both negative and positive aspects. On the one hand, States must refrain from violating human rights. According to

the Human Rights Committee: “States Parties must refrain from violation of the rights recognized by the Covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.”[2]

On the other hand, States should act with due diligence to prevent, investigate and punish any violation of the rights enshrined in the Declaration. In other words, States should prevent violations of the rights of defenders under their jurisdiction by taking legal, judicial, administrative and all other measures to ensure the full enjoyment by defenders of their rights; investigating alleged violations; prosecuting alleged perpetrators; and providing defenders with remedies and reparation (A/65/223 para 34). Examples of actions or omissions which contravene the State´s duty of due diligence include the failure to provide effective protection to defenders at risk who have documented attacks and threats by non-State actors or who have been granted interim protection measures by regional human rights mechanisms (A/65/223 para 35).

- **State’s responsibility for the acts of non-State actors**

In the context of human rights violations by third parties, the obligation to protect, first, involves ensuring that defenders do not suffer from violations of their rights by non-State actors. Failure to protect could, in particular circumstances, engage the State’s responsibility (A/65/223 para. 29). For instance, acts and omissions committed by non-State actors under the instructions, control or direction of the State can, under certain circumstances, give rise to State responsibility. One example of a situation might be where a State creates or equips armed groups, such as paramilitaries or armed bands, and instructs them to attack human rights defenders. In this instance, the paramilitaries could be considered de facto State organs, and the commission of acts in breach of international law against defenders could be attributed to the State (A/65/223 para 41).

In cases involving non-State actors — including private companies and illegal armed groups — it is paramount that prompt and full investigations are conducted and perpetrators brought to justice. Failure by States to prosecute and punish such perpetrators is a clear violation of article 12 of the Declaration on Human Rights Defenders. Addressing the issue of impunity is a key step to ensuring a safe environment for defenders (A/HRC/13/22 para. 42).

State responsibility in relation to actions and omissions of non-State actors as provided in article 12, paragraph 3, of the Declaration has been reiterated by numerous human rights bodies, including the Human Rights Committee and the

[2] ICCPR General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, 26 May 2004, para 6.

Inter-American Commission on Human Rights. The rights enshrined in the International Covenant on Civil and Political Rights, including the right to life and freedom of association and expression, should be protected from violations not only by State agents, but also private persons or entities (A/HRC/13/22 para. 43).

- **Responsibility of non-State actors[3]**

Although States bear the primary responsibility for protecting human rights defenders, it is necessary to recall that the Declaration on Human Rights Defenders is addressed not only to States and human rights defenders, but to everyone. It is set forth in article 10 of the Declaration that, "no one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms". (A/HRC/13/22 para. 44 and A/65/223 para. 2). In addition, the Declaration reaffirms the responsibility of everyone not to violate the rights of others, encompassing the responsibility of non-State actors to respect the rights of human rights defenders, in the preamble as well as in articles 11, 12.3 and 19 (A/65/223 para. 22).

Accordingly, all non-State actors, including armed groups, the media, faith-based groups, communities, companies and individuals should refrain from taking any measures that would result in preventing defenders from exercising their rights. On the contrary, non-State actors can, and should, play a preventive role by promoting the Declaration as well as the rights and activities of human rights defenders (A/65/223 para. 22).

In relation to private national or transnational corporations, the mandate refers to the responsibility of companies to respect human rights, as emphasized by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Mr. John Ruggie, in his report to the Human Rights Council (A/HRC/8/5), submitted in 2008. The Human Rights Council endorsed the Special Representative's policy framework for business and human rights, as elaborated in his report. The framework rests on the three principles of "protect, respect and remedy": the State duty to protect against human rights abuses by third parties, including businesses; the corporate responsibility to respect human rights; and the need for more effective access to remedies.[4] The Human Rights Council later emphasized that transnational corporations and other business enterprises have a responsibility to respect human rights (see Human Rights Council resolution 8/7).[5] Consequently,

[3] The term "non-State actor" encompasses people, organizations, groups and corporations not composed of State agents or not being State organs (A/65/223 para 1).

[4] On March 2011, the Special Representative, Mr. John Ruggie issued the "Guiding Principles on Business and Human Rights", for the consideration of the UN Human Rights Council at its June 2011 session. The Principles delineate "how States and businesses should implement the UN 'Protect, Respect and Remedy' Framework in order to better manage business and human rights challenges." See http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy-Framework/GuidingPrinciples.

[5] The corporate responsibility to respect human rights (see A/HRC/14/27, paras. 54-78) is recognized in soft-law instruments such as the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises, and it constitutes one of the commitments that companies undertake when joining the United Nations Global Compact (A/65/223 para 24).

business enterprises also have a responsibility to respect the rights of human rights defenders (A/65/223 para 23).

The mandate has also stated that discharging the responsibility to respect human rights requires due diligence. This concept, which is derived from, but should be distinguished from, a State's due diligence responsibility, should be understood to mean that companies must ensure that their activities do not infringe upon the rights of others, including human rights defenders. This implies that companies should identify and prevent human rights violations against defenders that may result from their activities and operations. Companies should engage with human rights defenders while implementing the four components of the human rights due diligence standard, as elaborated by the Special Representative of the Secretary-General on business and human rights (A/65/223 para 25).

- **Harmonizing domestic legal frameworks with the Declaration**

States should harmonize their domestic legal frameworks with the Declaration on Human Rights Defenders. To enhance the protection of defenders and ensure that the rights and freedoms referred to in the Declaration are guaranteed, it is paramount that States review their national legal frameworks and abolish legal or administrative provisions impeding the work and activities of defenders (A/HRC/13/22 para. 63).

In this context, States should verify that their security legislation, including their intelligence and counter-intelligence legislation, is not used to impede the work of defenders. States should also translate and disseminate the Declaration on Human Rights Defenders and organize training for law enforcement officials and judges on the rights contained in the Declaration (A/HRC/13/22 para. 64).

- **Protection measures and programs**

States have developed different measures and protection programmes to ensure the personal safety of human rights defenders at imminent risk. Many States use their witness protection programs as their only mechanism to ensure the protection of human rights defenders at risk. However, the mandate has stressed that witness protection programs are not sufficient to provide for the safety of defenders since in most cases they have not been designed for that purpose and do not take the specific needs of human rights defenders into account (A/HRC/13/22 paras 71, 73 and 74).

Other States have put in place protection mechanisms and measures at the national level to contribute to the physical protection of defenders. These measures range from establishing specialized investigative units for crimes against human rights activists, setting up an early warning system, providing police protection and bodyguards, and establishing programmes for emergency placement of defenders in another region or country (A/HRC/13/22 paras 77, 79, 81 and 82 and E/CN.4/2006/95 para. 45).

Many of these measures and mechanisms, however, have received some criticism with regard to their efficiency and sustainability. For example, the outcome of the risk assessments has reportedly failed to match, in several instances, the real situation of vulnerability faced by the defenders requesting protection. Furthermore, protective measures have, on some occasions, failed to address the specificities of the profile of defenders pertaining to gender, ethnic affiliation, leadership position and place of residence (A/HRC/13/22/Add.3 para. 111). There have also been cases in which the bodyguards assigned for the protection of defenders have reportedly spied on them and transmitted information to the intelligence agency (A/HRC/13/22/Add.3 para. 112). Human rights defenders have also raised concerns about the privatization of the protection measures, which would allow members of private security companies to provide protection to them. Defenders fear former paramilitaries could be employed, and could similarly spy on them and transmit information to intelligence services, in pursuit of economic benefits (A/HRC/13/22/Add.3 para 113).

Consequently, many defenders have refused police protection as they are not confident that they would be properly protected. Furthermore, the large number of Government entities and ministries in charge of implementation of the programmes often causes confusion and a lack of confidence within the community of defenders (A/HRC/13/22 paras 80, 83 and E/CN.4/2006/95 para. 56).

Concerning protection measures and programs to protect women defenders and those working on women's rights or gender issues, the information received indicates that in the vast majority of cases there are no specific mechanisms in place or, where they do exist, they are often hampered by a lack of implementation, political will or gender-sensitivity (A/HRC/16/44 para. 90). More specifically, existing protection measures and mechanisms are often limited and lack a gender-specific approach (A/HRC/16/44 para. 92).

A factor reported as hindering the development or implementation of State-based policies or practices for the protection of women defenders and those working on women's rights or gender issues is the lack of will on the part of Government authorities, including the police. Government or police officials may themselves share the prevailing conservative and patriarchal views of the community in general towards women defenders and those working on women's rights or gender issues, and thus may have little or no enthusiasm to intervene effectively for their protection in spite of their obligation to do so (A/HRC/16/44 para. 96). Another factor affecting the efficiency of protection mechanisms is that they do not recognize non-State actors as part of the group of perpetrators of violations of the rights of women defenders and those working on women's rights or gender issues (A/HRC/16/44 para. 92).

While a set of protection mechanisms must be put in place in order to prevent violations against human rights defenders, the mandate has underscored that such measures can only represent temporary protection from an imminent danger. Adequate protection requires a comprehensive and transversal policy from Governments to establish an appropriate environment where the legitimacy of the work of human rights defenders is respected, the legal framework is in line with the Declaration's provisions, and those taking adverse actions against defenders can be brought to justice (E/CN.4/2006/95 para. 45).

Lastly, in discharging their duty to protect, States parties to international and regional human rights instruments must also implement the interim measures provided by international and regional human rights mechanisms, such as the precautionary measures granted by the Inter-American Commission on Human Rights, so as to prevent violations by non-State actors, including corporations (A/65/223 para 32).

- **The obligation to protect in States with a federal structure**

The mandate has noted that the federal structure of certain States has sometimes impeded the prosecution of human rights violations, in particular those committed against human rights defenders. Regardless of the structure of a State, federal authorities retain the primary responsibility to protect human rights defenders and guarantee that their rights are protected. Federal Governments should therefore take all necessary measures to ensure that the transfer to States of the jurisdiction to prosecute and try human rights violations committed against defenders is effective (A/HRC/13/22 para. 45).

The United Nations treaty bodies have repeatedly stated that the application of State obligations shall extend to all parts of federal States without any limitation or exception. States with a federal structure should therefore ensure that the Declaration on Human Rights Defenders is fully applicable throughout their territory. Whenever possible, unified provisions should be adopted and the rights contained in the Declaration should be directly enforceable by State courts (A/HRC/13/22 para 46).

- **Ending impunity**

The mandate is concerned about the paucity of practical initiatives to physically protect human rights defenders effectively. Only a few countries have adopted legislation or taken effective measures to put an end to the numerous and violent attacks against defenders. Impunity continues to prevail and no specific compensation mechanisms for human rights violations committed against human rights defenders have been created (A/HRC/13/22 para. 112). Addressing the issue of impunity, in line with article 12 of the Declaration, is a key step to ensuring a safe environment for defenders. The degree of security enjoyed by human rights defenders will determine the capacity to expose human rights violations and to seek redress for victims of such violations (E/CN.4/2006/95 para. 59).

Common restrictions and violations

Since the adoption of the Declaration on Human Rights, many intergovernmental and non-governmental regional mechanisms for the protection of defenders have been created and declarations and resolutions adopted (A/HRC/13/22 para. 69). Despite these achievements, in every region of the world, defenders, including women human rights defenders – and often their beloved ones – continue to be subjected to intimidation, threats, killings, disappearances, torture and ill-treatment, arbitrary detention, surveillance, administrative and judicial harassment and more generally, stigmatization by State authorities and non-State actors.[6] The Special Rapporteur sends an average of 350 communications to Governments per year, including allegation letters and urgent appeals. Of these, about one third of the communications concerned women defenders and those working on women's rights or gender issues (A/HRC/16/44 para 35).

Defenders face illegitimate restrictions on the exercise of their rights to freedom of opinion and expression, access to information, access to funding, and freedoms of association - including registration - peaceful assembly, and movement. A climate of impunity for violations committed against defenders prevails in numerous countries.[7] Since the beginning of her mandate, the Special Rapporteur has identified specific situations impeding the work of human rights defenders and leading to a highly insecure environment (A/HRC/13/22 para. 26).

a) Stigmatization: The growing characterization of human rights defenders as "terrorists", "enemies of the State" or "political opponents" by State authorities and State-owned media is a particularly worrying trend, as it is regularly used to delegitimize the work of defenders and increase their vulnerability. (A/HRC/13/22 para. 27). Aside from the "political" stigmatization to which both women defenders and their male counterparts are subjected in certain contexts, including accusations of being fronts for guerrilla movements, terrorists, political extremists, separatists, foreign countries or interests, women human rights defenders often face further stigmatization by virtue of their sex or the gender- or sexuality-based rights they advocate. As noted by the Special Rapporteur, such work can be perceived as challenging established socio-cultural norms, tradition or perceptions about the role and status of women in society.

As a result of this, women defenders often find themselves and their work subjected to stigmatization by both State and non-State actors. A common accusation directed in particular at those working on women's rights, gender issues, and LGBT rights, is the assertion that these defenders are somehow advocating or attempting to import "foreign" or "Western" values which contradict national or regional culture. State agents or representatives are often alleged to be responsible for such stigmatization (A/HRC/16/44 para 85).

[6] "Ten years on, human rights defenders continue to pay a high price," press release, 9 December 2008.
[7] "Ten years on, human rights defenders continue to pay a high price," press release, 9 December 2008.

The mandate has, on repeated occasions, expressed serious concerns in relation to this phenomenon, since it contributes to the perception that defenders are legitimate targets for abuse by State and non-State actors (A/HRC/13/22 para. 27). Acknowledging the work and roles of groups, organs or individuals in the promotion and protection of human rights and fundamental freedoms is of primary importance. This is the first step towards a safe working environment for defenders (A/HRC/13/22 para. 29).

b) Prosecution of defenders and criminalization of their activities: States increasingly resort to legal actions to violate the human rights of defenders denouncing human rights violations. Defenders are arrested and prosecuted on false charges. Many others are detained without charge, often without access to a lawyer, medical care or a judicial process, and without being informed of the reason for their arrest (A/HRC/13/22 para. 31).

Example

In July 2010, the Special Rapporteur on the situation of human rights defenders, together with the Special Rapporteur on the independence of judges and lawyers, sent an urgent appeal regarding the sentencing of the president of a human rights organization and also a commissioner of the International Commission of Jurists, to three years imprisonment.

According to information received, a criminal court started hearing his case on 18 February 2010, on the charges of "weakening national sentiments and encouraging racist and sectarian feelings", and "transferring false and exaggerated news that weaken national sentiments" under the penal code. Five subsequent hearings were conducted on 10 March, 6 April, 4 May, 27 May and 6 June. The final hearing and sentencing took place on 23 June 2010, and he was sentenced to three years imprisonment.

According to information received, a number of procedural fair trial guarantees were not complied with during the trial. The defense lawyers called 11 (eleven) witnesses to testify during the trial and it is alleged that the President of the criminal court forbid all defense witnesses from testifying and did not take into account the evidence submitted by the defense. The conviction was based on three secret reports of the intelligence service, even though defence lawyers had presented credible evidence undermining the authenticity of the reports. Further his lawyers were not allowed to visit and meet with him in jail without authorization from the bar association. On several occasions, the bar association refused to allow his lawyers to visit him in jail. During consultations with his lawyer there was a prison guard present.

This case has previously been addressed by the Special Procedures Mechanisms in communications dated 3 August 2009 and 10 December 2009. In these communications concern was raised that the disbarment and criminal charges against this defender were reportedly related to his peaceful and legitimate activities in defence of human rights, including as a lawyer. We are yet to receive a reply to the communications we addressed to the Government (A/HRC/16/44/Add.1 paras 2170 to 2174).

Communications issued by the mandate indicate that the judicial harassment and criminalization of human rights defenders' activities by States' authorities has not decreased. Some States tend to systematically invoke national security and

public safety to restrict the scope of activities of defenders. In many countries, trade unionists, members of NGOs and social movements face repeated arrests and criminal proceedings for charges of “forming criminal gangs”, “obstructing public roads”, “inciting crime”, “creating civil disobedience” or “threatening the State security, public safety or the protection of health or morals”. Moreover, human rights defenders, including defence lawyers, providing legal assistance to other defenders or victims of human rights violations are threatened, denied access to courthouses and their clients, and arrested and charged under various criminal provisions. The multitude of arrests and detentions of defenders also contributes to their stigmatization, since they are depicted and perceived as troublemakers by the population (A/HRC/13/22 para. 32).

Some States continue to resort to ambiguous security laws to arrest and detain human rights defenders, often without charges. In some States, national intelligence and security services have the power to detain human rights defenders without charge for a prolonged period of time. In some instances, agents of intelligence and security services are granted immunity from prosecution, and can therefore commit human rights violations against defenders in total impunity. Defenders may also face arrests, detention and harsh sentences, including the death penalty, under various State secret laws. The Special Rapporteur is concerned that legislation on State secrets often lacks clarity on what constitutes a State secret and that States frequently resort to such legislation to silence defenders and political opponents. The activities of defenders are also often criminalized and their freedom of association and expression violated through the use of extremely broad provisions of criminal codes (A/HRC/13/22 para. 34).

Analysis of the communications sent by the mandate also reveals a worrying trend of criminalization of the activities carried out by women human rights defenders and those working on women’s rights or gender issues throughout the world. Many communications reported arrests and further acts of criminalization including criminal investigations, charges, trials, and sentences varying from fines to administrative detentions to lengthy prison terms (A/HRC/16/44 para 70). Allegations of irregularities relating to due process and fair trial procedure are commonplace (A/HRC/16/44 para 71).

Those at risk include women defenders working on the rights of religious and national minorities; women’s rights, including family planning and reproductive rights; housing rights; democratic reform; impunity for alleged use of torture; women defenders working on human rights issues related to conflict; pro-democracy advocates; those denouncing violations to the European Court of Human Rights; and women journalists. In other countries, those most at risk appear to be women activists for indigenous rights along with other women community leaders, campesino and rural activists, environmentalists, and lawyers (A/HRC/16/44 para 73, 77 and 79).

The prevalence of the alleged use of torture, as well as other forms of ill-treatment and mistreatment of women human rights defenders and those working on women's rights or gender issues while in detention is alarming (A/HRC/16/44 para 81). In some countries, there is a a worrying trend of the alleged committal of women defenders to psychiatric institutions, wherein they may be subjected to forced medication, as a form of punishment for their work, along with other forms of mistreatment such as assaults and beatings or sleep deprivation (A/HRC/16/44 para 82).

c) Role of non-State actors: These past few years, the safety of defenders has been increasingly threatened by a growing number of non-State actors in a climate of impunity (A/HRC/13/22 para 38). Individuals acting on their own or as part of groups, whether in collusion with States or not, have been increasingly involved in attacks on human rights defenders. Guerillas, private militias, vigilante groups and armed groups have been implicated in violence against defenders, including beatings, killings and various acts of intimidation (A/HRC/13/22 para 39).

Private companies have also been directly or indirectly involved in acts of violence against defenders. In this regard, the mandate has underlined the situation of defenders working on economic, social and cultural rights, who are increasingly vulnerable, since their work is not always recognized as human rights work (A/HRC/13/22 para 39). Private corporations have allegedly been impeding the activities of defenders working, inter alia, on labour rights, the exploitation of natural resources, the rights of indigenous peoples and minorities (A/65/223 para 9). In certain countries, attacks have been perpetrated against defenders who supported indigenous communities affected by gold and silver mining by transnational companies (A/65/223 para 15). Also, in several cases brought to the attention of the Special Rapporteur, it has been alleged that local authorities had colluded with the private sector or that private companies had aided and abetted the commission of violations against human rights defenders (A/65/223 para 11).

In addition, community leaders and faith-based groups are increasingly resorting to the stigmatization of, and attacks against, defenders working on issues such as the rights of lesbian, gay, bisexual and transgender persons (A/HRC/4/37/Add.2, para. 32), violence against women and domestic violence. In numerous instances, defenders have been threatened with ostracism or pressured to stop their work in defence of human rights. Furthermore, the information received shows that women human rights defenders working in the area of domestic violence and other types of violence against women are often pressured by the family members of victims or threatened by the perpetrators or their own family members to drop cases (A/65/223 para 16).

In some parts of the world, the media has been involved in violations committed against human rights defenders, notably in relation to violations of their right to privacy. In certain States, human rights defenders have been subjected to

denigration campaigns in the press (although sometimes the perpetrators were State-owned outlets). The mandate strongly condemns such stigmatization, which often causes defenders to be portrayed as “troublemakers” and consequently legitimizes attacks against them (A/65/223 para17).

The mandate has been made aware of cases in which newspapers have directly incited homophobia or portrayed defenders working on lesbian, gay, bisexual and transgender rights as homosexuals (A/65/223 para 18). Stereotypical portrayals and insults have also been used against women defenders working on issues such as rape, domestic violence and female genital mutilation (A/65/223 para 19).

Example

In 2009, the Special Rapporteur on the situation of human rights defenders, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal regarding physical attacks against two members of an organization working with sexual minorities and a media campaign against human rights defenders who work with lesbian, gay, bisexual, transgender and intersex (LGBTI) human rights organizations.

According to the information received, a newspaper published an article, self-described as a 'killer dossier', listing the names of several human rights defenders and other LGBTI people. The article contained pictures, names, physical descriptions, details about professions and places of residence, negative stereotyping and accusations of “spreading the gay and lesbian vice in schools”. This was followed by a public petition presented to Parliament by an NGO requesting new laws providing harsher punishment for homosexuality. This NGO has taken the lead in organising an anti-LGBTI campaign and fomenting anti-LGBTI sentiments. This campaign--which TV, radio and printed media echoed--is fostering a climate of hostility and is encouraging attacks against LGBTI defenders.

Following this campaign, LGBTI defenders have reportedly been the subject of an increased level of harassment and threats, including death threats, and killing. Such a smear campaign will further incite hatred and violence against human rights defenders and members of the LGBTI community (A/HRC/13/22/Add.1 paras 2314 to 2320).

d) Sexual violence and rape: Violations faced by women defenders may take a gender-specific form, ranging from verbal abuse based on their sex, to sexual abuse and rape. Cases of the latter are particularly prevalent in situations of conflict, which are often characterized by an environment of complete impunity for perpetrators (A/HRC/16/44 para 24). Sexual assaults, including instances of gang rape in detention of LGBT activists, have also been reported. The alleged perpetrators of these acts were mostly unknown/ unidentified but also included members of the police, military, armed groups, or local members of the community (A/HRC/16/44 para 87).

In certain cultural and social contexts, issues relating to rape and sexual abuse of women remain taboo. Women working on such issues, including victims seeking redress, organizations representing victims or granting them shelter, and organizations working with sex workers, among others, often face a hostile response from both society and State as a result of their work (A/HRC/16/44 para 88). Further, in certain contexts, if a woman human rights defender is subjected to rape or sexual abuse as a result of her work, she may be perceived by her extended family as having brought shame on both the family and the wider community.[8] Indeed, even when no rape or sexual abuse has occurred, women defenders are often subjected to stigmatization and ostracism by community leaders, faith-based groups, families and communities who consider them to be jeopardizing religion, honour or culture through their work (A/HRC/16/44 para 24).

Best practices and recommendations

***- Respecting defenders' rights*.** States should respect and protect the rights of human rights defenders in accordance with the Declaration on human rights defenders (A/65/223 para 63).

- ***Protection and recognition for defenders most exposed to attacks and violations***. States should make more efforts to recognize and protect women human rights defenders and defenders working to promote economic, social and cultural rights, as well as those working to uphold the rights of minorities, indigenous peoples and lesbian, gay, bisexual and transgender people. Those defenders need specific and enhanced protection, as well as targeted and deliberate efforts to make the environment in which they operate a safer, more enabling and more accepting one (A/63/288 Annex para 8).

- Providing legitimacy to the work of defenders. States should refrain from stigmatizing the work of human rights defenders. Recognition of the status and role of human rights defenders and the legitimacy of their activities in public statements is the first step to preventing or at least reducing threats and risks against them (A/HRC/13/22 para. 114 a).

- Harmonizing domestic laws with the Declaration. States should consider adopting the Declaration on Human Rights Defenders as a part of domestic legislation and establish focal points for human rights defenders within the office of the Head of State or Government, or other relevant ministries. (A/HRC/13/22 para. 114 a). The mandate also calls on States to disseminate the Declaration not only among State agents but also to individuals, groups and organs of society and other non-State actors, including faith-based groups, the media, private and State-owned companies (A/65/223 para 62).

- Enacting legislation on the protection of defenders. States should adopt

[8] OHCHR fact sheet No. 29: "Human Rights Defenders: protecting the right to defend human rights."

national and provincial laws on the protection of human rights defenders, with a specific reference to the work of women human rights defenders. These laws should be developed in consultation with civil society and on the basis of technical advice from relevant international agencies (A/HRC/13/22/Add.2 para 97).

- Guidelines for protection programs. States can use the following minimum guidelines regarding protection programmes for human rights defenders (A/HRC/13/22 para 113 and 111):

a) Human rights defenders should be consulted throughout the setting up or review of protection programmes ;

b) The structure of a protection programme should be defined by law;

c) In federal States, the structure of a protection programme should be defined by federal legislation. The administration of such a programme should be overseen by the Federal Government even in cases where it is in practice administered by States;

d) Protection programmes should include an early warning system in order to anticipate and trigger the launch of protective measures. Such a system should be managed centrally and risk assessments should involve different groups of human rights defenders;

e) Specific trainings on human rights, gender issues and on the Declaration on Human Rights Defenders should be a prerequisite for the selection of police and other law enforcement officials that would be involved in the programme;

f) The physical protection of defenders should not be outsourced to third parties unless they are properly trained. Their selection and recruitment should be made with the consultation of human defenders;

g) Adequate financial resources should be devoted to such programmes. In this regard, a better assessment of the security needs of human rights defenders will enable States to better cost such programmes. Third States should contribute to the development or review of sustainable and well-financed protection programmes.

h) Protection programmes and measures should address the specificities of the profile of defenders pertaining to gender, ethnic affiliation, leadership position and place of residence.

i) The Government should fully guarantee that personnel assigned to the protection of human rights defenders do not gather information for intelligence purposes. Any ongoing illegal intelligence activities targeting human rights

defenders should stop immediately (A/HRC/13/22/Add.3 paras 157 and 159);

- Protection of women human rights defenders and those working on women's rights or gender issues. States should use the following recommendations (A/HRC/16/44 para 109):

a) Publicly acknowledge the particular and significant role played by women defenders and those working on women's rights or gender issues in the consolidation and advancement of plural and inclusive societies as a first step to the prevention or reduction of the risks that they face;

b) Protect women defenders and those working on women's rights or gender issues from violations perpetrated by State and non-State actors by acknowledging such violations and by offering effective security measures;

c) Ensure that violations against women defenders and those working on women's rights or gender issues committed by State and non-State agents are promptly and impartially investigated and that those responsible are punished in an appropriate manner. Fighting impunity is essential for the security of this group of defenders;

d) Specifically involve women defenders and those working on women's rights or gender issues in any consultation with human rights defenders, whether it be in the context of protection programmes or otherwise;

e) Ensure that programmes for the security and protection of human rights defenders integrate a gender perspective and address the specific risks and security needs of women defenders and those working on women's rights or gender issues;

f) Promote projects to improve and further develop the documentation of cases of violations against women defenders and those working on women's rights or gender issues;

g) Increase material resources for the immediate protection of women defenders and those working on women's rights or gender issues and make sure that they can be mobilized in a flexible manner to guarantee their effective physical and psychological protection; and

h) Ensure that cases of sexual violence against defenders are attended to by personnel who are qualified from a gender perspective. The victim must be consulted during each step of the process.

- Implementing interim protection measures. States should implement the interim measures of protection granted by international and regional human rights mechanisms to human rights defenders by, inter alia, taking immediate

steps to provide them with appropriate protection (A/65/223 para. 64).

- Accountability of non-State actors. Non-State actors and private entities should abide by the Declaration on human rights defenders and refrain from endangering the safety of defenders and/or impeding their work (A/HRC/13/22 para. 44 and A/65/223 paras 53 and 54).

- Accountability of national and transnational corporations. National and transnational corporations should (A/65/223 paras 56 to 60):

a) Involve and consult with human rights defenders when carrying out country assessments;

b) Develop national human rights policies in cooperation with defenders, including monitoring and accountability mechanisms for violations of the rights of defenders;

c) Fully implement the recommendations of the Special Representative of the Secretary-General on business and human rights on the corporate responsibility of respect;

d) Act with due diligence and ensure that their activities will not infringe the rights of others, including human rights defenders;

e) Promote the role and activities of human rights defenders.

- The role of national institutions. National human rights institutions are encouraged to prioritize the protection of human rights defenders on their agenda and establish focal points for human rights defenders, to play an important role in fostering the dissemination of the Declaration and to investigate complaints made by human rights defenders (A/HRC/13/22 para. 114 c).

- ***The role of the Office of the High Commissioner for Human Rights.*** The Office of the High Commissioner for Human Rights is encouraged to develop a comprehensive strategy to protect human rights defenders, including against threats and reprisals by non-State actors (A/65/223 para. 80).

Chapter II The right to freedom of assembly

- *Where is the right to freedom of assembly protected?*
- *Peaceful assembly and the Declaration on human rights defenders*
- *What activities are protected under the Declaration?*
- *Common restrictions on and violations to the right to peacefully assembly*
- *Permissible limitations to freedom of assembly*
- *Best practices and recommendations*

Where is the right to freedom of assembly protected?

The right to peacefully assembly is protected under various international and regional instruments, such as:

- The Universal Declaration of Human Rights (Article 20(1)),
- The International Covenant on Civil and Political Rights (Article 21),
- The International Convention on the Elimination of All Forms of Racial Discrimination (Article 5 (d) (ix),
- The Convention on the Right of the Child (Article 15),
- The European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 11),
- The African Charter on Human and Peoples' Rights (Article 11),
- The African Charter on the Rights and Welfare of the Child (Article 8),
- The Arab Charter on Human Rights (Article 28),
- The American Convention on Human Rights (Article 15) and
- The Declaration on Human Rights Defenders [9] (Articles 5 and 12).

Peaceful assembly and the Declaration on human rights defenders

The Declaration on Human Rights Defenders acknowledges the legitimacy of participation in peaceful activities to protest against violations of human rights, and recognizes freedom of assembly as a very important element of this right (A/61/312, para 76 and A/58/380, para. 24).

The right to participate in peaceful assemblies is recognized in the Declaration under:

> Article 5
>
> 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:
> (a) To meet or assemble peacefully;
> […]
>
> Article 12
>
> 1.Everyone has the right, individually and in association with others, to participate in

[9] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.

peaceful activities against violations of human rights and fundamental freedoms.

2.The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3.In this connection, everyone is entitled, individually and in association with others, 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 mandate considers the right to peaceful assembly essential for human rights defenders working locally, nationally and globally to promote and protect human rights (A/61/312, para 76). Without a guarantee of this right and protection against its violation by State officials and non-State entities, human rights defenders will be restricted in their ability to fulfill their fundamental role of protecting and promoting human rights (A/61/312, introduction).

What activities are protected under the Declaration?

In terms of the activities protected under the Declaration, the right to freedom of assembly includes numerous forms of assembly ranging from a meeting inside a private residence to meetings and conferences in public places, demonstrations, vigils, marches, picket lines and other kinds of assemblies, indoors or outdoors, with the aim of promoting and protecting human rights (A/61/312, para 31). An important consideration is that in order to be protected under the Declaration human rights defenders must exercise these activities peacefully.

But what happens when assemblies are not peaceful or turn violent? The mandate recognizes the State's obligation to act in these situations. However, it has observed with concern that it is frequently the excessive and disproportionate use of force by the police or army during peaceful demonstrations that has provoked violent reactions from an otherwise peaceful assembly, these reactions are in turn answered by more violence from the police or army and again led to deaths and severe injuries. The Special Rapporteur is also gravely concerned by allegations that the authorities in some countries have used undercover personnel to instigate violence in peaceful assemblies in order to justify using violent means to disperse the assembly or arrest people. Such conduct by State authorities clearly contradicts the principle of State responsibility enshrined in articles 2 and 12 of the Declaration and makes the State accountable for provocations that result in violence (A/61/312, para 44).

Women Human Rights Defenders and the Right to Freedom of Assembly

The rights of women to participate in public life, including through the promotion and protection of human rights, is contained in the Universal Declaration of Human Rights as well as asserted in various international treaties, foremost among them the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of all forms of Discrimination against Women (A/HRC/16/44 para 17).

In accordance with the Special Rapporteur's mandate to integrate a gender perspective throughout her work and to pay particular attention to the situation of women human rights defenders, the mandate wishes to emphasize that the rights recognized in the Declaration, including the right to meet or assemble peacefully, apply to every man and woman acting to promote and protect human rights as long as they accept and apply the principles of universality of and non- violence (A/HRC/16/44 para 21).

Women's inequality in the enjoyment of rights is rooted in "tradition, history and culture, including religious attitudes."[10] These attitudes also influence the enjoyment and respect of the right to freedom of assembly. States should ensure that these attitudes are not used to justify violations of women's right to equality before the law and to the equal enjoyment of all rights.[11]

States have a positive duty to actively protect assemblies that are lawful and peaceful, including protecting the participants against persons or groups that attempt to disrupt an assembly or carry out violent acts against the participants (A/61/312, para 81). The mandate cannot to accept that a peaceful assembly that is threatened with violence should be prohibited rather than be assured of protection in accordance with State responsibility (A/61/312 paras 53 to 56).

Regarding the organizers, assemblies can be organized by an NGO, a trade union, an ad hoc group, a social movement, or by individual defenders seeking to raise an issue for debate or protesting against human rights violations of different kinds (A/61/312, para 31). As the right to participate in peaceful activities can be exercised individually and in association with others, it is important to emphasize that it is not necessary for an NGO to have legal personality to participate in assemblies, including a demonstration.

The Declaration specifies that defenders are entitled to effective protection under national law against harmful actions committed by State that result in human rights violations (A/58/380, para. 24). It also provides that everyone is entitled to similar protection when protesting against violent acts of other groups or individuals. Accordingly, the protection afforded in the Declaration covers violations committed by both State and non-State actors. In this context, the

[10] General Comment No. 28: Equality of rights between men and women (article 3) (sixty-eighth session, 2000**),** Human Rights Committee, para 5.
[11] General Comment No. 28: Equality of rights between men and women (article 3) (sixty-eighth session, 2000**),** Human Rights Committee, para 5.

mandate has noted that violations of the rights of human rights defenders by non-state actors are seldom adequately or effectively addressed by the authorities (A/61/312, para 43).

Common restrictions on and violations to the right to peacefully assembly

Despite the protection afforded to the right to freedom of assembly in international and regional human rights instruments, restrictions imposed on this right have been broadly applied to prohibit or disrupt peaceful human rights assemblies, frequently on the pretext of the need to maintain public order, and relying on counter-terrorism legislation, arguments and mechanisms (A/58/380, para. 25 and A/61/312, para 32). In terms of trends, the mandate has identified the following trends as violations to the right to freedom of assembly (A/61/312, paras 29 to 69):

- **Violations against women human rights defenders and those working on women's rights and gender issues.** Although all defenders are potentially vulnerable in situations where they are exercising the right to freedom of assembly, certain groups of defenders are at particular risk and more efforts are needed to ensure their protection. Women defenders often face more risks when participating in collective public action because of perceptions of the traditional role of women in some societies, and they become targets of non-State actors. In some cases, retaliation against them takes such forms as rape and sexual assault, which can have adverse social consequences in addition to causing physical harm. The mandate has also dealt with communications concerning women being attacked and arrested for organizing a marathon in support of women's rights; they have been attacked, arrested and raped after organizing peaceful demonstrations and vigils; and threatened by conservative religious groups and persons. In some of the cases, the alleged perpetrators were the authorities in the form of the police and/or the army. In several of the cases, the alleged perpetrators were non- State entities and even members of the women defenders' local community. In these cases the women defenders did not receive adequate protection from the State as guaranteed by article 12 of the Declaration (A/61/312 paras 72 and 73).

> The mandate has received information concerning allegations of violations and harassment of women defenders in connection with demonstrations to celebrate International Women's Day on 8 March. It is an alarming indicator of how controversial women's rights still are in several countries around the world and of the level of intolerance of and violence against women defenders working on women's rights, even when their demonstrations take place in the framework of what is now widely perceived as a well-established and internationally recognized celebration (A/62/225 para 65).

The mandate has also dealt with numerous communications concerning defenders working on the rights of lesbian, gay, bisexual and transgender (LGBT) persons that have their right to peaceful assembly violated (A/61/312 paras 70 and 71). In several of these cases, the authorities have prohibited demonstrations, conferences and meetings of organizations working for LGBTI rights and police officers have, allegedly, beaten up or even sexually abused these defenders of LGBTI rights. The authorities have generally attempted to justify action against these defenders by arguing that "the public" does not want these demonstrations to take place, or that "the people" do not want LGBTI people in their community (A/HRC/4/37 para 96).

Example

In 2010, the Special Rapporteur on the situation of human rights defenders, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal regarding the situation of participants of an Asian regional meeting of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). According to the information received, more than 150 human rights defenders representing 100 organizations from 16 Asian countries gathered to participate in a three-day regional meeting. In response to protests by conservative Muslim groups and the Muslim clerical body in the country, the police reportedly ordered the cancellation of the conference, and national and international participants were ordered to leave the conference hotel. A group of militant fundamentalists entered the hotel and attempted to identify conference participants by conducting a room-by-room search. According to various reports, the police did not take any measures to ensure the safety of the participants. Grave concern was expressed for the physical and psychological integrity of the participants of the ILGA meeting (A/HRC/16/44/Add.1 para 1157 to 1162).

- **Use of excessive force against defenders during assemblies**. The mandate is gravely concerned about the rising number of incidents reported to her concerning an excessive and often indiscriminate use of force against those exercising their right to peaceful assembly. Reports have been received of tear gas, live ammunition, rubber-coated metal bullets, rubber bullets, stun grenades and other violent means being used in order to disperse peaceful gatherings. This conduct violates the responsibility and duty to protect enshrined in articles 2 and 12 of the Declaration (A/61/312 paras 41 to 48).

- **Arrests and detentions while exercising freedom of assembly**. The mandate has dealt with numerous communications concerning the arrest and detention of human rights defenders who have been allegedly detained while exercising their right to freedom of assembly. These arrests and detention are often arbitrary. In some cases, defenders have been arrested preventively to prevent them from taking part in demonstrations, meetings or conferences. Arrests of defenders are in most cases

accompanied by violence against defenders, and a large number of those arrested report having been ill-treated and even tortured or raped in connection with their arrest and detention. In many of the cases, defenders are never brought to trial, but merely released on bail after a certain amount of time, or detained without having their case brought before a judge (A/61/312 paras 38 to 40).

- **Threats against defenders and members of their families** can take place prior, during or after their participation in a peaceful assembly. Defenders and their families have received telephone calls threatening death or injury. In addition to verbal threats, there have been cases where defenders and their families and/or colleagues have received funeral wreaths or condolence cards, clearly indicating that the defender in question could be killed if he or she continues his or her human rights work. In most cases, it is difficult to pinpoint the source of such threats, whether they come from authorities, non-state actors or both (A/61/312 paras 49 to 52).

- **Judicial harassment**. Defenders have been prosecuted under laws that allow the executive to arbitrarily ban public gatherings generally, or at specified locations. Farmers have been prosecuted in anti-terrorist courts for protesting attempts by State security forces to evict them from land. Villagers demonstrating against mega-projects that threaten their environment and livelihood have been charged with conducting anti-State activities. Peace activists and anti-war protesters have been maligned and threatened with prosecution for defying travel restrictions. The worst affected have been pro-democracy activists and those organizing or taking part in peaceful public action asserting their right to independence or self-determination (A/58/380 para 25 and A/61/312 para 65).

- **Travel restrictions for defenders wishing to participate in assemblies to promote and protect human rights**. In many cases, representatives of the authorities at airports or border-crossings have prevented defenders from leaving the country. In some of the cases, defenders have not been issued with the documents needed in order to travel. In those cases where the authorities have given a reason for the restrictions on travel, defenders have been deemed “security threats” or “spies” and have been accused of being involved in “terrorist activities” or of trying to “tarnish the image of the country abroad”. Travel restrictions imposed on defenders in order to prevent them from participating in assemblies of different kinds outside their country of residence is contrary to the spirit of the Declaration and the recognition in its preamble that individuals, groups and associations have the right to “promote respect for and foster knowledge of human rights and fundamental freedoms at national and international levels” (A/61/312 paras 57 to 60).

- **Restrictions imposed through legislative and administrative measures**. Although freedom of assembly is guaranteed in most national constitutions, in many instances this right is restricted through secondary legislation. Most national laws require official written permission for holding assemblies, rallies and demonstrations (A/61/312 para 62). Although the requirement of obtaining permission or authorization does not necessarily violate the right to freedom of peaceful assembly, an arbitrary denial could lead to excessive restrictions on the right.

  The mandate has dealt with a number of communications concerning demonstrations, meetings, conferences and other assemblies that have not received authorization from the authorities. Some of the reasons given were that the events or their organizers would "agitate the population", that the organization responsible for the event was not registered, that the organizers had not sought permission for the event to be held, that there was a danger of violent counter-demonstrations, and that the demonstration would interrupt traffic. In most of the cases, however, no reason was given for not allowing the assemblies to be held. (A/61/312 paras 54) In other cases, authorization was initially given, or no authorization was needed according to the law, but participants were prevented from entering the conference, the meeting or the place of the demonstration, often without explanation. Defenders have reported to the mandate that the granting of authorization often seems to be arbitrary rather than based on laws and regulations (A/61/312 paras 55). In several cases, it has also been reported that no appeal procedures exist when permission to hold peaceful assemblies has been denied (A/61/312 paras 63).

  The mandate has also received information from defenders indicating that the authorities often prevent them from holding rallies, demonstrations or other assemblies in central areas of cities and towns, but that the assembly has been given permission to convene in "pre-authorized" locations, or in locations on the outskirts of the city. Some States also have regulations stating that assemblies cannot be held within a certain radius of buildings of the legislative, executive or judicial authorities. Such measures would also be contrary to the spirit of the Declaration (art. 6 (c)) if measures limiting the freedom of assembly are motivated by the desire to isolate human rights gatherings in order to prevent defenders from drawing public attention to the issues they are raising (A/61/312 paras 64).

Permissible limitations to freedom of assembly

Article 17 of the Declaration on human rights defenders states: "In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting

individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society" (A/61/312 para 88).

Concerning the right of peaceful assembly, Article 21 of the International Covenant on Civil and Political Rights provides: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

While restrictions on the right to freedom of association are only permissible when they are "prescribed by law," restriction to freedom of peaceful assembly must be "in conformity with the law" to be permissible. This would seem to imply that restrictions to peaceful assembly can be imposed not only by law but also through a more general statutory authorization, such as an executive order or a decree.[12]

Furthermore, Article 21 of the International Covenant on Civil and Political Rights establishes that restrictions must be "necessary in a democratic society." This means that limitations to freedom of assembly must be proportional—States must first exhaust any alternatives that limit the right to a lesser degree—and must comply with minimum democratic principles.[13] According to the mandate, the right to assembly is an essential element of the right to participation in any democratic dispensation and restrictions imposed on this right must be closely scrutinized with respect to their necessity and reasonableness (A/61/312 para 56).

Legitimate purposes for interference

With respect to the reasons for restricting or denying the freedom of assembly, it is worth drawing attention to article 2 of the Declaration, which places the responsibility on the State to adopt such steps as may be necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that persons are able to enjoy human rights and fundamental freedoms (A/61/312 para 56). According to Article 21 of the International Covenant on Civil and Political Rights, the only grounds upon which an interference with the right to peaceful assembly is permitted are: national security or public safety, public order (ordre public), the protection of public health or morals or the protection of

[12] M. Nowak, *CCPR Commentary* (N.P. Engel, 2005), 490, para19.

[13] M. Nowak, *CCPR Commentary* (N.P. Engel, 2005), 489, paras 21 and 22.

the rights and freedoms of others. However, the mandate has underscored that administrative measures to restrict or prohibit the freedom of assembly are in many instances imposed without serious consideration or relevance to genuine concerns relating to security, public safety or order, etc (A/61/312 para 56).

Good practices and recommendations

- ***Notification v. authorizations of assemblies***. While recognizing that States can place restrictions on the right to freedom of assembly in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, States should favor regimes of notification rather than authorization when it comes to defenders exercising their right to freedom of assembly. In cases where authorization is required for the holding of an assembly, States should make sure that authorization is given on the basis of national legislation that is in accordance with the principle of non-discrimination enshrined in ICCPR (A/61/312, para 96).

- ***Holding public, peaceful assemblies in exceptional circumstances***. While recognizing that in order to be able to fulfil their responsibility to protect defenders participating in an assembly, the authorities need to be notified in advance, States are encouraged to consider in exceptional circumstances that defenders, with the aim of protesting human rights violations, should have the possibility of responding immediately to an event by holding public, peaceful assemblies (A/61/312, para 97).

- ***Review procedures for complaints***. States should ensure that there are satisfactory review procedures for complaints in the event of restrictions being imposed on assemblies. Additionally, States should ensure access to courts to appeal against any decision to restrict an assembly, although this should not be a replacement for satisfactory administrative review procedures for addressing such complaints from defenders (A/61/312, para 100).

- ***Training of law enforcement officials***. States should ensure that law enforcement officials are trained in international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and other relevant treaties, declarations and guidelines (A/61/312, para 98).

- ***Accountability of law enforcement officials.*** States should enforce a code of conduct on law enforcement officials, particularly with regard to crowd control and the use of force, and ensure that the legal framework contains effective provisions for the oversight and accountability of officials

especially with regard to their responses to public protest actions (A/62/225, 100).

- ***Investigation of law enforcement officials***. All allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials (A/61/312, para 98).

- ***Obligation to protect***. States are reminded of their responsibilities, provided by article 12 (2) of the Declaration, to "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 other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration". States should fulfil their obligation to protect defenders and to ensure there is no impunity for harm inflicted on defenders who are carrying out collective public action (A/61/312, para 101).

- **Guarantee effective exercise of freedom of assembly to women defenders and those working on women's rights and gender issues.** In many countries, women defenders often face more risks when participating in collective public action because of perceptions of the traditional role of women in some societies. Those working on women's rights and gender issues also face similar situations. States should take the necessary steps to guarantee the effective exercise of the right to freedom of assembly for all individuals without discrimination of any kind.

- ***Compliance of legal frameworks with international standards.*** States are urged to review their legal frameworks to ensure that national legislation is in conformity with the Declaration and other international commitments and international standards relating to the right to freedom of assembly in accordance with article 2 (2) of the Declaration (A/61/312 2006, para 93).

Chapter III The right to freedom of association

- *Where is the right protected?*
- *The right to freedom of association and the Declaration on human rights defenders*
- *What does the right to freedom of association entail?*
- *Common restrictions on and violations of the right to freedom of association*
- *Permissible limitations to freedom of association*
- *Best practices and recommendations*

Where is the right protected?

The right to freedom of association is recognized in many international and regional instruments, including:

- The Universal Declaration of Human Rights (Article 20),
- The International Covenant on Civil and Political Rights (Article 22),
- The International Covenant on Economic, Social and Cultural Rights (Article 8 recognizes the right to form and join trade unions),
- The Convention on the Elimination of All Forms of Discrimination against Women (Article 7),
- The Convention No. 87 on Freedom of Association and Protection of the Right to Organize of the International Labour Organization (Article 2),
- The European Convention on Human Rights (Article 11),
- The African Charter on Human and Peoples' Rights (Article 10),
- The American Convention on Human Rights (Article 16),
- The Arab Charter on Human Rights (Article 28),
- The Declaration on Human Rights Defenders[14] (Article 5).

The right to freedom of association and the Declaration on human rights defenders

The Declaration recognizes the right to freedom of association under:

> **Article 5**
>
> 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:
>
> (*b*) To form, join and participate in non-governmental organizations, associations or groups;

[14] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.

Freedom of association lies in the area where civil and political rights overlap.[15] As a civil right it provides for protection against arbitrary interference by the State or private agents, when, for whatever reason or whatever purpose, an individual wishes to associate with others, or has already done so. As a political right it is indispensable for the existence and functioning of democracy, since political interests can be effectively championed only in community with others (A/64/226 para 12). The protection of the right to freedom of association is fundamental to any democratic society, as there is a direct relationship between democracy, pluralism and the freedom of association (A/64/226 para 7).

What does the right to freedom of association entail?

Freedom of association involves the right of individuals to interact and organize among themselves to collectively express, promote, pursue and defend common interests (A/59/401 para 46). Article 22 of the International Covenant on Civil and Political Rights does not expressly list the possible purposes an association may pursue. It is assumed that the protective scope of this article is broad. Religious societies, political parties, commercial undertakings and trade unions are as protected by article 22 as are cultural or human rights organizations, soccer clubs or associations of stamp collectors[16] (A/64/226 para 20).

The American Convention on Human Rights, in article 16, includes a non-exhaustive list of possible purposes associations may pursue, such as ideological, religious, political, economic, labour, social, cultural, sports or others (A/64/226 para 18). The Inter-American Court of Human Rights has further stressed that article 16 covers the right of every individual to form and freely participate in organizations, associations and non-governmental groups with the purpose of observing, denouncing/reporting, and promoting human rights (A/64/226 para 43). Similarly, the mandate on human rights defenders has underlined that the promotion and protection of human rights is a legitimate purpose for an association to pursue, as recognized by article 1 of the Declaration on human rights defenders, which states that: “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” (A/64/226 para 57).

[15] Manfred Nowak, *UN Covenant on Civil and Political Rights, CCPR Commentary*, p. 496, 2nd revised edition (N.P. Engel, 2005), p. 496.
[16] Manfred Nowak, *UN Covenant on Civil and Political Rights, CCPR Commentary*, p. 497, 2nd revised edition (N. P. Engel 2005).

Women Human Rights Defenders and the Right to Freedom of Association

The rights of women to participate in public life, including through the promotion and protection of human rights, is contained in the Universal Declaration of Human Rights as well as asserted in various international treaties (A/HRC/16/44 para 17). In article 7 of the Convention on the Elimination of All Forms of Discrimination against Women, States agreed to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure to women, on equal terms with men, the right: ... I to participate in NGOs and associations concerned with the public and political life of the country (A/HRC/4/37 para 98).

In accordance with the Special Rapporteur's mandate to integrate a gender perspective throughout her work and to pay particular attention to the situation of women human rights defenders, the mandate wishes to emphasize that the rights recognized in the Declaration, including the right to *form, join and participate in non-governmental organizations, associations or groups*, apply to every man and woman acting to promote and protect human rights as long as they accept and apply the principles of universality of and non- violence (A/HRC/16/44 para 21).

Women's inequality in the enjoyment of rights is rooted in "tradition, history and culture, including religious attitudes."[17] These attitudes also influence the enjoyment and respect of the right to freedom of association. States should ensure that these attitudes are not used to justify violations of women's right to equality before the law and to the equal enjoyment of all rights.[18]

The right to freedom of association has an individual and a collective dimension. Under the provisions of article 22 of the International Covenant on Civil and Political Rights individuals have the right to found an association with like-minded persons or to join an already existing one. At the same time, it also covers the collective right of an existing association to perform activities in pursuit of the common interests of its members. States parties cannot therefore prohibit or otherwise interfere with the founding of associations or their activities.[19] This was further stressed by the European Court of Human Rights when it proclaimed that "the right guaranteed by article 11 would be largely theoretical and illusory if it were limited to the founding of an association, since the national authorities could immediately disband the association [...]. It follows that the protection afforded by article 11 lasts for an association's entire life [...]"[20] (A/64/226 para 22).

The Inter-American Court of Human Rights has further elaborated on the two

[17] General Comment No. 28: Equality of rights between men and women (article 3) (sixty-eighth session, 2000**),** Human Rights Committee, para 5.
[18] General Comment No. 28: Equality of rights between men and women (article 3) (sixty-eighth session, 2000**),** Human Rights Committee, para 5.
[19] 11 Manfred Nowak, *UN Covenant on Civil and Political Rights, CCPR Commentary*, p. 498, 2nd revised edition (N. P. Engel 2005).
[20] *United Communist Party of Turkey and Others v. Turkey*, No. 19392/92, para. 33, European Court of Human Rights 1998-I.

dimensions of the freedom of association. It has held that "in its individual dimension, labour-related freedom of association is not exhausted by the theoretical recognition of the right to form trade unions, but also corresponds, inseparably, to the right to use any appropriate means to exercise this freedom. [...] In its social dimension, freedom of association is a mechanism that allows the members of a labour collective or group to achieve certain objectives together and to obtain benefits for themselves".[21] The Court also observed that "the State must ensure that people can freely exercise their freedom of association without fear of being subjected to some kind of violence, otherwise the ability of groups to organize themselves to protect their interests could be limited"[22](A/64/226 para 41). By referring to the right of everyone to participate in non-governmental organizations, the Declaration further reinforces the implicit collective dimension of associations to perform activities in pursuit of the common interests of its members, free from undue interference from the State. (A/64/226 para 25).

There are also negative and positive obligations of the State arising from the right to freedom of association, including the obligation to prevent violations of the right to freedom of association, to protect those exercising this right and to investigate violations thereof. The Inter-American Court of Human Rights also "established that States have a duty to provide the necessary means so that human rights defenders can freely carry out their activities; to protect them when they are the subject of threats so to avoid attacks on their lives or integrity; to abstain from putting obstacles in their way that might make their work more difficult, and to seriously and efficiently investigate any violations committed against them, thus combating impunity"[23] Given the importance of the role that human rights defenders play in democratic societies, the free and full exercise of this right places a duty on States to create legal and real conditions in which they can freely carry out their activities. (A/64/226 para 43).

Additionally, the formation, as well as the membership of an association must be voluntary. Compulsory membership in an association, the so-called closed-shop agreements, contravene the notion of freedom of association. This also implies the freedom to choose the organizations to which one wishes to belong. When a country has only one organization for promoting human rights but an individual is not in agreement with its methods and objectives, his or her freedom of association is not exhausted simply because he or she is not forced to join this organization. On the contrary, article 22, paragraph 1, also guarantees the right to found a second human rights organization with other like-minded persons.[24] Therefore, a situation where the authorities do not allow the establishment of a new organization on the basis that one already exists in the same area is not fully

[21] Case of *Huilca-Tecse v. Peru*, Judgment of 3 March 2005, of the Inter-American Court of Human Rights, paras. 70-71.
[22] Ibid., para. 77.
[23] Case of *Kawas Fernández v. Honduras*, Judgment of 3 April 2009, of the Inter-American Court of Human Rights, para. 145 (original available only in Spanish).
[24] Manfred Nowak, *UN Covenant on Civil and Political Rights*, *CCPR Commentary*, p. 500, 2nd revised edition (N. P. Engel 2005).

compliant with this right and should be justified upon one of the grounds provided in article 22, paragraph 2, of the International Covenant on Civil and Political Rights[25] (A/64/226 para 23).

Finally, in order for it to be an association, some kind of institutional structure is required (A/64/226 para 19). In order to fall under the scope of article 22, associations do not need to assume a legal personality, de facto associations are equally protected. However, as mentioned above, some kind of institutional structure is required, even with de facto organizations (A/64/226 para 21).

Example

Defenders working on land rights often organize themselves in the form of social movements. These are usually broad grassroots-based movements with a more horizontal organizational structure than for instance most NGOs. These movements and the defenders who are actively involved in those movements have faced several specific challenges. Two that should be mentioned include accusations of not being properly registered and therefore deemed illegal, whereas the reason behind the non-registration often is that the movements do not have the organizational structures that are needed to enable registration with the authorities, such as a permanent headquarters or a secretariat. Another challenge continues to be that defenders engaged in social movements are accused of "forming criminal gangs" and the like (A/HRC/4/37 para 46).

Common restrictions on and violations of the right to freedom of association

In a great number of countries, national laws regulating the functioning of NGOs impose severe restrictions on their registration, funding, management and operation. Instead of providing a legal basis to NGOs and guaranteeing their rights, domestic legislation has often been enforced to keep NGOs under strict control and has been arbitrarily used to legitimize taking legal action against human rights NGOs for activities protected and promoted by the Declaration. In other countries, where legislation on freedom of association appears to be in accordance with international law, registration requirements have been used arbitrarily or restrictively to void legal protection for those human rights NGOs that are most critical of the Government (E/CN.4/2006/95 para 51).

- **Difficulties in the formation and registration of human rights associations, and criminal sanctions for unregistered activities.**

There are essentially two types of systems in place for civil society organizations to obtain legal personality; the so-called "notification" system and "registration" system. In the most liberal regulations, often referred to as a system of "declaration" or "notification", NGOs are automatically granted legal personality upon receipt by the authorities of notification by the founders that an organization

[25] Right to freedom of association — Human rights defenders briefing paper series, April 2009, International Service for Human Rights, part I.1.

was created. Other countries require the formal registration of organizations in order to be able to carry out activities as a legal entity. Although the registration requirement does not necessarily, in itself, violate the right to freedom of association, registration should not be compulsory and NGOs should be allowed to exist and carry out collective activities without having to register if they so wish. On the other hand, NGOs have the right to register as legal entities and to be entitled to the relevant benefits (A/64/226 para 59).

a) Criminal sanctions for unregistered activities

In many instances, however, any activities by informal groups are allowed only where the group has registered formally as a legal entity. Developments in legislation in many countries over previous years have been increasingly aimed at stifling civil society groups, and NGO framework laws are increasingly used by certain Governments to reinforce this effect. One of the most disturbing trends is the criminalization of activities carried out by unregistered groups. The insistence by certain Governments that all groups must register, however small or informal they may be, reflects the intention to control their activities and filter those groups that are critical of government policies. In many countries similar laws have been introduced to outlaw already existing and functioning organizations (A/64/226 para 60). In some cases, criminal penalties may carry up to six months of detention, two years of prison sentences and excessive fines (A/64/226 para 61).

Example

In a press release dated 1 March 2010, the Special Rapporteur, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, voiced their deep concern about a draft legislation which, if adopted as it was, would have not only violated the fundamental rights of lesbian, gay, bisexual and transgender people but would also criminalize the legitimate activities of men and women, as well as national and international organizations, who strive for the respect for equality and nondiscrimination on the basis of sexual orientation.

The mandate has underlined that the criminalization of participation in unregistered entities is contrary to the right to freedom of association and violates a number of international human rights instruments. Imposing criminal sanctions for unregistered activities is very often exacerbated by lengthy, ambiguous and unpredictable registration requirements. Very often an extended period of time, and in some cases several years, may elapse between the request for registration and the decision by the competent authorities. In certain cases the length of the registration process is artificially prolonged by the registration authorities with the aim of preventing human rights organizations from carrying out their activities and of silencing critical voices (A/64/226 para 65).

The relevant legislation should clarify the status of organizations in the period between the request for registration and the final decision. The mandate has stressed that, pending such a final decision, human rights organizations should

be free to start their activities (A/64/226 para 66).

b) Denial of registration and deregistration

Criteria for registration included in national laws, where they exist, are frequently ambiguous enough to allow authorities broad discretion in their interpretation, resulting in the arbitrary denial of registration for human rights organizations (A/59/401 para 57). In the absence of a response or of a motivated decision, it has been difficult for human rights defenders to lodge appeals against the rejection of their registration application. Even where responses are received, defenders have faced difficulties in exercising their right to appeal because of the complexity of the process, the time- consuming procedures and the lack of independence from the Government of the reviewing bodies (A/59/401 para 59).

Denial of registration for human rights associations and NGOs is the most extreme measure used by Governments to curtail the right to freedom of association, especially in instances where activities carried out in the framework of unregistered entities carry criminal sanctions (A/64/226 para 67). In the most restrictive environments, the right to association is not granted by the authorities. In certain countries the right to associate is not recognized by domestic laws, and as a result the few organizations that are able to carry out their work are mostly established by the Government (A/64/226 para 68).

c) Lack of independence of registration authorities

It is crucial for the reviewing body to be independent from the Government to ensure the fairness of the registration process. Information received by the mandate indicates that registration is becoming increasingly politicized by Governments, to the detriment of human rights defenders. In a large number of cases, registration applications are reviewed by Government Ministries and even security units with strong ties to Government. Numerous new laws establish registration boards whose members are appointed at the discretion of the Government (A/59/401 para 60).

d) Burdensome and lengthy registration procedures

Burdensome, lengthy, arbitrary and expensive registration requirements may considerably hamper the activities of human rights associations, even in instances where registration is voluntary. Tactics used by Governments include exceedingly lengthy registration processes; burdensome and ever changing documentation requirements that associations are not able to fulfill; and excessive government control and discretion over the registration process. In some cases amendments to the existing legislation expand government discretion and require already functioning and registered organizations to re-register (A/64/226 para 70). In some instances, NGO laws foresee a registration process without establishing clear procedures and timelines for the Government review of applications. (A/64/226 para 72).

Overly vague legislation also lends itself easily to abuse and discretionary interpretation by registration officials. This may result in unreasonably lengthy registration processes and repeated requests for the submission of documents not originally foreseen by the relevant law. The imposition of several (new) layers of bureaucracy may lead to implementation problems and originally unforeseen delays in the registration process (A/64/226 para 71).

In some cases the costs related to the registration process make it increasingly difficult for civil society organizations to initiate or maintain their registered status. Apart from registration costs, other bureaucratic requirements, such as the provision of quarterly financial reports to the registering authority, may also pose unsustainable burdens on some organizations (A/64/226 para 73).

In certain countries NGOs are required to re-register within certain periods, annually or sometimes more regularly, which provides additional opportunities for Governments to prohibit the operation of groups whose activities are not approved by the Government. Requirements for periodic re-registration may also induce a level of insecurity in human rights organizations, resulting in self-censorship and intimidation (A/64/226 para 74).

e) Restrictions on the registration of international NGOs

While only a minority of countries deny foreign human rights defenders the right to associate freely, in many countries they are subjected to a separate and more restrictive system (A/64/226 para 75). For example, in one country, any work by foreign NGOs in the fields of the advancement of human and democratic rights; the promotion of equality of nations, nationalities and peoples and that of gender and religion; the promotion of the rights of the disabled and children's rights; the promotion of conflict resolution or reconciliation; and the promotion of justice and law enforcement services is deemed illegal without the written consent of the Government (A/64/226 para 76).

In certain countries foreign nationals or persons without citizenship are required to be physically present in the territory of the country in order to be able to establish an organization, and registration authorities have broad discretionary powers to refuse registration of foreign human rights organization (A/64/226 para 75).

- **Restriction on activities: Government supervision and monitoring**

Many NGO laws adopted during the past years empower Government officials to interfere with the internal management and activities of NGOs (A/64/226 para 77). Several laws place restrictions on the types of activities that civil society organizations are allowed to carry out without prior Government approval. NGO framework laws containing lists of permitted or prohibited activities for civil society organizations are extremely problematic, as the often rather vague formulations of such provisions lend themselves to discretionary interpretation by the relevant Government organs and may be used to curtail activities of civil

society organizations that are critical of Government policies or practice (A/64/226 para 79).

Example

In March 2011, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, together with the Special Rapporteur on the situation of human rights defenders, sent an urgent appeal regarding a human rights organization, which has been registered as a partner of the International Human Rights House Network since 2007 and works on the promotion and protection of human rights.

According to the information received, on 10 March 2010, this human rights organization was allegedly ordered by the Ministry of Justice to cease all activities with immediate effect. The Ministry of Justice reportedly stated that they must obtain prior permission from the State in order to conduct its activities in the future. This organization operates as a meeting place, a resource centre and a focal point for human rights organizations in the country. It is reported that the organization was not issued with a warning.

Concern was expressed that the closure of this organization will impede its legitimate work on the promotion and protection of human rights and will hamper the meeting and coordination of other human rights defenders working in the country. Further concern was expressed that such a measure may encroach upon the rights of many human rights defenders to freedom of expression, assembly and association, and as such may have a negative impact on the community as a whole.[26]

Emergency, security, anti-terrorism and anti-extremism laws are also being used increasingly by certain Governments in order to restrict activities of civil society (A/64/226 para 82). The Special Rapporteur has received an increasing number of allegations of interference by State agents, in most cases by the security and police forces. For example, the offices of an NGO defending the rights of lesbian, gay, bisexual and transgender people were raided by plain clothes police officers, on suspicion that the organization was facilitating prostitution (A/64/226 para 83).

In some cases, NGO laws also interfere with the management of NGOs. For example, according to the Law on Societies in a certain country, the elections to the board of directors and decisions taken by the general body of an NGO take effect only if the supervising ministry had been notified and had not objected to the decision (A/64/226 para 78).

[26] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Summary of cases transmitted to Governments and replies received, A/HRC/17/27/Add.1, paras 63 to 65, 27 May 2011.

- **Administrative and judicial harassment: grounds and procedures for dissolution**

Discretionary interpretation of existing laws has allowed Governments to initiate legal proceedings against human rights organizations for even minor infractions or to dissolve them without appropriate remedies and judicial oversight. For example, the NGO law of a country allows for the Government to involuntarily dissolve civil society organizations for having departed from or not having completely fulfilled the goals for which it was established; for its membership falling below the minimum required number; and for the failure to present operational plans for two consecutive reporting periods. Some countries even prescribe criminal penalties for administrative infractions. In certain cases the decisions of the registration agency are not subject to the right of appeal in a court (A/64/226 para 84).

Prosecutors also use "official warnings" against human rights defenders, often under anti-extremism or anti-terrorism laws, in order to deter them from further activities (A/64/226 para 90).

Example

The mandate has received information concerning allegations of systematic persecution of women defenders in connection with their work on sexual and reproductive rights in the context of the ban on therapeutic abortion in the country. According to the information received, in 2007, a Church-backed non-governmental organization brought a complaint against 9 well known women human rights defenders. The accusation against them argues that these women defenders were guilty of conspiracy and incitement to commit a crime and public defence of a crime. Allegedly, they were subjected to criminal investigations for two and a half years.

The mandate also received information that a year after, in 2008, another complaint was brought against several non-governmental organizations for alleged crimes not specified by the Public Ministry. According to the information received, the government had announced the intention to charge those organizations with money laundering. The charges seemed to be related to these organizations' efforts to criticize the government. Apparently, the District Attorney dropped both complaints because of lack of evidence to sustain the charges (A/HRC/16/44/Add.3 paras 580, 581, 582, 587, 589, 590).

Permissible limitations to freedom of association

Article 17 of the Declaration on human rights defenders states: "In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society" (A/61/312 para 88).

The right to freedom of association is not absolute; it is subject to limitations similar to other such clauses in the International Covenant on Civil and Political Rights and regional human rights instruments. Article 22, paragraph 2, specifically details the requirements for such limitations to be admissible. For any restriction on the right to freedom of association to be valid, it must cumulatively meet the following conditions: (a) it must be provided by law; (b) it may only be imposed for one of the purposes set out in paragraph 2; and (c) it must be necessary in a democratic society for achieving one of these purposes. Such limitations may be imposed in the interest of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others (A/64/226 para 26). The mandate considers that this provision, read together with articles 5 and 17 of the Declaration on human rights defenders, must be understood to include the protection of freedom of association for human rights organizations whose work may offend the Government, including organizations that criticize policies, publicize human rights violations perpetrated by authorities, or question the existing legal and constitutional framework (A/59/401 para 49).

Any restriction on the right to freedom of association is only permissible when all these conditions are met. The term "prescribed by law" makes it clear that restrictions on the right to freedom of association are only valid if they had been introduced by law (through an act of Parliament or an equivalent unwritten norm of common law), and are not permissible if introduced through Government decrees or other similar administrative orders. It would seem reasonable to presume that an interference is only "prescribed by law" if it derives from any duly promulgated law, regulation, order, or decision of an adjudicative body. By contrast, acts by governmental officials that are *ultra vires* would seem not to be "prescribed by law", at least if they are invalid as a result[27] (A/64/226 para 27).

The mandate has noted that very often restrictions on freedom of association are proclaimed in Government decrees and similar legislative acts, thus they do not conform to the requirement of being "prescribed by law". Furthermore, these laws increasingly contain rather vague and broadly defined provisions that easily lend themselves to misinterpretation or abuse. Security and anti-terrorism legislation should not be used to suppress activities aimed at the promotion and protection of human rights (A/64/226 para 52).

Furthermore, restrictions must be "necessary in a democratic society", which indicates that "the existence and functioning of a plurality of associations, including those which peacefully promote ideas not favourably received by the Government or the majority of the population, is one of the foundations of a democratic society. Therefore, the existence of any reasonable and objective justification for limiting the freedom of association is not sufficient. The State Party must further demonstrate that the prohibition of the association and the

[27] Leon E. Irish, Karla W. Simon, "Freedom of Association: Recent developments regarding the 'Neglected Right'", *International Journal of Non-Profit Law*, vol. 3, Issue 2, December 2000.

criminal prosecution of individuals for membership in such organizations are in fact necessary to avert a real, and not only hypothetical danger to the national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose"[28] (A/64/226 para 28).

Ideas that "offend, shock, or disturb" are protected under the right of freedom of expression. Thus, associations that take controversial positions or criticize the Government in ways that "offend, shock or disturb" are fully protected under the Covenant. In short, associations in effect enjoy fully the freedom of expression. This is a crucial part of what is required for a "democratic society" to exist. The principle of proportionality further requires a careful balancing of the intensity of a measure with the specific reason for interference[29] (A/64/226 para 29).

Legitimate purposes for interference

According to the International Covenant on Civil and Political Rights, Article 22, paragraph 2, the only grounds upon which an interference with the freedom of association that is prescribed by law can be justified is if the interference in question is in pursuance of "legitimate aims", which require that it be: in the interests of national security or public safety; public order (ordre public); the protection of public health or morals, or the protection of rights and freedoms of others (A/64/226 para 30).

Best practices and recommendations

- Registration laws and procedures. It should be permissible for individuals to join together to engage in lawful activities without having to register as legal entities, in accordance with the provisions of article 22 of the International Covenant on Civil and Political Rights and article 5 of the Declaration of human rights defenders, if they so wish (A/64/226 para 103). The mandate has issued the following recommendations regarding registration laws and procedures (A/64/226 para 104 to 119):

i. States should not criminalize or impose criminal penalties for activities in defence of human rights or for participating in unregistered entities.

ii. Laws governing the creation, registration and functioning of civil society organizations should be written and should set up clear, consistent and simple criteria to register or to incorporate a civil society organization as a legal person. Non-governmental organizations that meet all prescribed administrative criteria should be immediately able to register as legal entities.

iii. States should ensure that existing laws and regulations are applied in an

[28] Case No. 1119/2002, *Lee vs The Republic of Korea*, 824 HRC 2005 Report, vol. II, annex V, sect. U, paras 7.2.-7.3.
[29] Manfred Nowak, *UN Covenant on Civil and Political Rights, CCPR Commentary*, p. 505, 2nd revised edition (N. P. Engel 2005).

independent, transparent and less burdensome or lengthy manner in order to avoid restricting the right to freedom of association.

iv. States must ensure that any restriction regarding the registration of organizations is fully compatible with article 22 of the International Covenant on Civil and Political Rights.

v. In the event of the adoption of a new law, all previously registered NGOs should be considered as continuing to operate legally and be provided with accelerated procedures to update their registration.

vi. Unless a new law is adopted, existing laws governing the registration of civil society organizations should not require that organizations re-register periodically.

vii. The registration process should be prompt and expeditious, easily accessible and inexpensive.

viii. Clear procedures and timelines for Government review of applications should be established. Lengthy, burdensome and overly bureaucratic registration processes affecting effective functioning should be avoided.

ix. States should not impose costs related to the registration process making it difficult for NGOs to maintain their registration or place other provisions on NGOs that cause unsustainable burdens.

x. States should guarantee the right of an association to appeal against any refusal of registration. Effective and prompt recourse against any rejection of application and independent judicial review regarding the decisions of the registration authority is necessary to ensure that the laws governing the registration process are not used as obstacles to the right to freedom of association.

xi. The registration authority should be allowed to involuntarily terminate an NGO only for the most flagrant violations, and all involuntary terminations should be subject to judicial review.

xii. States should put in place a single, publicly accessible registry for civil society organizations. Registration bodies should be independent from the Government and should include representatives of civil society.

xiii. Reporting obligations placed on NGOs should be simple, uniform and predictable. Sanctions for the failure of filing reports or complying with other provisions of the law governing civil society organizations should provide for adequate warning being given to the organization as well as an opportunity to correct such administrative infractions. States should not criminalize non-

compliance with the law governing civil society organizations.

xiv. The registration and supervisory organs should have the right to examine the books, records and activities of civil society organizations only during ordinary business hours, with adequate advance notice. Such auditing and supervisory powers should not be used arbitrarily and for the harassment or intimidation of organizations. Police and other law enforcement agencies should only conduct raids on offices and confiscate documents or equipment of NGOs when in possession of a valid search warrant or other applicable court authorization, and allowing the presence of an attorney.

- **Guarantee effective exercise of freedom of association to women human rights defenders and those working on women's rights and gender issues.** In many countries, women human rights defenders are more at risk of facing restrictions to their right to form, join and participate in the work of NGOs, associations and movements because they are perceived as challenging accepted socio-cultural norms, traditions and perceptions about feminity, sexual orientation, and the role and status of women in society. Those working on women's rights and gender issues also face similar situations. States should take the necessary steps to guarantee the effective exercise of the right to freedom of association for all individuals without discrimination of any kind.

- Interference with internal management and activities. States should not interfere with the internal management and activities of NGOs. The validity of decisions of the management board should not be conditional on the presence of a Government representative at the board meeting (A/64/226 para 121).

- Limitations incompatible with the right to freedom of association. Human rights organizations that are independent and whose objectives and activities are not in violation of the International Covenant on Civil and Political Rights should have the right to engage in activities for the benefit of their members and for the public; and should be free to participate in public policy debates, including debates about and criticism of existing or proposed State policies or actions. Any limitations, within these parameters, including lists of permitted and prohibited activities, are incompatible with the right to freedom of association. Accordingly, no distinction regarding the types of permitted activities should be made between national and foreign organizations (A/64/226 para 122).

- Same rules for foreign and national NGOs. Foreign NGOs carrying out human rights activities should be subject to the same set of rules that apply to national NGOs; separate registration and operational requirements should be avoided (A/64/226 para 126).

- Amendment of vague provisions and elimination of slander laws. Vague definitions of terrorism, extremist activities and slander provisions in legislation facilitate their arbitrary application against individuals and associations and

should be amended. The use of slander laws and other provisions by Government officials to sanction critical statements and reports by human rights NGOs should be eliminated (A/64/226 para 127).

Chapter IV The right to access and communicate with international bodies

- *Where is the right protected?*
- *The right to access and communicate with international bodies and the Declaration on human rights defenders*
- *What activities are protected under the Declaration?*
- *Common restrictions on and violations to the right to communicate with international bodies*
- *Best practices and recommendations*

Where is the right protected?

The right to access and communicate with international bodies is contained in the following instruments:

- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Art. 11,
- The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Art. 15,
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (CESC), Art. 13.

The optional protocols of CEDAW and CESC contain a specific provision asking Sates parties to take all appropriate measures to ensure that individuals under their jurisdiction are not subject to ill-treatment or intimidation for having communicating with the monitoring bodies of the respective instruments. The optional protocol of OPCAT states that no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information and no such person or organization shall be otherwise prejudiced in any way.

Moreover, the right to access and communicate with international bodies is protected under freedom of expression (for the specific provisions, see the relevant section).

The right is also protected under other relevant provisions such as the right to freedom of movement and the right to freedom of expression.[30]

[30] See Human Rights Committee, Concluding Observations on Uzbekistan, 26 April 2005, §19, CCPR/CO/83/UZB and Human Rights Committee, Concluding Observations on Morocco, 1 December 2004, §18, CCPR/CO/82/MAR, cited in The Right to Access International Bodies, Human Rights Defenders Briefing Papers, International Service for Human Rights, 2009, pages 5 and 6. See also Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, paragraphs 101 to 105.

The right to freedom of movement is protected under:[31]

- The Universal Declaration of Human Rights (Article 13),
- The International Covenant on Civil and Political Rights (Article 12),
- The International Convention on the Elimination of All Forms of Racial Discrimination (article 5 (d) (i)),
- The Convention relating to the Status of Refugees (article 26),
- The Fourth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (articles 2 and 3),
- The African Charter on Human and Peoples' Rights (article 12),
- The American Convention on Human Rights (article 22) and
- The Declaration on Human Rights Defenders[32] (articles 5 (c) and 9 (4)).

In addition to the above mentioned instruments, treaties and declarations, resolutions by the General Assembly on various international instruments and their monitoring bodies have highlighted the importance of working with civil society and have encouraged this[33].

The Human Rights Council[34] and its predecessor, the Commission on Human Rights, have also underlined the importance of the cooperation of individuals and groups with the United Nations (UN) in a free and safe manner to ensure an efficient and results-oriented approach to the promotion and protection of human rights. Both the Commission and the Human Rights Council have addressed the issue through several resolutions[35], including those establishing or renewing mandates of the special procedures, as well as when determining the modalities of its universal periodic review. And the outcome of the Human Rights Council review contains a strong rejection of any acts of intimidation and reprisals against individuals and groups who seek to cooperate or have cooperated with the UN, its representatives and mechanisms in the field of human rights and urges States to prevent the occurrence of such acts as well as to provide adequate protection.

Pursuant to Human Rights Council Resolution 12/2,[36] the UN Secretary-General has been invited to report annually on cases of intimidation and reprisals against

[31] See Compilation of International and Regional Instruments for the Protection of Human Rights Defenders, International Service for Human Rights, 2004.
[32] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.
33 General, Assembly Resolution 63/243 on the International Convention of All Forms of Racial Discrimination or 64/138 on the Convention on the Elimination of All Form of Discrimination against Women.
[34] The Human Rights Council is a United Nations inter-governmental body made up of 47 States with the main purpose of addressing situations of human rights violations and making recommendations to address them. The Council was created by the UN General Assembly on 15 March 2006 to replace the Commission on Human Rights.
[35] See Human Rights Council Resolution 12/2: Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, 12 October 2009, A/HRC/RES/12/2. See also UN Commission on Human Rights, Human Rights Resolution 2005/9: Cooperation with Representatives of United Nations Human Rights Bodies, 14 April 2005, E/CN.4/RES/2005/9.
[36] A/HRC/RES/12/2.

individuals or groups who seek to cooperate or have cooperated with the UN, its representatives and mechanisms in the field of human rights.

These reports by the UN Secretary-General include a variety of situations in which individuals have been intimidated or suffered reprisals by Governments and non-State actors for seeking to cooperate or having cooperated with the UN, its representatives and mechanisms in the field of human rights, for having provided testimony or information to them; for having availed themselves of procedures established by the UN; for having provided legal assistance for this purpose; for having submitted communications under procedures established by human rights instruments; or for being relatives of victims of human rights violations or for having provided legal or other assistance to victims.[37] The reports also express serious concerns about the gravity of the reported acts of reprisals and underscore the need for United Nations human rights bodies in cooperation with States to take urgent measures to prevent such acts and ensure that they are not treated with impunity.[38]

The right to access and communicate with international bodies and the Declaration on human rights defenders

The Declaration recognizes the right to access and to communicate with international bodies under:

> Article 5 (c)
>
> 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: […]
>
> (c) *To communicate with non-governmental or intergovernmental organizations*.
>
> Article 9 (4)
>
> To the same end, and in accordance with applicable international instruments and procedures, everyone has *the right, individually and in association with others, to unhindered access to and communication with international bodies* with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

By referring explicitly to this right under two separate provisions, the Declaration recognizes that accessing and communicating with international bodies is essential for human rights defenders to carry out their work, alerting the

[37] A/HRC/RES/12/2.
[38] Report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights, A/HRC/14/19, 7 May 2010. See also Progress on reports and studies relevant to cooperation with representatives of United Nations human rights bodies, Report of the Secretary-General, A/HRC/10/36, 6 February 2009. See also, A/HRC/RES/12/2.

international community of human rights problems, and bringing key cases to the attention of regional and international human rights bodies and mechanisms.

The mandate has underscored how the UN human rights treaty bodies and the various special procedures of the Human Rights Council depend to a great extent on the information provided to them by human rights defenders (A/60/339 para 65). Further, the mandate has highlighted the important role that human rights defenders play communicating to international bodies emerging security or human rights problems. According to the mandate, the information gathered and reported by human rights defenders on human rights violations all over the world and, in particular in their communities, can be used as a valuable early warning system to alert the international community to a developing threat to peace. Human rights defenders should be protected in the interest of preserving a functional early warning system in every country (E/CN.4/2005/101 para 131). See also (A/60/339 paras 8 and 9).

Finally, the mandate has drawn attention to the fundamental role of defenders in communicating with international mechanisms during emergency situations. Defenders in emergencies help to ensure that the monitoring of United Nations human rights mechanisms — including special rapporteurs and treaty bodies — can continue, even when emergency conditions last for many years. Based outside the country for which they have a mandate, country-specific special rapporteurs of the Human Rights Council would have no source of information other than that provided by the State if it were not for the support of defenders. Indeed, it is often upon the basis of information gathered by defenders that the Human Rights Council is able to determine the need to actually establish a special rapporteur mandate (A/58/380 para 60).

What activities are protected under the Declaration?

Regarding the degrees of interaction protected under the Declaration, article 9 (4) refers to "unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms." The broad wording of the Declaration permits the inclusion of a wide range of collaboration activities with international bodies and agencies, from the submission of information or complaints related to specific cases to the presentation of information on the internal human rights situation in a particular country at international human rights venues.[39]

As regards the different bodies and mechanisms that defenders can engage with, the Declaration provides the right to communicate with a wide range of institutions and mechanisms, including non-governmental organizations, intergovernmental organizations and international bodies. These mechanisms

[39] See also The Right to Access International Bodies, Human Rights Defenders Briefing Papers, International Service for Human Rights, 2009, page 5.

can include UN bodies, such as treaty bodies, special procedures of the Human Rights Council, the Universal Periodic Review and field presences of the Office of the High Commissioner for Human Rights. The mandate has also expressed concerns about defenders being prevented from engaging with other bodies, both non-governmental and inter-governmental, outside the UN system, including participating in events at the European Parliament, conferences organized by OSCE and large regional and international conferences such as the African Peace Forum and the World Social Forum (A/61/312 para. 69).[40]

In relation to the protection afforded to human rights defenders that collaborate with international mechanisms, the Declaration specifies the obligation of the States to take the necessary measures to protect defenders in the exercise of their rights (article 12.2). Furthermore, the mandate has underlined that non-State actors, including private companies, have an obligation to comply with national laws in conformity with international standards and norms. Consequently, non-State actors can be held accountable for violations of the rights of defenders amounting to offences or crimes under national law. In addition, the Human Rights Council, in its resolution 12/2, condemns "all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights" (A/65/223 para. 21).

Common restrictions on and violations to the right to access and communicate with international bodies

The mandate has dealt with many cases of violations of the right to access and communicate with international bodies. According to the cases received, violations to this right can occur by preventing human rights defenders to attend human rights meetings, or through retaliation after human rights defenders have engaged with different bodies and mechanisms. Defenders have also faced threats and intimidation during their participation in events. The mandate has intervened in cases where human rights activists have not been granted permission to leave their countries to participate in international human rights events, including the Human Rights Council, or have been molested or subjected to serious reprisals upon returning to their homes following these events. The mandate has also intervened in cases of individuals who have been targeted after they have submitted information or complaints to international human rights mechanisms, in particular to the mandate and other special procedures of the Human Rights Council. The mandate remains extremely concerned about allegations received reporting acts of intimidation, threats, attacks, arbitrary arrests, ill-treatment, torture and killings of human rights defenders who collaborated with the UN or other international mechanisms.

Defenders have continued to confront limitations to their freedom of movement

[40] See op. cit., page 2.

and their right to access information. Some have been barred from travelling abroad, have had their travel documents seized, been refused access to planes and detained at airports in order to prevent them from reporting about the human rights situation in their country to international forums and bodies. (E/CN.4/2005/101 para 59). The mandate has noted that travel restrictions imposed on defenders in order to prevent them from participating in assemblies of different kinds outside their country of residence is contrary to the spirit of the Declaration and the recognition in its preamble that individuals, groups and associations have the right to "promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels". (A/61/312 para. 60)

The mandate also receives information with regard to cases of defenders that have faced reprisals after collaborating with international bodies and agencies. In particular, the special rapporteur has expressed her deep concern over some cases of defenders who were killed or disappeared after having cooperated with the special procedures of the Human Rights Council. Human rights defenders, who report on the human rights situation inside their countries to the outside world, in particular to special procedures, provide an invaluable source of information. Where they remain silent for fear of retaliation, it becomes difficult, if not impossible, to assess their situation. (E/CN.4/2004/94 para 32)

Examples

On 29 December 2008, four special rapporteurs—the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples and the Special Rapporteur on extrajudicial, summary or arbitrary executions—sent an urgent appeal in relation to the murder of the husband of a indigenous women human rights defender who had previously denounced alleged extrajudicial executions carried out by the security forces. According to the information received, he was murdered when he was on the way to meet his wife upon her return from Geneva, where she had denounced the human rights violations suffered by indigenous peoples during the universal periodic review. According to the allegations, soldiers from the army may have carried out the murder (A/HRC/10/36 para 9 and A/HRC/13/22/Add.3 para. 21).

Additionally, State authorities have continued to use the courts and restrictive legislation to deter defenders from carrying out their work and punish them for their activities. In particular, defenders have faced charges of "inciting rebellion", disseminating "false information" and "damaging the country's reputation" for reporting on the internal human rights situation at international human rights events (E/CN.4/2005/101 para 37).

Examples

In 2010, the Special Rapporteur on the situation of human rights defenders together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent a communication in relation to a proposed bill amending a criminal code that could criminalize defenders activities for communicating with foreign bodies.

According to the information received, the proposed bill included a provision to the criminal code incriminating "anyone who establishes, in a direct or indirect way, contact with agents of a foreign State, an institution or a foreign organization with an aim of encouraging them to attack the interests of the country and its economic safety". This crime would be liable with penalties of up to twenty years in prison. The absence of a definition of what could be considered an attack to the interests of the country and its economic safety could also interfere with defenders' right to freedom of opinion and expression and to access funding from foreign donors (A/HRC/16/44/Add.1 paras 2249 to 2252).

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The Special Rapporteur on the situation of human rights defenders together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent an urgent appeal concerning a journalist and the president of a human rights organization who was sentenced to eleven years' imprisonment. A ten-year sentence was issued for "acting against State security" by establishing a human rights association, and a one-year sentence was added to that for "propaganda against the system". According to the information received, the ruling from the court listed among the charges, "sending untrue reports on the situation of human rights to international organizations, e.g. the Secretary-General of the United Nations." The Government replied that the prison sentence has not been in relation with his activities in defence of human rights or any other peaceful activity; that his trial was in accordance with the rule of law and merely in relation with his illegal activities; and that allegations in defence of the human rights were only an instrument to cover his illegal activities and deceive international human rights bodies. (A/HRC/10/12/Add.1 paras. 1359 to1364 and A/HRC/10/36 para 10 and 11).

In addition to the cases reported directly to the mandate on the situation of human rights defenders, the reports of the Secretary-General related to cooperation with the United Nations, its representatives and mechanisms in the field of human rights contain descriptions of situations in which persons have reportedly been intimidated or suffered reprisals for having provided testimony or information to them; for having availed themselves of procedures established by the UN; for having provided legal assistance for this purpose; for having submitted communications under procedures established by human rights instruments; or for being relatives of victims of human rights violations or for having provided legal or other assistance to victims.

For example, the cases of reprisals contained in the 2010 report include instances of attacks, threats, intimidation and harassment; detention, imprisonment and physical violence against defenders, including murder; and campaigns aimed at delegitimizing the activities of human rights defenders.

These acts are aimed at terminating or preventing individuals and groups from cooperating with United Nations mechanisms.[41]

Best practices and recommendations

- ***Prevent and refrain from all acts of intimidation or reprisal against defenders***. Human Rights Resolution 2005/9[42] and Resolution 12/2 (2009)[43] of the Human Rights Council urge States to prevent and refrain from all acts of intimidation or reprisal against those who have sought to cooperate or have cooperated with UN human rights bodies, those who have availed themselves of procedures established by the United Nations, those who have provided testimony or information to them; for having availed themselves of procedures established by the UN; have provided legal assistance for this purpose; have submitted communications under procedures established by human rights instruments; are relatives of victims of human rights violations or have provided legal or other assistance to victims.

- ***Ensure adequate protection***. Human Rights Resolution 2005/9[44] and Resolution 12/2 (2009)[45] of the Human Rights Council urge States to ensure adequate protection to individuals and members of groups who wish to cooperate with the United Nations, its representatives or mechanisms in the field of human rights. States have also the duty to end impunity for such actions by bringing the perpetrators, including accomplices, to justice in accordance with international standards and by providing an effective remedy to victims.

- ***Increase access for defenders to the United Nations, its representatives and mechanisms.*** The Special Rapporteur urges States to refrain from imposing travel restrictions and to guarantee human rights defenders timely and sufficient access to UN bodies--including the Special Procedures, the Treaty Bodies, the Universal Periodic Review and the Human Rights Council—and have the possibility to present oral and written reports at the most appropriate time for the issues being presented, and to have those reports given due consideration. Heightened access for defenders could be further facilitated by the Office of the High Commissioner for Human Rights (A/60/339 para 64 (a));

- ***Defenders as an early warning mechanism***. The Office of the High Commissioner should consider ways in which it can provide a rapid response to the reports of human rights defenders and through which defenders' work can be more effectively used as an early warning mechanism to alert the Security

[41] See Report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights, A/HRC/14/19, 7 May 2010.
[42] E/CN.4/RES/2005/9.
[43] A/HRC/RES/12/2.
[44] E/CN.4/RES/2005/9.
[45] A/HRC/RES/12/2.

Council and the Human Rights Council of deteriorating human rights situations (A/60/339 para 64 (b)).

Chapter V The right to freedom of opinion and expression

- *Where is the right protected?*
- *The right to freedom of opinion and expression and the Declaration on human rights defenders*
- *What does the right to freedom of opinion and expression entail?*
- *Common restrictions on and violations to the right to freedom of opinion and expression*
- *Permissible limitations to freedom of opinion and expression*
- *Best practices and recommendations*

Where is the right protected?

The right to freedom of expression[46] is recognized in many international and regional instruments, including:

- The Universal Declaration of Human Rights (Article 19),
- The International Covenant on Civil and Political Rights (Article 19),
- The International Convention on the Elimination of all forms of Racial Discrimination (Article 5(d)(viii)),
- The Convention on the Rights of the Child (Article 13)
- The European Convention on Human Rights (Article 10),
- The African Charter on Human and Peoples' Rights (Article 9),
- The American Convention on Human Rights (Article 13),
- The Declaration on Human Rights Defenders[47] (Article 6).

The right to freedom of opinion and expression and the Declaration on human rights defenders

The Declaration recognizes the right to freedom of expression under:

> Article 6
>
> Everyone has the right, individually and in association with others:
>
> (*a*) 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;

[46] The main international human rights body within the United Nations system, the Human Rights Council (the Council), also provides through its system of special procedures for a Special Rapporteur on freedom of opinion and expression, which was established in 1993. Similarly, the African Commission on Human and Peoples' Rights has also established a Special Rapporteur on freedom of expression in Africa. The Inter-American Commission on Human Rights (IACHR) also provides for a Special Rapporteur on freedom of expression, who drafted a *Declaration of Principles on freedom of expression*, which was adopted in 2000.

[47] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.

(*b*) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(*c*) 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.

What does the right to freedom of opinion and expression entails?

Freedom of expression is one of the rights crucial to the work of human rights defenders. The Inter-American Court of human rights has highlighted that freedom of expression "is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *conditio sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its opinions, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free."[48]

The right to freedom of opinion and expression encompasses three different aspects: 1) the right to hold opinions without interference; 2) the right of access to information; and (c) the right to impart information and ideas of all kinds.[49] The Declaration seeks to protect the monitoring and advocacy functions of defenders by recognizing their right to obtain and disseminate information relevant to the enjoyment of human rights (A/58/380 para 14).

Women Human Rights Defenders and the Right to Freedom of Expression

The rights of women to participate in public life, including through the promotion and protection of human rights, is contained in the Universal Declaration of Human Rights as well as asserted in various international treaties, foremost among them the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of all forms of Discrimination against Women (A/HRC/16/44 para 17).

In accordance with the Special Rapporteur's mandate to integrate a gender perspective throughout her work and to pay particular attention to the situation of women human rights defenders, the mandate wishes to emphasize that the rights recognized in the Declaration apply to every man and woman acting to promote and protect human rights as long as they accept and apply the principles of universality and of non- violence (A/HRC/16/44 para 21).

[48] I/A Court H.R., *Ivcher Bronstein Case.* Judgment of February 6, 2001. Series C No. 74, para. 149. As cited in the Report on the Situation of Human Rights Defenders in the Americas, Inter-American Commission on Human Rights (IACHR), OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, para 79.

[49] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23 para. 24, 20 April 2010.

Women's inequality in the enjoyment of rights is rooted in "tradition, history and culture, including religious attitudes."[50] These attitudes also influence the enjoyment and respect of the right to freedom of opinion and expression and the right to access information.[51] States should ensure that these attitudes are not used to justify violations of women's right to equality before the law and to the equal enjoyment of all rights.[52]

The right to freedom of expression has an individual and a social dimension. According to the Inter-American Court, this right "requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others."[53]

The right to freedom of opinion and expression also requires states to comply with positive and negative obligations, including: a) to abstain from interfering with the enjoyment of the right; b) to protect the right by working to prevent, punish, investigate, and provide redress for harm caused by private persons or entities; and c) to take positive measures for the realization of the right.[54]

With respect to access to information, there are several legislative and procedural measures that governments must implement. These include "a principle of maximum disclosure, presumption of publicity with respect to meetings and key documents, broad definitions of the type of information that is accessible, reasonable fees and deadlines, independent review of denials, and sanctions for noncompliance."[55]

Common restrictions on and violations to the right to freedom of opinion and expression

According to information received by the mandate on human rights defenders, trends restricting or violating the right to freedom of expression include:

[50] General Comment No. 28: Equality of rights between men and women (article 3) (sixty-eighth session, 2000), Human Rights Committee, para 5.
[51] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23 para. 43, 20 April 2010.
[52] General Comment No. 28: Equality of rights between men and women (article 3) (sixty-eighth session, 2000), Human Rights Committee, para 5.
[53] I/A Court H.R., Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism. November 13, 1985. Series A No. 5, para. 30. As cited in the Report on the Situation of Human Rights Defenders in the Americas, Inter-American Commission on Human Rights (IACHR), OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, para 78.
[54] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/HRC/14/23, para 25, report 20 April 2010.
[55] These concepts are developed in IACHR, Annual Report of the Office of the Special Rapporteur for Freedom of Expression, 2003, Chapter IV, paragraph 32 on. As cited in the Report on the Situation of Human Rights Defenders in the Americas, Inter-American Commission on Human Rights (IACHR), OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, para 85.

- **The use of security legislation to persecute defenders who criticize the Government**

Despite protection under international and regional human rights instruments and national constitutions, the right to freedom of expression has suffered the most severe adverse impact of restrictions imposed by national security or anti-terrorism laws. The information received by the mandate contains many examples of how these laws have been used to criminalize accepted forms of dissent and suppress the right to hold Governments accountable (A/58/380 para 17). Journalists have been prosecuted for exposing corruption, flaws in governance and human rights abuses. Information on HIV/AIDS, 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 have all been claimed by States to be information whose publication is a threat to national security (A/58/380, para 18).

The Human Rights Committee, in its General Comment No. 34[56] on freedom of opinion and expression, calls on States parties to exercise caution to ensure that provisions related to national security are designed and applied in a way that they guarantee freedom of opinion and expression. The Committee warns that invoking national security provisions, such as treason and sedition laws, to prosecute journalists, researchers, environmental activists or human rights defenders for disseminating information of public interest is not compatible with Article 19, paragraph 3 of the International Covenant on Civil and Political Rights.

- **Restrictions on access to information**

In many States, provisions of laws on internal security, official secrets and sedition, among others, have been used to deny freedom of information to defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards. For example, on the basis of the need to ensure national security and promote counter-terrorism, defenders' access to detainees held on terrorism charges has been limited; their attempts to monitor human rights in terrorism trials have been thwarted; and efforts to gather human rights-related information in areas of conflict have been obstructed; among others. Since 11 September 2001, the executive in many countries has adopted a higher level of secrecy, sometimes even in instances other than those involving terrorism. There are cases in which the executive, after designating detainees as terrorists, has refused to share information or to provide evidence to support that designation, even to the legislature and courts. At the same time, laws on freedom of information that were adopted to ensure government accountability are now being more restrictively interpreted (A/58/380, para 15).

The mandate has also observed restrictions on human rights defenders ability to access information in the context of emergency situations. As emergencies develop, defenders have decreasing access to places and people they need to

[56] CCPR/C/GC/34 on Article 19, para. 31.

visit to perform their human rights role. Where actual armed conflict is present, limitations on access are partly the result of the conflict itself. However, in both conflict and non-conflict emergencies, it is clear that deliberate and concerted efforts are made to limit the access of human rights defenders and to prevent their presence altogether (A/58/380, para 52). Access to places, persons or information is essential to defenders in conducting their human rights work that could contribute towards restoring, strengthening or sustaining peace and security. Defenders have been prevented from speaking directly with witnesses and victims of violations through denial of access to places of detention or IDP camps and by a refusal to allow questioning to take place in private, or by intimidation of witnesses (A/60/339 para 52).

- **The use of the legal system to harass human rights defenders and hinder their work**

Information received by the mandate indicates that State authorities are increasingly using courts and restrictive legislation, including security legislation, as a means to deter defenders from carrying out their activities and to sanction their work. Defenders have faced charges of subversion for setting up Internet-based human rights web sites, of being spies for disseminating information abroad, and of aiming to overthrow the Government and damage the country's reputation for reporting on the internal human rights situation at international human rights conferences. Others have been accused of treason, terrorist activities, aiding and abetting an illegal organization, and endangering the integrity of the State for acts such as making public statements in a minority language or publishing reports about minority rights (E/CN.4/2004/94 para 52).

Other charges have included "defamation of authorities", "spreading false information liable to disturb public order", insulting the security forces, tarnishing the image or reputation of the State and sedition, all of which have been portrayed as damaging national security. Alleged offenders have been fined, arrested, detained, subjected to criminal prosecution and sentenced to very long terms of imprisonment. (A/58/380, para 19). The Special Rapporteur on freedom of opinion and expression has established that "criminal defamation laws may not be used to protect abstract or subjective notions or concepts, such as the State, national symbols, national identity, cultures, schools of thought, religions, ideologies or political doctrines. This is consistent with the view, sustained by the Special Rapporteur, that international human rights law protects individuals and groups of people, not abstract notions or institutions that are subject to scrutiny, comment or criticism."[57]

[57] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/HRC/14/23, para 84, report 20 April 2010.

Example

In January 2010, the Special Rapporteur on the situation of human rights defenders, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a communication concerning a women's rights defender, photographer and film-maker. According to information received, in December 2009, the Department of Internal Affairs informed the defender that she had been arraigned on charges of slander, insult and conducting activities without a licence under the criminal code.

The charges relate to the publication of a photo album titled "Women and Men: from Dawn to Dusk". The album was published in 2007 and contains 110 photographs relating to the traditions and customs in the country. She has also produced two documentaries, titled "women and Men in Customs" and "Virginity Code". It is reported that these charges were initiated following the opening of investigations on several books and films on gender issues by the government agency dealing with media and information in November 2009. Concern was expressed that the charges against her might have been directly related to her legitimate work in defense of human rights (A/HRC/16/44/Add.1 para 2347 to 2350).

According to the Special Rapporteur, authorities and non-State actors increasingly resort to civil and criminal defamation suits against defenders raising their voice against violations of freedom of opinion and expression and carrying out activities for free and fair elections. Civil defamation suits, used in particular against journalists and newspapers, are as damaging as criminal defamation charges and have a disastrous impact on the freedom of opinion and expression. The severe fines to be paid can endanger the existence of newspapers by forcing them into bankruptcy. Civil defamation suits are also launched in order to silence political opponents who are subsequently sentenced to heavy fines. Similarly, civil and criminal defamation and libel proceedings are often used against members of human rights NGOs speaking out against human rights violations. The fines and prison sentences received may effectively cripple such organizations, while the threat of civil and criminal proceedings may also lead to self-censorship and diminished human rights monitoring (A/HRC/13/22 para 33).

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has also underlined that "[d]efamation offenses have been one of the main sources of imprisonment of journalists around the world."[58] He has received a large number of communications dealing with the prosecution or imprisonment of individuals based on charges of defamation, libel and slander.[59] In this context, it is important to highlight that persons who hold public positions are more exposed to scrutiny and criticism because of their role. As the Inter-American Commission has established "one cannot legitimately impose a sanction that impedes or restricts the critical and necessary work of human rights

[58] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/7/14, para. 39, 28 February 2008

[59] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/HRC/11/4, para 9, report 30 April 2009

defenders when they scrutinize the persons who hold public positions. An excessive sanction may have a chilling effect on such criticism."[60]

- **Laws restricting printing and publication**

Laws restricting printing and publication have also been used to curtail the freedom of the press (A/58/380, para 18). The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression highlights as an important trend in many regions "the adoption of legislation that unduly limits freedom of expression by fostering State interference in editorial independence; by creating subjective licensing procedures that are used to close media outlets; by restricting the ability of journalists, particularly foreign correspondents, to perform their work freely; and by imposing severe limitations on the operation, including funding, of civil society organizations."[61]

- **Censorship, suspension, closing or banning of media outlets**

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has expressed concern at "the widespread resort to censorship, direct or indirect, which remains in many regions of the world." Among the concerns are the use of "overly subjective administrative regulations" like licensing and taxation to close or suspend media outlets;[62] censorship of the internet and efforts by many governments to control and monitor digital media, as well as to punish "cyber-dissidents."[63] According to the Special Rapporteur, illegal restrictions on the right to freedom of opinion and expression have been facilitated by major Internet corporations, most of which are based in democratic countries. Search engines have accepted many governments' imposition of strict controls, such as blocking "politically sensitive terms" of search results presented to individuals. The Special Rapporteur has also expressed concern about many large internet corporations that have disclosed personal information about their users to governments.[64]

- **Attacks against human rights defenders and journalists**

Members of human rights NGOs and journalists are often targeted during the investigation of human rights abuses. They are subject to threats, attacks and intimidation, and some of them have even been abducted and killed (A/HRC/13/22 para 55). Defenders and journalists have also been subjected to arrest and detention following the publication of letters calling for the improvement of the human rights situation, for posting articles on line criticizing governmental policies and for denouncing human rights violations. Journalists have also been detained to prevent criticism of figures of authority.

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[60] Report on the Situation of Human Rights Defenders in the Americas, Inter-American Commission on Human Rights (IACHR), OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, para 81.
[61] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/11/4, para 9, report 30 April 2009.
[62] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/7/14, para. 21, 28 February 2008.
[63] Op. cit., para. 23.
[64] Op. cit., para. 24.

The mandate has also highlighted the risk to which women journalists and media professionals working on human rights issues are exposed to as a result of their work. This group includes women investigative journalists working on human-rights related issues, women columnists advocating human rights reform, women reporters monitoring and reporting violations of human rights, and women bloggers (A/HRC/16/44 para 47).

The communications sent by the mandate indicate that human rights defenders are disproportionately targeted before, during, or just after publicizing human right issues. In particular, defenders have been targeted at the time of the publication of reports, articles, petitions, open letters, radio broadcasts, public statements and campaigns denouncing human rights violations, criticizing the Government and State authorities for policies and practices not in compliance with internationally recognized human rights standards (E/CN.4/2004/94 para 43 and E/CN.4/2005/101 para 29).

The mandate already has a solid caseload of work involving journalists reporting on human rights and being targeted for that reason. The mandate regards them as human rights defenders and consistently intervenes to protect them. Their role in following up on cases at a national level through investigative journalism can make a real difference in terms of raising public awareness and shedding light on responsibilities. The media could play their role in the promotion and protection of human rights (A/63/288 para 54).

Defenders working on economic, social and cultural rights are also subject to threats and intimidation when they attempt to access information. In certain countries, defenders trying to gather information on violations of human rights or humanitarian law being committed in certain areas are prevented from doing so in an often violent manner, including killings, harassment and threats. In countries where the control of natural resources is at stake, defenders have been particularly threatened while denouncing the lack of transparency regarding contracts between the State and private companies (A/HRC/13/22 para. 40).

Many violations of the right to freedom of expression also occurred in the context of peaceful demonstrations.[65] The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression notes that many of the cases concerning attacks of journalists, students, human rights defenders and unionists in retaliation for the exercise of their right to freedom of opinion and expression "are linked to the repression of peaceful protests conducted to express disagreement with a particular governmental policy, at the national or

[65] See the following press releases: UN experts call on Syria to urgently end crackdown and implement reforms, 15 April 2011; Broken promises in Bahrain – UN experts question Government's human rights commitments, 22 March 2011; Libya: "Stop the massacre" - UN experts, 22 February 2011; Bahrain / Libya: UN experts urge authorities to guarantee right to protest without fear of being injured or killed, 18 February 2011; Governments must pay more attention to people's voices - UN experts, 3 February 2011; Tunisia: "Words must become reality, excessive use of force must end" - UN human rights experts, 14 January 2011.

local level, or with the actions of large corporations."[66] The electoral period is also a time when defenders face heightened risks. Freedom of expression and assembly are often restricted before, during and after elections. In many cases, acts of intimidation start long before the beginning of election campaigns. Solutions to enhance the security of defenders during elections should therefore also take this preceding period into account (A/HRC/13/22 para 56).

Permissible limitations to freedom of opinion and expression

As mentioned before, the right to freedom of opinion and expression encompasses three different aspects: 1) the right to hold opinions without interference; 2) the right of access to information; and (c) the right to impart information and ideas of all kinds. With regards to the first aspect, the right to hold opinions, no exceptions or restrictions are permitted.[67]

Concerning the other 2 aspects, Article 19, paragraph 3 of the International Covenant on Civil and Political Rights establishes that "the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself."[68] According to paragraph 3, restrictions must be "provided by law" and must be justified as being "necessary" for one of the following purposes: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.[69]

The Special Rapporteur on freedom of opinion and expression has emphasized that restrictions on the following dimensions of the right to freedom of expression are not permissible:

> (i) Discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups;
> (ii) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship;
> (iii) Access to or use of information and communication technologies, including radio, television and the Internet.[70]

[66] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression A/HRC/11/4, para 8, report 30 April 2009.
[67] General Comment No. 10: Freedom of expression (Art.19) (Nineteenth session, 1983), Human Rights Committee, para1.
[68] Ibid., para 4.
[69] Ibid., para 4.
[70] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23, para 81, report 20 April 2010.

Despite these provisions, both the Special Rapporteur on human rights defenders and the Special Rapporteur on freedom of opinion and expression continue to receive information about restrictions imposed on this right. States obstruct defenders from accessing places, persons or information essential for defenders to carry out their work, and continue to resort to the use of the legal system to criminalize defenders to silent dissent or criticism. In view of these trends and practices, the Special Rapporteur on freedom of opinion and expression has proposed the following principles[71] that can be used to decide what limitations and restrictions to the right to freedom of expression are legitimate in the framework of human rights standards:

Principles concerning permissible limitations or restrictions to the right to freedom of expression[72]

(a) The restriction or limitation must not undermine or jeopardize the essence of the right of freedom of expression;

(b) The relationship between the right and the limitation/restriction or between the rule and the exception must not be reversed;

(c) All restrictions must be provided for by pre-existing statutory laws issued by the legislative body of the State;

(d) Laws imposing restrictions or limitations must be accessible, concrete, clear and unambiguous, such that they can be understood by everyone and applied to everyone. They must also be compatible with international human rights law, with the burden of proving this congruence lying with the State;

(e) Laws imposing a restriction or limitation must set out the remedy against or mechanisms for challenging the illegal or abusive application of that limitation or restriction, which must include a prompt, comprehensive and efficient judicial review of the validity of the restriction by an independent court or tribunal;

(f) Laws imposing restrictions or limitations must not be arbitrary or unreasonable and must not be used as a means of political censorship or of silencing criticism of public officials or public policies;

(g) Any restrictions imposed on the exercise of a right must be "necessary", which means that the limitation or restriction must:

(i) Be based on one of the grounds for limitations recognized by the Covenant;

[71] The principles proposed in this document have been compiled by the Special Rapporteur from various public sources, including the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex) and the general comments adopted by the Human Rights Committee, including No. 10 (article 19 of the Covenant),6 No. 11 (article 20 of the Covenant) and No. 27 (article 12 of the Covenant). Although general comment No. 27 concerns freedom of movement, it encapsulates the Human Rights Committee's position on permissible limitations on the rights established in the Covenant. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23 para. 78, 20 April 2010.

[72] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23 para. 79, 20 April 2010.

(ii) Address a pressing public or social need which must be met in order to prevent the violation of a legal right that is protected to an even greater extent;
(iii) Pursue a legitimate aim;
(iv) Be proportionate to that aim and be no more restrictive than is required for the achievement of the desired purpose. The burden of demonstrating the legitimacy and the necessity of the limitation or restriction shall lie with the State;

(h) Certain very specific limitations are legitimate if they are necessary in order for the State to fulfil an obligation to prohibit certain expressions on the grounds that they cause serious injury to the human rights of others. These include the following:

(i) Article 20 of the Covenant, which establishes that "any propaganda for war" and "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law";
(ii) Article 3, paragraph 1 (c), of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which provides that States must ensure that their criminal law covers "producing, distributing, disseminating, importing, exporting, offering, selling or possessing [...] child pornography";
(iii) Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination, which establishes the requirement to "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin";
(iv) Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide, which states that "direct and public incitement to commit genocide" shall be punishable;

(i) Restrictions already established must be reviewed and their continued relevance analysed periodically;

(j) In states of emergency which threaten the life of the nation and which have been officially proclaimed, States are permitted to temporarily suspend certain rights, including the right to freedom of expression. However, such suspensions shall be legitimate only if the state of emergency is declared in accordance with article 4 of the Covenant and general comment No. 29 of the Human Rights Committee. A state of emergency may not under any circumstances be used for the sole aim of restricting freedom of expression and preventing criticism of those who hold power;

(k) Any restriction or limitation must be consistent with other rights recognized in the Covenant and in other international human rights instruments, as well as with the fundamental principles of universality, interdependence, equality and non-discrimination as to race, colour, sex, language, religion, political or other belief, national or social origin, property, birth or any other status;

(l) All restrictions and limitations shall be interpreted in the light and context of the particular right concerned. Wherever doubt exists as to the interpretation or scope of a law imposing limitations or restrictions, the protection of fundamental human rights shall be the prevailing consideration.

Best practices and recommendations

- **Guarantee effective exercise of freedom of expression.** States should take the necessary steps to guarantee the effective exercise of the right to freedom of opinion and expression for all individuals and social sectors, without exception or discrimination of any kind.[73]

- Security legislation should not be used to persecute defenders. States should ensure that security legislation is not applied against human rights defenders as a means to prevent their human rights work. Derogations from human rights standards and the granting of additional powers to security forces should not hinder the work of defenders or result in their being targeted (A/58/380 para 70).

- Guarantee access to places and basic information. States should seek to ensure that, when implementing security legislation, they guarantee an opportunity for human rights defenders to effectively monitor its application, the relevant court proceedings and the actual physical integrity of persons targeted by such legislation. For example, in the context of the arrest and detention of a person under security legislation, defenders should, at a minimum, have regular access to the detainee and to basic information on the substance of the charges on which the detainee is held. These two conditions are the absolute minimum for defenders to monitor the most fundamental human rights involved in the application of security legislation (A/58/380 para 74).

- Laws and policies should reflect the right of access to information. States should ensure that laws and policies reflect the right of defenders' to access information and sites related to alleged violations, and that the relevant authorities are trained to give full effect to this right (E/CN.4/2006/95 para 86). In relation to the access to information held by the State, the latter is under an obligation to take all necessary steps to fully discharge its obligations pursuant to article 22, paragraph 2, of the International Covenant on Civil and Political Rights. States should also ensure that information held by non-State actors — and in particular private companies — that can harm the public or is linked to public interest is made available to the public (A/HRC/13/22 para 41). States should establish an effective and independent mechanism for this purpose.

- Avoid measures aimed at criminalizing freedom of expression. States should refrain from criminalizing any manifestation of the freedom of expression as a means of limiting or censoring that freedom. Accordingly, any measure of this kind should be abolished, except for the permissible and legitimate restrictions established in international human rights law.[74]

[73] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23, para 119, report 20 April 2010.
[74] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23, para 120, report 20 April 2010.

- Defamation offences must be dealt with under civil law. States should decriminalize defamation and similar offences. These should be dealt with under civil law. The amount of fines to be paid as compensation should be reasonable and allow the continuation of professional activities. Governments should release immediately and unconditionally all journalists detained because of their media-related activities. Prison sentences should be excluded for offences concerning the reputation of others such as defamation and libel.[75]

- Refraining from introducing new norms. Governments should also refrain from introducing new norms which will pursue the same goals as defamation laws under a different legal terminology such as disinformation and dissemination of false information. Under no circumstances should criticism of the nation, its symbols, the Government, its members or their actions be seen as an offence.[76]

[75] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/4/27, para 81, report 2 January 2007.
[76] Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/4/27, para 82, report 2 January 2007.

Chapter VI The right to protest

- *Where is the right protected?*
- *The right to protest and the Declaration on human rights defenders*
- *What does the right to protest entails?*
- *Common restrictions on and violations to the right to protest*
- *Best practices and recommendations*

Where is the right protected?

The protection of the right to protest lies in the recognition and protection of a set of rights that includes freedom of expression and opinion, freedom of association, freedom of peaceful assembly and trade union rights, including the right to strike (A/62/225 para 12). For the specific provisions concerning freedom of expression and opinion, freedom of association and freedom of peaceful assembly see the relevant sections. The right to protest also encompasses the right to strike, which is recognized under several international and regional instruments, including:

- The International Covenant on Economic, Social and Cultural Rights (Article 8),
- The Inter-American Charter of Social Guarantees of 1948 (Article 27),
- The European Social Charter of 1961 (Article 6 (4)),
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (Article 8 (1) (b)),
- The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) of the International Labour Organization (the right to strike is considered an intrinsic corollary of the right to organize protected under article 11 of this convention), and
- The Declaration on Human Rights Defenders[77] (Article 5(a)).

The right to protest and the Declaration on human rights defenders

The Declaration recognizes the right to protest under:

> 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: […]
>
> *a)* To meet or assemble peacefully;
> […]
>
> See also relevant provisions related to freedom of opinion and expression (Article 6) and freedom of association (Article 5).

[77] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.

What does the right to protest entails?

Historically, protests and demonstrations have been the engines of change and major contributing factors to advances in human rights. Unknown defenders as well as activists of high profile have led and inspired protest movements in all regions and historical epochs, paving the way for achievements in human rights. From the civil disobedience as a form of non-violent protest championed by Mahatma Gandhi to claim the right of the people of India to self-determination, to the march on Washington, D.C., demanding the end of racial segregation in the United States led by Martin Luther King, Jr., to the Mothers of the Plaza de Mayo taking their Thursday afternoon walk in the Buenos Aires square with their white scarves to denounce the crimes of the dictatorship in Argentina, to demonstrations for workers' rights on 1 May, the protests of human rights defenders all over the world have been high-water marks of history (A/62/225 para 4).

The mandate has underlined that the right to protest is a fully fledged right and entails the enjoyment of a set of rights internationally recognized and reiterated in the Declaration on Human Rights Defenders. These rights include freedom of expression and opinion, freedom of association, freedom of peaceful assembly and trade union rights, including the right to strike (A/62/225 para 96). Protecting the right to protest in the context of freedom of assembly entails both negative and positive obligations. The negative obligation on the part of the State not to interfere with peaceful protests is to be combined with the positive obligation to protect rights holders in the exercise of this right, particularly when persons protesting hold unpopular or controversial views, or belong to minorities or other groups exposed to higher risks of victimization, attacks and other forms of intolerance (A/62/225 para 97).

In the same venue, the European Court has stated that the genuine, effective freedom of peaceful assembly cannot be reduced to a mere duty on the part of the State not to interfere (A/62/225 para 38). Compliance with the provision on freedom of peaceful assembly entailed positive and negative obligations for the State. On the one hand, the State is compelled to abstain from interfering with the right to assembly, which also extends to a demonstration that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote. If every probability of tension and heated exchange between opposing groups during a demonstration was to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views. On the other hand, the State may have to take positive measures to protect a lawful demonstration against counter-demonstrations (A/62/225 para 40).

The mandate has also argued that in addition to these obligations, respecting and fulfilling the right to protest entails the obligation on the part of States to take deliberate, concrete and targeted steps to build, maintain and strengthen pluralism, tolerance and an open attitude to the expression of dissent in society (A/62/225 Summary).

Similarly, in a case[78] concerning members of non-governmental organizations (NGOs) active in the area of discrimination on the basis of sexual orientation who were denied permission to assemble, the European Court of Human Rights observed that the refusals to give authorization could have had a chilling effect on the participants in the assemblies. The Court further stated that pluralism, tolerance and broadmindedness are particularly important in a democratic society. Democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position. The Court described the State as the ultimate guarantor of the principle of pluralism, a role that entails positive obligations to secure the effective enjoyment of rights. These obligations are of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimization (A/62/225 para 46).

As the mandate has noted, the right to protest is an essential element of the right to participation in any democratic dispensation and restrictions imposed on this right must be closely scrutinized with respect to their necessity and reasonableness (A/61/312 para 56). Similarly, the Inter-American Commission has underscored that political and social participation through public demonstration is critical to the consolidation of democratic life in societies. It has also underlined that such participation, as an exercise of freedom of expression and freedom of assembly, is a keen interest to society, which leaves a State very narrow margins for justifying restrictions on this right. The Inter-American Commission deems that States should establish administrative controls to ensure that in public protests and demonstrations force is used only in cases where it is necessary and that measures for planning, prevention and investigation of cases in which abuse of force may have occurred should be adopted[79] (A/62/225 para 33).

Regarding permitted limitations, restrictions may be imposed on public demonstrations as long as their purpose is to protect national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others (A/62/225 para 21). For example, the European

[78] The European Court of Human Rights, *Bączkowski and Others v. Poland*, Application No. 1543/06, judgement of 3 May 2007.
[79] Inter-American Commission on Human Rights, *Report on the situation of human rights defenders in the Americas*, OEA/Ser.L/V/II.124, Doc. 5 rev.1, 7 March 2006, para. 68.

Court,[80] in line with the position of the Human Rights Committee[81] and the European Commission for Democracy through Law,[82] has held that establishing a regime of prior notification of peaceful assembly does not necessarily extend to an infringement of that right provided that the pre-notification requirement does not indirectly restrict the right to hold peaceful meetings (A/62/225 para 43).

In a case in which the pre-notification requirement was not met, the European Court recognized the protest as unlawful. Nevertheless, the Court pointed out that an unlawful situation does not justify an infringement of freedom of assembly. In the view of the Court, there was no evidence to suggest that the gathering represented a danger to the public, apart from possibly disrupting traffic. In the Court's view, where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings. Accordingly, the Court considered that the forceful intervention by the police was disproportionate and was not necessary for the prevention of disorder[83] (A/62/225 para 44).

Common restrictions on and violations to the right to protest

Several treaty bodies[84] have identified implementation gaps with regards to participation in public demonstrations. The Human Rights Committee has highlighted the following: (a) bans on demonstrations; (b) unjustified restrictions on demonstrations; (c) unnecessary requirements to obtain authorizations that affect the enjoyment of freedom of assembly; (d) lack of remedies to appeal decisions denying the authorization to hold demonstrations; (e)arrest of protestors amounting to arbitrary detention; (f) legislation not complying with international human rights law both because it obstructs and punishes the exercise of freedom of assembly and the right to protest and because it establishes procedures infringing on the actual ability to enjoy the right to peaceful assembly; (g) legislation on counter-terrorism with definitions of "terrorism" so broad that they might jeopardize legitimate activities in a democratic society, in particular participation in public demonstrations (A/62/225 para 20).

In addition, the Committee on Economic, Social and Cultural Rights has identified implementation gaps related to legal frameworks not complying with international obligations, restrictions to the right to strike and bans or limitations of the right to

[80] The European Court of Human Rights, *Oya Ataman v. Turkey*, Application No. 74552/01, judgement of 5 December 2006.
[81] Human Rights Committee, *Auli Kivenmaa v. Finland*, see *Official Records of the General Assembly, Forty-ninth Session, Supplement No. 40* (A/49/40), vol. II, annex IX, sect. N.
[82] The European Commission for Democracy through Law, better known as the Venice Commission, is the Council of Europe's advisory body on constitutional matters. Established in 1990, the Commission has played a leading role in the adoption of constitutions that conform to the standards of Europe's constitutional heritage. The Commission has become an internationally recognized independent legal think-tank.
[83] The European Court of Human Rights, *Oya Ataman v. Turkey*, Application No. 74552/01, judgement of 5 December 2006.
[84] Treaty bodies are committees of experts that monitor the implementation of international treaties.

strike for civil servants (A/62/225 para 22). Inadequacies in the legal framework on the right to strike concern: (a) strikes considered to be criminal offences; (b) failure to incorporate the right to strike in domestic law; (c) legislation preventing workers from striking; (d) laws providing the possibility of replacing workers on strike; (e) unjustified exclusion from the right to strike of some categories of workers, such as public school teachers and college and university professors; (f) prohibition of strikes for all public employees and civil servants; (g) too-broad definitions of "essential services" affecting the right to strike of civil servants (A/62/225 para 23).

The mandate has received a wealth of information concerning violations of the right to protest. Communications sent by the mandate regarding protests concerned human rights activists demonstrating against the declaration of the state of emergency; supporting the independence of the judiciary; complaints about conditions of imprisonment and the absence of visitation rights for the families of detained political prisoners; demands for greater freedom of religion and protests against discriminatory practices against ethnic communities. Protests have also been linked to the passing of restrictive legislation such as an internal security legislation or a communication bill that could be used to restrict media freedom. Defenders participating in these protests have faced harassment, intimidation, violence, arrest, detention, ill-treatment and, in some cases, defenders have been killed.[85]

In addition to the above examples, the mandate has identified specific protection gaps on the basis of the following group of protestors and thematic areas:

- **Women defenders engaged in demonstrations.**

Women defenders often face more risks when participating in collective public action because of perceptions of the traditional role of women in some societies, and they become targets of non-State actors (A/61/312, para. 72).The protests organized by women defenders concern both women defenders organized in groups and associations as women and engaged in demonstrations on broad human rights issues, as well as women defenders protesting to demand change and progress in the protection and promotion of the human rights of women (A/62/225 para 61). According to the information received by the mandate, women defenders have protested against issues such as police violence, the death penalty, torture, political reform and electoral fraud. Protests organized by women defenders on women's rights concerned (a) celebration of International Women's Day; (b) equal pay and equal treatment for women and men; (c) legislative changes to ensure equal rights and the removal of discriminatory

[85] See Reports of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, summary of cases transmitted to Governments and replies received, Addendums A/HRC/16/44/Add.1 (28 February 2011), A/HRC/13/22/Add.1 (24 February 2010) and A/HRC/10/12/Add.1 (4 March 2009). See also Report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, summary of cases transmitted to Governments and replies received, Addendum A/HRC/7/28/Add.1 (5 March 2008).

clauses; and (d) slogans to call the attention of public opinion and decision makers to women's rights (A/62/225 para 62).

> Example
>
> The mandate on human rights defenders, together with the Special Rapporteur on violence against women, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, sent a communication concerning three dozen women human rights defenders from an ethnic community who were reportedly beaten and detained in custody while protesting in front of a government building.
>
> Allegedly, the aim of their protest was the rehabilitation of women who have been forced to work as commercial sex workers, the right to own land, the equal representation of male and female candidates in the constituent assembly, and the establishment of legal bodies at all levels of the Government to address issues such as racial discrimination, untouchability and legal identity for their children who are deprived of citizenship certificates. All the protestors were released without charge later that day. (A/HRC/7/28/Add.1 para 1505 to 1508).

Violations suffered by women defenders as a consequence of their participation in protests ranged from threats following demonstrations to arrests and excessive use of force in repressing assemblies and marches. The Special Rapporteur on Violence against Women joined the mandate on the situation of human rights defenders in about half of her communications on women defenders when the allegations indicated that women defenders were targeted because of their gender (A/62/225 para 63). The mandate has highlighted that "only when women are truly involved in raising demands, claiming their rights and participating fully in public life, will advances in the elimination of discriminatory laws and practices, gender stereotypes and patriarchal structures be possible."[86]

- **Protests linked to the rights of Lesbian, gay, bisexual and transgender persons (LGBT)**

The mandate has sent communications concerning bans and acts of harassment against "pride parades" campaigning for the rights of lesbian, gay, bisexual and transgender (A/62/225 paras 47 and 48). These communications highlight a pattern of intolerance and violence against defenders working on LGBT rights. The Commissioner for Human Rights of the Council of Europe has also confirmed this trend[87] and has urged stronger reactions against officials who take decisions against the law by banning demonstrations or politicians who use their positions to spread prejudices against people because of their sexual orientation.

[86] UN experts call on Syria to urgently end crackdown and implement reforms, GENEVA (15 April 2011). Press release available at:
http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10941&LangID=E

[87] Viewpoint issued on 16 May 2007. Available at www.coe.int/t/commissioner/Viewpoints/070516_en.asp.

He also called on the authorities to treat organizations advocating for rights of LGBT persons with the same respect as they are expected to pay to other NGOs (A/62/225 para 49). Concerned at this alarming pattern, the Congress of Local and Regional Authorities of the Council of Europe has adopted recommendations on the need to protect the freedom of assembly and expression of LGBT persons[88] (A/62/225 para 50).

- **Protests linked to demands for democratic reforms**

The mandate has received numerous information concerning protests linked to the demands for democratic reforms. Some of these protests started in reaction to an increase in fuel prices and prices of goods and transportation and became more political turning into protests against authoritarian regimes and demanding democratic reforms. Grievances that led to these demonstrations were related to restrictions on fundamental rights and freedoms such as discrimination and the denial of the right to participate meaningfully in decision-making. Protests also concerned corruption and lack of access to employment and violations on the right to an adequate standard of living, including the rights to food and housing, which have been aggravated by the increase in the cost of living.

In this context, journalists, bloggers, political activists and human rights defenders denouncing human rights violations have been the subject of widespread arbitrary arrest and detention, intimidation, ill-treatment, and torture. The mandate has expressed grave concern about the number of peaceful protesters who have been injured or killed during violent crackdown by the authorities. The mandate is deeply alarmed by the excessive use of force by the State security forces, despite the largely peaceful nature of the demonstrations.

Example

In March 2011, the Special Rapporteur on the right to freedom of opinion and expression, together with the Special Rapporteur on the situation of human rights defenders, the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, sent an urgent appeal to the Government regarding the deaths of at least 16 people, and violence against journalists in connection with several demonstrations held since mid-January 2011. According to reports, the demonstrations were initially against unemployment, economic conditions and corruption, as well as the Government's proposals to modify the Constitution which would allow the President to remain in office for life. As demonstrations have continued, protesters have started calling for the resignation of the President.[89]

[88] Recommendation 211 (2007) and resolution 230 (2007) on "Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons".

[89] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, Summary of cases transmitted to Governments and replies received, A/HRC/17/27/Add.1, para 2357, 27 May 2011.

- **Students' protests**

Student protests concerned both demonstrations related to their situation and rights as students, e.g. denial of the authorization to establish student unions and delays in receiving grants and loans, as well as broader human rights issues such as rallies against press laws limiting freedom of expression, protests denouncing cases of torture and rape, commemorations of human rights achievements, demonstrations seeking the release of political prisoners and the amendment of laws infringing the enjoyment of human rights (A/62/225 para 68). Violations suffered by student activists linked to their participation in demonstrations included arrests, often resulting in incommunicado detention, and excessive use of force by the police (A/62/225 para 69).

Acts of repression and retaliation against student activists engaged in protests have been particularly harsh. The fact that the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment joined the mandate on defenders in many communications sent on student protests indicates the brutality of violations affecting student defenders. This is of even greater concern because of the young age of the students, who are sometimes under 18; their youth adds to the severity of the violations suffered. In addition, children and young students have less means than adults, including economic ones, to defend themselves as victims of human rights violations (A/62/225 para 70).

- **Defenders and workers' rights**

Protests related to workers' rights referred to in communications of the mandate concerned issues such as: (a) campaigns for workers' rights; (b) promotion of basic labour standards; (c) peaceful assemblies in support of trade union members engaged in protests through hunger strikes; (d) strikes for wage increases; (e) protests against the violation of trade union rights; (f) demonstrations against human rights abuses connected to the economic crisis; (g) protests against the conditions of work; and (h) protests against bonded labour (A/62/225 para 72).

Most of the violations suffered by defenders engaged in protests over workers' rights occur during arrest, before, during or after demonstrations as well as a result of excessive use of force by the police, resulting in injuries to protestors and, in some instances, leading to the death of demonstrators (see A/HRC/4/37/Add.1, para. 435) (A/62/225 para 73). In addition to these violations, the communications of the mandate reported violations and forms of retaliation which specifically affected defenders protesting against work-related issues, such as dismissal linked to participation in strikes and blacklisting of trade union members (A/62/225 para 74).

- **The anti-globalization movement: protests for social and economic rights**

The protests at the World Trade Organization (WTO) Summit in Seattle, United States of America, in November 1998 brought to the attention of media and public opinion what has since been named the anti-globalization movement. It is made up of activists, trade unionists, environmentalists, lobbyists, farmers, feminists, anarchists and students demonstrating against a broad range of issues associated with globalization, such as growing multinational corporate power, global agreements on economic growth, social insecurity of workers, bioengineering of agricultural crops, violations of animal rights and collusion with oppressive regimes (A/62/225 para 75). The anti-globalization movement has been described, for instance, as multigenerational, multi-class and multi-issue. This diversity also applies to the tone and nature of the protests. While a large proportion of activists engage in marches and other peaceful forms of protest, there have also been fringe elements that use more violent forms of demonstration, including arson. The presence of violent elements has usually been the most likely to be covered by media. This has caused the human rights message of the protests to be lost in sensational action and media coverage (A/62/225 para 76).

The mandate sent several communications that can be associated to protests by the anti-globalization movement. They concerned demonstrations that took place, or were meant to take place, in the context of the Asia-Pacific Economic Cooperation Summit (Bangkok, October 2003), the World Trade Organization Ministerial Meeting (Hong Kong, December 2005), the World Bank/International Monetary Fund meetings (Singapore, September 2006), or were against the signature of the Free Trade Agreement (*Tratado de Libre Comercio*) in Latin America (A/62/225 para 78).

Communications sent by the mandate included cases of arrests and detentions of protestors. In some cases, protestors were mishandled or beaten by the police and were denied medical aid, food, water and bathroom facilities and access to interpreters. In other cases, authorities prohibited peaceful protests and threatened to arrest protestors who were considered to be a security threat. Communications also included cases of threats and attacks against defenders working on indigenous issues in connection with their participation in public protests against the Free Trade Agreement. The mandate has also received information in which authorities allegedly indicated that protesting organizations would be prevented from receiving government funds from poverty eradication programmes, threatened to blacklist any non-governmental organization taking part in public protests and denied visas to foreign activists to travel (See A/HRC/4/37/Add.1 para 143; A/HRC/4/37/Add.1 para 324; E/CN.4/2006/95/Add.1 para 208; E/CN.4/2005/101/Add.1 para 236; and E/CN.4/2004/94/Add.3 para 414).

- **Protests linked to elections**

Communications sent by the mandate regarding protests concerned calls for free and fair elections, challenged the results of elections, denounced irregular nomination and registration procedures of candidates, or alleged violations of electoral regulations (A/62/225 para 79).

Violent means such as tear gas, rubber-coated metal bullets and stun grenades were frequently used to disperse these gatherings. In most of these cases defenders were allegedly arbitrarily detained or arrested. Arrests were often accompanied by violence, and a large number of those arrested were ill-treated. In many cases, defenders were never brought to trial, but merely released on bail after a certain amount of time, or detained without having their case brought before a judge (A/62/225 para 80).

- **Peace demonstrations**

Anti-terrorism measures used as a pretext to restrict the right to protest and freedom of assembly particularly affected peace demonstrations after 11 September 2001. Government surveillance of activities of anti-war and peace groups increased tremendously, affecting the enjoyment of the right to protest (A/62/225 para 83). The mandate is concerned that arrests of protesters in the context of these demonstrations appear to have been based on the detainees' known or alleged affiliation with organizations critical of government policies rather than on evidence supporting the criminal charges eventually brought against them (A/62/225 para 85).

- **Protests linked to land rights, natural resources and environmental claims**

Communications sent by the mandate included cases of arrests, detentions, threats and, in some cases, killings of human rights defenders protesting over environmental issues and land rights (A/62/225 para 87). The mandate has pointed out that land rights and natural resources is an area where a large part of the defenders come from indigenous populations and minority groups. The mandate has also noted that these populations are often working to secure their right to utilize and live on the land they consider to be theirs (A/HRC/4/37, para. 41). According to the mandate, human rights defenders working for the preservation of the environment become even more vulnerable because of the remoteness of the areas in which they are active. (A/HRC/4/37/Add.2, para. 23).

The criminalization of social movements working on land rights and environmental issues is another concern pointed out by the mandate on previous occasions, when it was stated that "farmers have been prosecuted in anti-terrorist courts for protesting attempts by State security forces to evict them from land. Villagers demonstrating against mega-projects that threaten their environment and livelihood have been charged with conducting anti-State activities" (A/58/380, para. 25; see also A/HRC/4/37/Add.2, paras. 36-42). (A/62/225 para 90). Defenders have also been attacked over protests against the

building of dams. In addition, activists protesting against demolition of homes and forced evictions have been arrested and, in some cases, killed.

Example

The Special Rapporteur on human rights defenders, together with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent a communication regarding violent forced evictions and death of protestors.

According to the information received, five protestors were killed during a protest against forced eviction and the police crackdown to stop it. These events resulted from the implementation of an urban redevelopment project which has led to alleged massive forced evictions with no plan for resettlement. Reportedly, the tenants were only informed of their forthcoming eviction through a compensation notice received one month before the eviction took place. As a consequence of this lack of notification, the tenants had no opportunities to challenge the authorities' decision or to file a legal complaint, to present alternative proposals, or to articulate their demand and priorities (A/HRC/13/22/Add.1 paras 1836 to 1844).

- **Violations against defenders monitoring and reporting on demonstrations**

Monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. This is a valuable contribution to the effective enjoyment of the right to peaceful assembly. The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly[90] (A/62/225 para 91).

Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. Assemblies, parades and gatherings are often the only means that those without access to the media may have to bring their grievances to the attention of the public. Media footage also provides an important element of accountability both for organizers of events and law enforcement officials. The media must therefore have access to assemblies and the policing operations mounted to facilitate them[91] (A/62/225 para 93).

The mandate has sent communications and issued press releases concerning human rights monitors and journalists who have received threats, including death threats, have had their cameras confiscated, been arrested, ill-treated, tortured and, in some cases, killed while covering demonstrations (A/62/225 para 94).

[90] OSCE/ODHIR, *Guidelines on Freedom of Peaceful Assembly*, Warsaw, 2007, p. 73. Available at www.osce.org/odihr/item_11_23835.html.
[91] Ibid., p. 75.

Best practices and recommendations

- Legitimize the role of human rights defenders. Human rights defenders play a pivotal role in ensuring that protest and criticism are expressed in a peaceful and constructive manner. States should legitimize and empower human rights defenders in this role and encourage defenders to take full ownership of this role (A/62/225 para 102).

- Accountability of law enforcement officials. States should enforce a code of conduct on law enforcement officials, particularly with regard to crowd control and the use of force, and ensure that the legal framework contains effective provisions for the oversight and accountability of officials especially with regard to their responses to public protest actions (A/62/225 para 100).

- Refrain from excessive use of force. States should take all necessary measures to protect defenders during protests and to refrain from the use of excessive force against protesters. Excessive or disproportionate use of force can amount to cruel and degrading treatment and could, under certain circumstances, also amount to torture. States should adhere to international human rights norms when arresting persons in the context of peaceful demonstrations. (A/HRC/7/28/Add.1 para 1465).

- Specific protection measures in relation to group of protestors and thematic areas. In particular, States should take the following measures to address the protection gaps identified with respect to the different types of protests analyzed and the role of defenders therein.

<u>On women defenders in demonstrations</u>:
(i) Investigate and prosecute instances of gender-based violence against women defenders occurring during demonstrations as a matter of priority. It is important to give no-tolerance signals on gender-based violence. This helps to accelerate changes in attitudes and behavior in sectors of society hostile to women's rights;
(ii) Train and instruct law enforcement officials on protection measures to be taken with regard to children taking part in demonstrations with their mothers (A/62/225 para 101 (a)).

<u>Demonstrations on LGBT rights</u>:
(i) Take adequate measures to hold accountable officials and authorities taking unlawful decisions banning demonstrations;
(ii) Ensure the protection of participants in gay pride parades before, during and after marches from acts of violence and intolerance by counter-protestors;
(iii) Train law enforcement officials on appropriate conduct, particularly as it relates to the implementation of the non-discrimination principle and respect of diversity (A/62/225 para 101 (d)).

On student protests: take steps to create a conducive environment that allows children and young adults to associate and express views on matters affecting them as well as on broader human rights issues. Student protests have a high educational value as they are among the first experiences of public participation and human rights defence of students. Ensuring a conducive environment for student protests is a social investment in addition to a legal obligation (A/62/225 para 101 (b)).

On trade unionists, protests over workers' rights and the right to strike:
(i) Review restrictive legislation on the right to strike, including provisions with too-broad definitions of essential services that restrict or prevent strikes by vast sectors of civil servants;
(ii) Acknowledge trade unionists as human rights defenders entitled to the rights and protection set out in the Declaration on Human Rights Defenders (A/62/225 para 101 (c)).

On peace demonstrations: ensure that anti-terrorism legislation and measures are not applied against human rights defenders to prevent their human rights work (A/62/225 para 101 (e)).

On the monitoring role of defenders and journalists during demonstrations:
(i) Allow human rights defenders to operate freely in the context of freedom of assembly to enable them to perform their monitoring role;
(ii) Grant media access to assemblies to facilitate independent coverage. The Special Rapporteur recommends that media report on the human rights aspects of protests and seek the information and collaboration of human rights defenders for this purpose (A/62/225 para 101 (f)).

Chapter VII The right to develop and discuss new human rights ideas

- *Where is the right protected?*
- *The right to develop and discuss new human rights ideas and the Declaration on human rights defenders*
- *What does the right to develop and discuss new human rights ideas entail?*
- *Common restrictions on and violations to the right to develop and discuss new human rights ideas*
- *Best practices and recommendations*

Where is the right protected?

The right to develop and discuss new human rights ideas is an important provision for the ongoing development of human rights. This right may be seen as an elaboration of the right to freedom of opinion and expression, the right to freedom of assembly and the right to freedom of association which are protected under the Declaration as well as under other regional and international instruments.[92]

The right to develop and discuss new human rights ideas and the Declaration on human rights defenders

The Declaration on human rights defenders affirms this right under:

> 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."

What does the right to develop and discuss new human rights ideas entail?

Many of the basic human rights that today we take for granted took years of struggle and deliberation before they took their final shape and became widely acceptance. A good example is the long struggle of women in many countries to gain the right to vote. Today, we see the case of women defenders and those defenders working on LGBTI rights. Although the rights of women defenders and those working on women's rights or gender issues are not new human rights, in some contexts they may be perceived as new because they address issues that might challenge tradition and culture. But tradition and culture are not static, as

[92] See also Protecting Human Rights Defenders, Human Rights First, <http://www.humanrightsfirst.org/our-work/human-rights-defenders/protecting-human-rights-defenders/>.

the UN's independent expert in the field of cultural rights has argued, saying that "cultures are constantly evolving, as are the concepts of human rights."[93]

It is because of the visions of courageous defenders that human rights have developed and transformed our societies. These visionaries have held "that women deserve the same rights as men, that empires are not inevitable, that indigenous peoples are human beings, or that torture and genocide are ethically reprehensive and need not be tolerated. Similarly, they ask people to imagine that international norms can be established and that nation-states need not be allowed to claim that however they wish to behave and treat people is strictly their own business."[94] However, these ideas often meet resistance, especially because they challenge the legitimacy of the status quo as well as socio-cultural norms and traditions.

Nonetheless, ideas that "offend, shock, or disturb" are protected under the right of freedom of expression. This is a crucial part of what is required for a "democratic society" to exist (A/64/226 para 29).[95] Pluralism, tolerance and broadmindedness are particularly important in a democratic society. Democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position. The State is the ultimate guarantor of the principle of pluralism, a role that entails positive obligations to secure the effective enjoyment of rights. These obligations are of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimization (A/62/225 para 46).[96]

In this context, the right to develop and discuss new human rights ideas is an important provision to guarantee the ongoing development of human rights and to protect those defenders that advocate new visions and ideas of human rights.

Common restrictions on and violations to the right to develop and discuss new human rights ideas[97]

In many countries, women human rights defenders are more at risk of suffering certain forms of violence because they are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity,

[93] Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed, submitted pursuant to resolution 10/23 of the Human Rights Council, A/HRC/14/36, para 34, 22 March 2010.
[94] The Evolution of International Human Rights: Visions Seen. By Paul Gordon Lauren. University of Pennsylvania Press, 1998, page 282.
[95] Manfred Nowak, UN Covenant on Civil and Political Rights, CCPR Commentary, p. 505, 2nd revised edition (N. P. Engel 2005).
[96] The European Court of Human Rights, Bączkowski and Others v. Poland, Application No. 1543/06, judgement of 3 May 2007.
[97] See also Defending Human Rights Defenders, A Short Guide, by the International Service for Human Rights <http://www.protectionline.org/IMG/pdf/WHRD_booklet_EN.pdf>.

sexual orientation, and the role and status of women in society. This is, for example, the case of women defenders campaigning against female genital mutilation.

Example

In November 2010, the Special Rapporteur on the situation of human rights defenders, together with the Special Rapporteur on violence against women, its causes and consequences, sent a letter of allegations to a government concerning two women human rights defenders—the executive director and a programme officer—from an NGO working to eliminate traditional practices that negatively affect the health of women and children.

According to information provided to the rapporteurs, on 11 October 2010, the women were arrested after attending a meeting with the public relations officer of the National Drug Enforcement Agency. The following day, they were remanded in prison custody by the court. They faced charges of theft in relation to an alleged embezzled from their organization. On 20 October 2010, they were released on bail and scheduled to appear before the Court on 3 November 2010. According to the information received, in May 2010, a commission was established to investigate the use of the organization's funding. It concluded that the allegation of misappropriation of funds were unfounded. Shortly after the publication of the commission's findings, its members were allegedly dismissed and a second commission, yet to present its conclusions, was set up.

According to the information received, in 1999, the president of the country publicly stated that the safety of activists who campaign against female genital mutilation (FGM) could not be guaranteed. Furthermore, a presidential directive had been issued allegedly prohibiting the dissemination of personal messages that oppose FGM and referring to the medical risks that it entails. Concern was expressed that the convictions against these two women defenders may be related to their human rights work in support of sexual and reproductive health and rights of women and children (A/HRC/16/44/Add.1 paras 852 to 858).

Defenders working on LGBTI rights are also targeted for their work, harassed, and sometimes killed, because of their work in the defence of a different idea of sexuality. They are often denied the right to associate. The denial of registration of human rights associations and NGOs is the most extreme measure taken by Governments to curtail the right to freedom of association, especially in instances where activities carried out in the framework of unregistered entities can incur criminal sanctions (A/64/226 para 67). When registration is denied to groups working on LGBTI rights, their right to discuss new human rights ideas and to advocate their acceptance is also denied.

Example

In July 2009, the Special Rapporteur on the situation of human rights defenders issued a communication concerning the refusal to register a non-governmental organisation that works to protect and promote the rights of LGBT persons. According to the information provided to the rapporteur, on 11 June 2009, the LGBT Centre's lawyer, who is working to facilitate the registration of the NGO, was informed by the State Registration Authority that the LGBT Centre's application for legal registration had been denied. The State Registration Authority allegedly stated that the organisation could not be registered for the following reasons: 1) the full name

"Lesbian Gay Bisexual Transgender Centre" is too long; 2) the name is not well understood in the country; 3) the abbreviation "LGBT" is not permitted under national law; and 4) it is not sufficiently clear to the public what activities the NGO is engaged in.

This refusal came after several previous attempts to register the LGBT Centre as an NGO. In February 2007, the founding members of the organisation registered its name with the State Registration Authority in the country as "Lesbian Gay Bisexual and Transgender Centre" (LGBT Centre). Following this, they proceeded to apply for official registration as an NGO. At the time, they were informed by the Ministry of Justice that the name of the organisation was problematic since it is not in the national language. Despite the fact that several legally registered NGOs in the country have foreign words in their name, and despite the fact that the International Gay and Lesbian Human Rights Commission (IGLHRC) wrote to the Ministry of Justice confirming that the terms "lesbian, gay, bisexual and transgender" and "LGBT" are officially recognized at the international level, the LGBT Centre was not permitted to register at the time.

In April 2009, the two founding members of the LGBT Centre reapplied for the legal registration of their organisation, this time to the State Registration Authority, which had since assumed responsibility for the registration of NGOs. On arrival to the offices, they were falsely informed that their organisation could not be registered since the founding members were not nationals. In order to solve this problem, they revised their registration application and included the one national as the sole founder of the LGBT Centre. Later that month, the State Registration Authority informed the group that this person could collect the NGO registration certificate within two days. However, that evening, he received a telephone call from the State Registration Authority telling him that there were problems with the application and asking whether the term LGBT could be considered an accepted term in the country and under international law. Despite the fact that he subsequently provided the State Registration Authority with copies of international human rights documents in which the term "LGBT" is used, the registration application was still denied (A/HRC/13/22/Add.1 paras 1617 to 1622).

Best practices and recommendations

- Recognize a defender's right to promote and protect new human rights ideas. States should recognize a defender's right to promote and protect new human rights ideas (or ideas that are perceived as new) and to advocate their acceptance. States should publicly recognize the legitimacy of defender's activities as a first step to preventing or reducing violations against them;

- Guarantee a conducive environment for defenders' work. States should take necessary measures to create an environment of pluralism, tolerance and respect in which all human rights defenders can carry out their work without risk to their physical and psychological integrity or to any form of restriction, harassment, intimidation or fear of persecution;

- **Guarantee protection of certain groups of defenders at risk.** States should take extra measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence because they are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation, and the role and status of women in society.

Chapter VIII The right to an effective remedy

- *Where is the right protected?*
- *The right to an effective remedy and the Declaration on human rights defenders*
- *What activities are protected under the Declaration?*
- *Common restrictions and violations*
- *Best practices and recommendations*

Where is the right protected?

The right to an effective remedy is protected under various international and regional instruments, such as:[98]

- The Universal Declaration of Human Rights (Article 8),
- The International Covenant on Civil and Political Rights (Articles 2(3) and 9(5)),
- Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (Article 13 and 14),
- The International Convention on the Elimination of All Forms of Racial Discrimination (Article 6),
- The European Convention on Human Rights (Article 13),
- The African Charter on Human and Peoples' Rights (Article 7),
- The American Convention on Human Rights (Article 25), and
- The Inter-American Convention on Violence against Women (Article 4(g)).

The right to an effective remedy and the Declaration on human rights defenders

The Declaration on human rights defenders recognizes the right to an effective remedy under:

> Article 9
>
> 1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
>
> 2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, 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, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual

[98] See Compilation of International and Regional Instruments for the Protection of Human Rights Defenders, International Service for Human Rights, 2004, pages 92 to 95.

decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

(*a*) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(*b*) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(*c*) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

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 in any territory under its jurisdiction.

Pursuant to article 9 of the Declaration, everyone has the right to benefit from an effective remedy and to be protected in the event of the violation of his/her human rights and fundamental freedoms. States therefore have a responsibility to ensure that human rights defenders whose rights have been violated are provided with an effective remedy (A/65/223 para 44).

What activities are protected under the Declaration?

In the framework of the Declaration, the obligation to provide human rights defenders with an effective remedy entails that the State ensures, without undue delay, a prompt and impartial investigation into the alleged violations, the prosecution of the perpetrators regardless of their status, the provision of redress, including appropriate compensation to victims, as well as the enforcement of the decisions or judgments. Failure to provide such a remedy often leads to further attacks against human rights defenders and further violates their rights (A/65/223 para 44).

Concerning investigations, the mandate concurs with the opinion of the Human Rights Committee that “failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the International Covenant on Civil and Political Rights. Cessation of an ongoing violation is an

essential element of the right to an effective remedy".[99] States should also investigate threats committed against families and relatives of human rights defenders (A/65/223 para 46).

The right to an effective remedy also implies an effective access to justice, which should be understood as including not only judicial but also administrative or quasi-judicial mechanisms. Investigation and prosecution should rest on an effective and independent judiciary. Unfortunately, in many instances, weaknesses in the judicial system and flaws in the legal framework have deprived defenders of adequate tools for seeking and obtaining justice (A/65/223 para 47).

States should take steps to ensure that violations against human rights defenders can be brought before tribunals or alternative complaints mechanisms such as national human rights institutions or existing or future truth and reconciliation mechanisms (A/65/223 para 48). National human rights institutions could play a leading role whenever States' judicial systems are unable or unwilling to adjudicate on alleged violations against defenders (A/65/223 para 49). National human rights institutions could also play a key preventive role in disseminating the Declaration and raising awareness about their responsibility to respect the rights of defenders (A/65/223 para 50).

Reparations are also an essential element of the right to an effective remedy. The Human Rights Committee has established that without reparations being granted to individuals whose human rights have been violated, the obligation to provide an effective remedy is not fulfilled. According to the Committee, in addition to compensation, reparations can involve "restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations."[100]

Common restrictions and violations

Defenders frequently have to face a lack of response by the authorities to their situations or complaints. This has resulted in impunity for those abusing their rights (E/CN.4/2004/94 para. 71). Judicial authorities worldwide have shown a disturbing lack of diligence in examining cases of abuse against defenders and particular leniency towards suspected perpetrators, especially members of the security and armed forces (E/CN.4/2004/94 para. 72).

The information received by the mandate shows that a majority of cases brought by defenders have not resulted in convictions, but in acquittals. In the few

[99] Human Rights Committee General Comment No. 31, "Nature of the General Legal Obligation Imposed on States Parties to the Covenant" (CCPR/C/21/Rev.1/Add.13), para. 15.
[100] Op. cit, para. 16.

instances where perpetrators have been convicted, the sentences have been particularly lenient. In certain cases, police officers convicted of torture have been able to convert their prison terms into fines. In some countries, the regulations in place require authorization prior to prosecuting police or military officers and accused officers are not suspended from their duties while on trial. In other countries, legislation sets extremely low maximum penalties for convicted officers and confers immunity for a number of actions, in particular those conducted in "good faith" in the context of the fight against terrorism (E/CN.4/2004/94 para. 72).

The mandate has also underlined the question of impunity as one of the major and systematic concerns raised by defenders in relation to violations committed by non-State actors (A/65/223 para 42). Information received by the Special Rapporteur shows that in many instances, complaints by defenders about alleged violations of their rights are either never investigated or dismissed without justification. In certain cases involving threats received by text message, for example, the telephone numbers of the senders (when known) have been transmitted to the police for further investigation. The information provided shows that in most cases, no proper investigation was carried out by the police. Furthermore, in certain States affected by internal conflict, impunity prevails with regard to cases of rape and the use of sexual and other forms of violence against women. Consequently, the State's unwillingness to investigate violations committed by non-State actors is seen as granting those responsible free rein to further attack defenders with total impunity (A/65/223 para 43) (See also A/HRC/13/22/Add.3).

Overall, during the respective reporting periods, the rate of responses received from States to the communications sent by the mandate has remained low. In their responses to the communications on individual cases transmitted by the mandate, many Governments indicate that, when threats or human rights violations are perpetrated against human rights defenders, an investigation is initiated by competent authorities and that defenders benefit from the full protection of the judiciary. The mandate is very encouraged by cases brought to its attention where appropriate measures have been taken against those responsible for these violations and effective and adequate reparation has been provided to the victims. However, the mandate has expressed in various occasions deep regret and concern that these successful cases are still extremely limited in number and that, in an overwhelming majority of violations against human rights defenders, impunity prevails. Non-State actors, who are increasingly attacking and harassing human rights defenders, are greatly encouraged in a climate of impunity. (E/CN.4/2006/95 para. 59).

Communications sent by the mandate and replies received

Year	Communications sent	replies	Percentage
2002-03	235	103	43.8%
2003-04	316	139	43.9%
2004-05	310	129	41.6%
2005-05	372	158	42.4%
2006-07	372	189	50.8%
2007-08	493	226	45.8%
2008-09	266	90	33.8%
2009-10	246	100	40.6%

The mandate has also sent many communications concerning the situation of women defenders working on issues of impunity and access to justice, including witnesses and victims of human rights violations seeking redress, as well as the lawyers, individuals and organizations representing or supporting them. This group seems to be particularly at risk in certain countries (A/HRC/16/44 para 48).

Example

In December 2010, the Special Rapporteur on the situation of human rights defenders, together with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, sent an urgent appeal regarding acts of harassment and threats against a woman human rights defender who was a member of a peace and justice commission that was part of the Catholic Church.

According to the information received, the woman has received threats and been subjected to acts of harassment by unknown individuals. Between 13 July and 29 August, she received some 40 threatening phone calls. In one case, the caller told her to be careful because she could be raped. Additionally, on 22 October 2010, while driving her motorcycle, she was followed by a car that tried to cause her to have an accident. During this incident, she also discovered that her breaks did not work. Later, the defender presented a complaint to the local police, who confirmed that the breaks had been manipulated.

This woman has been carrying out activities in defense of human rights, including representing indigenous communities to claim reparations for the petroleum spill in their territories by an oil company. She has also systematically denounced the alleged abuses against the population by state authorities (A/HRC/16/44/Add.1 paras 1918 to 1923).

The mandate is deeply disturbed by such trends, which attest to the fact that impunity for human rights abuses against defenders remains unacceptably widespread. Far from fulfilling their duty of protection, a number of States seem to criminalize the activities of defenders and tolerate, and in some cases legitimize the abuses perpetrated against them (E/CN.4/2004/94 para. 73). Ending impunity is a sine qua non condition for ensuring the security of defenders (A/65/223 para 42).

An additional concern is the fact that in some cases defenders do not report violations of their human rights to the relevant authorities. For example, women human rights defenders "have become so used to working in conditions of hostility and violence that the risks they face are often taken for granted, and many of the abuses against them are under-reported and unpunished."[101] In other cases, women's work is not recognized as human rights work or they are not considered human rights defenders by other organizations. It has also often been the case that certain violations suffered by women human rights defenders, in particular violations from non-state actors, are not properly documented as being human rights violations.[102]

Best practices and recommendations

- Ensure investigation, prosecution and compensation. States should ensure prompt and independent investigations of all violations of the rights of defenders, the prosecution of alleged perpetrators regardless of their status and the imposition of adequate penalties taking into account the specific nature of the offences. States should also provide victims of violations with access to justice and just and effective remedies, including appropriate compensation (A/65/223 para. 66).

- Ending impunity. States should ensure prompt and effective accountability of those who have committed human rights violations, especially against human rights defenders, through appropriate disciplinary, civil and criminal proceedings, thereby ending impunity for attacks against human rights defenders,. They should also consider the application of legal penalties for false prosecution of defenders and any other actions against those acting in violation of its principles (E/CN.4/2006/95 para. 92).

- Training of public officials and law enforcement officers. States should take measures to ensure that public officials and law enforcement officers in charge of the prevention, investigation and prosecution of violations against human rights defenders receive adequate training on the Declaration and on the specific needs of protection of human rights defenders (A/65/223 para. 67).

- Collaboration with the Special Rapporteur. Governments should respond to the communications sent by the mandate in a timely and comprehensive manner. In addition to these minimum requirements, a good practice for replies is to provide information not only on the measures taken to redress the individual situation reported but also on the initiatives undertaken to prevent the recurrence of similar situations in the future. In some cases, by reporting individual

[101] Claiming Rights, Claiming Justice: A Guidebook for Women Human Rights Defenders, Asia Pacific Forum on Women, Law and Development (2007), page 51.
[102] Violencia contra Defensoras de Derechos Humanos en Mesoamérica. Un Diagnóstico en Construcción. Presented at the Women Human Rights Defenders meeting in Oaxaca, Mexico, 23 to 25 April, 2010, page 13.

situations, communications point in fact to structural and systematic problems of which individual situations are a consequence. Governments should see the communications procedure as an opportunity to be alerted to situations that, if addressed properly and thoroughly, can improve not only the situation of individual defenders but the overall environment of human rights defenders, which is a fundamental indicator of the general situation of human rights in a country (A/HRC/7/28 para 100).

Chapter IX The right to access funding

- *Where is the right to access funding protected?*
- *The right to access funding and the Declaration on human rights defenders*
- *What activities are protected under the Declaration?*
- *Common restrictions on and violations to the right to access funding*
- *Best practices and recommendations*

Where is the right to access funding protected?

The right to access funding is protected in major international and regional human rights treaties under provisions concerning the right to freedom of association (A/64/226 para 91). (For the specific provisions, see the relevant section). Additionally, the right to access funding is codified as a separate right in the following instruments:

- The Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief (Article 6 (f)), and
- The Declaration on Human Rights Defenders[103] (Article 13).

The right to access funding and the Declaration on human rights defenders

The Declaration explicitly recognizes the right to access funding as a self-standing substantive right under:

> 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 mandate has underscored the importance to access to funding for human rights defenders—that is the ability to solicit, receive and use funding—as an inherent element of the right to freedom of association. According to the Special Rapporteur, "[I]in order for human rights organizations to be able to carry out their activities, it is indispensable that they are able to discharge their functions without any impediments, including funding restrictions" (A/64/226 para 91). When individuals are free to exercise their right to associate, but are denied the resources to carry out activities and operate an organization, the right to freedom of association becomes void. The ability of human rights defenders to carry out their activities rests on their ability to receive funds and utilize them without undue restriction, in conformity with article 13 of the Declaration (A/59/401 para 77).

[103] Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.

What activities are protected under the Declaration?

The wording of article 13 covers the different phases of the funding cycle. According to this provision, States are obliged to permit individuals and organizations to seek, receive and utilize funding (A/64/226 para 93). The Declaration requires States to adopt legislative, administrative or other measures to facilitate, or as a minimum not to hinder, the effective exercise of the right to access funding. The Committee on the Elimination of Discrimination Against Women (CEDAW) has gone further and recommended States to directly ensure financial resources are made available to civil society organizations.

> "The Committee notes with concern the insufficient funding of non-governmental organizations, including women's non-governmental organizations, which makes it difficult for them to build their capacities to fulfill their various roles and functions in supporting human rights of women. The Committee recommends that the Government develop clear criteria for rendering and ensuring governmental financial support on the national and local level for the work of women's non-governmental organizations. It also recommends that the Government increase awareness among individuals and corporations regarding possible donations to women's organizations.'"[104]

Concerning the origin of the funds, the Declaration protects the right to receive funding from different sources, including foreign funding. According to the mandate, given the limited resources available for human rights organizations at the local level, legal requirements of prior authorization for international funding have seriously affected the ability of human rights defenders to carry out their activities. In some cases, they have seriously endangered the very existence of human rights organizations (A/59/401 para 77). The mandate has recommended that Governments allow human rights defenders, in particular NGOs, access to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments. The only legitimate requirements imposed on defenders should be those in the interest of transparency (E/CN.4/2006/95 para. 31).

Article 13 of the Declaration further specifies that the funds must be used *'for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means'*.

Finally, the Declaration protects access to funding in accordance with article 3, which establishes:

[104] Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Lithuania. 06/30/2000. A/55/38, paras.118-165 (para 155). Cited in The Right to Access Funding, Human Rights Defenders Briefing Papers, International Service for Human Rights, 2009, page 7.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

The Mandate has emphasized that articles 3 and 4,[105] which define the juridical framework for the implementation of the Declaration, must be read together with the Declaration's preamble, which reaffirms and reiterates the importance of the Charter of the United Nations and international human rights law. The mandate has reaffirmed the full applicability of international human rights norms in a domestic context (E/CN.4/2006/95, para. 30). Consequently, only domestic legislation that is consistent with international human rights norms can be considered an appropriate legal framework for the enjoyment of the right of access to funding.

Common restrictions and violations to the right to access funding

A common feature of many NGO laws are restrictive provisions regarding funding. Many countries have put in place legislation that significantly restricts the ability of human rights organizations to seek and receive funding (A/64/226 para 94), including restrictions on the origin of the funds and the requirement for prior authorization for NGOs to access funds from foreign donors (A/59/401 para 75). There may be various reasons for a Government to restrict foreign funding, including the prevention of money-laundering and terrorist financing, or increasing the effectiveness of foreign aid. The mandate is concerned, however, that in many cases such justifications are merely rhetorical and the real intention of Governments is to restrict the ability of human rights organizations to carry out their legitimate work in defence of human rights (A/64/226 para. 94).

In addition to restrictive legislation, the political environment in a given country can also undermine access to funding, in particular for women's groups. Women's groups have indicated that patriarchal societies, sexism and authoritarian regimes are among the most common structural challenges to access funding to support their work.[106]

[105] Article 4 of the Declaration establishes: "Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field."

[106] FundHer Brief 2008, Money Watch for Women's Rights Movements and Organizations, page 17, Association for Women's Rigths in Development (AWID).

Some Governments have introduced a complete prohibition on certain types of funding; for example, those coming from United Nations agencies or other bilateral donors. In case of restrictions imposed on funding originating from UN agencies or bodies, the practice could be considered as an act of reprisal or intimidation also falling within the scope of the mandate of the Secretary-General to report on situations in which individuals or groups have been intimidated or suffered reprisals for seeking to cooperate or having cooperated with representatives of UN, its representatives and mechanisms in the field of human rights; for having availed themselves of procedures established by the United Nations or having provided legal or other assistance to do so; for having submitted communications under procedures established by human rights instruments or having provided assistance to do so; or for being relatives of victims of human rights violations or having provided legal or other assistance to victims.[107]

In other instances, organizations working in particular fields are prohibited from receiving foreign funding. For example, in one country NGOs working on governance issues are prohibited from receiving foreign funding. Another Government prohibits foreign assistance that may have the potential of "causing anxiety and disorder of national and regional economy". One registration authority may deny the transfer of foreign funds for the purposes of "protecting the basis of the Constitutional system, morality, health, rights and lawful interests of other persons, and with the aim of defending the country and state security" (A/64/226 para. 95).

In many countries NGOs are required to receive prior permission from the Government in order to receive foreign funding, and in some extreme cases government authorization is required even to apply for such funds. In one instance, a human rights organization received a dissolution order for allegedly having received foreign funding without authorization. When the organization in question reportedly notified the relevant authorities of the funds it was about to receive and had not received a response within the timeframe prescribed by law, it considered the foreign funding as approved by the Government (A/64/226 para. 96).

Certain Governments require that foreign development assistance and funding for NGOs be channeled through a government fund or be deposited in a bank designated and fully controlled by the Government. In one case, NGOs receiving funding from abroad in foreign currency are obliged to deposit it in the central bank of the country (A/64/226 para. 97).

There are further restrictions applied on the utilization of the funding received, which in some countries may be significantly restricted. In one country NGOs that receive more than 10 per cent of its funding from foreign sources, including from

[107] A/HRC/RES/12/2, 12 October 2009.

nationals of that country living abroad, are expressly banned from carrying out any work related to: the advancement of human and democratic rights; the promotion of equality of nations, nationalities and peoples and that of gender and religion; the promotion of the rights of the disabled and children's rights; the promotion of conflict resolution or reconciliation; and the promotion of justice and law enforcement services. (A/64/226 para. 98). A Presidential Decree in one country prevented NGOs from using international aid to organize "meetings, demonstrations or picket lines", or to "draft and circulate propaganda documents or to engage in other types of political activities" (A/59/401 para 76). Such restrictions severely infringe on the ability of the organizations to carry out their activities without undue interference (A/64/226 para. 98).

Tax laws and regulations are also frequently used to hinder the work of human rights organizations and disproportionately affect them. In many countries donations to not-for-profit organizations, including human rights organizations, are exempt from taxation. Although providing a tax exempt status is not a requirement under the right to freedom of association, the mandate is of the view that Governments should not have in place different taxation regimes for human rights organizations and other not-for-profit associations. In one case a so-called white list of donors had been established, and funding from foreign donors not included on the approved list was taxed up to 24 per cent. Another country amended its tax code and eliminated value added tax exemptions for NGOs, which had a substantial impact on spending available for programme activities (A/64/226 para. 99).

Extensive scrutiny by tax authorities and abuse of fiscal procedures are also often experienced by NGOs critical of the Government. One human rights NGO faced provisions by prosecutors claiming that it owed taxes on income that was exempt from taxation under national law (A/64/226 para. 100).

Best practices and recommendations

- **Ensured access to funding by law**. States should ensure and facilitate by law access to funds, including from foreign sources, for the purpose of defending human rights (A/59/401 para. 82 (t)).

- **Legal framework for the enjoyment of the right to access to funding**. Domestic legislation is the legal framework for the enjoyment of the right to access funding, but only insofar as it is consistent with international human rights norms and standards.

- Refrain from interference in the use of funding. States should refrain from restricting the use of funds as long as they comply with the purposes expressly established in the Declaration of promoting and protecting human rights and fundamental freedoms through peaceful means.

- **Not to require prior governmental authorization**. States should not to require prior governmental authorization to apply for or receive funding from abroad (A/64/226 para. 124).

- **Facilitate access to foreign funding**. States should allow access by NGOs to foreign funding, and to restrict such access only in the interest of transparency, and in compliance with generally applicable foreign exchange and customs laws. Restrictions on foreign funding may limit the independence and effectiveness of NGOs. States should therefore to review existing laws in order to facilitate access to funding (A/64/226 para. 123) and (E/CN.4/2006/95 para 31).

- **Equal regulations for all non-profit organizations**. States should allow NGOs to engage in all legally acceptable fund-raising activities under the same regulations that apply to other non-profit organizations in general. Fund-raising through public solicitation methods may require registration with a State organ or independent supervisory organ on equal footing for all non-profit organizations (A/64/226 para. 125).

- Prohibit scrutiny by tax authorities. States should prohibit extensive scrutiny by tax authorities and abuse of fiscal procedures (A/64/226 para. 120).

Chapter X Permissible derogations and the right to defend human rights

Article 4 (1) of the International Covenant on Civil and Political Rights states: “In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

In its general comment No. 29 (2001), the Human Rights Committee gives its general comments on article 4 of ICCPR on derogations during a state of emergency. Two fundamental conditions must be met before a State moves to invoke article 4: the situation must amount to a public emergency which threatens the life of the nation, and the State party must have officially proclaimed a state of emergency. A fundamental requirement for any measures derogating from ICCPR, as set forth in article 4, is that such measures must be limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation resorted to because of the emergency. Further, article 4 (1) requires that no measure derogating from the provisions of ICCPR can be inconsistent with the State party’s other obligations under international law, particularly the rules of international humanitarian law, and that States parties may in no circumstances invoke article 4 of ICCPR as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence (A/61/312 para 90).

The primary significance of the Declaration on human rights defenders lies in its provision of legitimacy and protection to certain activities that protect and promote universally recognized human rights and fundamental freedoms. The central focus of the Declaration is not on the recognition of these rights, but on their reiteration and the protection of activities for their promotion. It may also be recalled that the Declaration extends protection to persons only to the extent of their engagement in these activities. These are important distinctions to keep in mind when determining the relevance of any arguments regarding the scope of derogation of, and limitations and restrictions on, rights in the emergency or security context. For instance, even if some rights or freedoms are restricted in a situation of emergency, or under security legislation, or because of any other requirements, activity for the monitoring of these rights can be neither restricted nor suspended (A/58/380 para.64).

In this context, the mandate has emphasized that derogations from and exceptions to applicable human rights standards, including the Declaration, should be required to meet a higher standard when they are applied to human rights defenders. This should be the case with regard to security legislation. It should be even more rigorously the case in the context of emergencies during which the most atrocious and large-scale human rights violations are committed. At these times of great risk to human rights, it is essential that there be some form of independent monitoring and accounting of the actions of the protagonists in the context of threats to security and emergencies. The mandate considers that it would be contrary to the spirit of international human rights standards to argue that at these same moments of greater risk the right to defend human rights can be legally stifled (A/58/380 para. 66).

Example

In November 2007, the mandate—together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the promotion and protection of human rights while countering terrorism—sent an urgent appeal to a Government concerning the imposition of a state of emergency by the president of that country and the suspension of fundamental freedoms, including the right not to be deprived of one's liberty, save in accordance with the law and to the enjoyment of safeguards as to arrest and detention, the right to freedom of movement, the right to assemble in public and freedom of expression.

The proclaimed state of emergency also entailed an attack on the independence of the judiciary. The state of emergency did not reportedly involved a constitutional emergency envisaged in the Constitution, which was declared to remain in abeyance and replaced by a "Provisional Constitution Order". According to the information received, seven members of the Supreme Court issued a declaration against the emergency rule order stating that it appeared not to be legal, neither under the Constitution nor under international law.

The mandate-holders expressed concern about the situation of some 70 human rights defenders arrested during a meeting inside the premises of a non-governmental organization. They were initially taken to the police and asked to sign a declaration not to engage in any human rights activities. They all refused to sign it and were verbally abused by police officers. Many of these activists were then brought before a judicial magistrate and sent to jail. They were later released on bail. Another defender was placed under house arrest for a period of 90 days. Her house was declared to be a “sub-jail” where some of the activists mentioned above were detained. Two women defenders were transferred to a police-owned residence at an unknown location. None of them were charged. Neither a warrant nor judicial order was issued. The activists were not given access to lawyers or to their families and were detained for several hours without receiving food.

The Proclamation of Emergency stated that some members of the judiciary have undermined the executive and legislative branches in the fight against terrorism and extremism, thereby weakening the Government’s ability to address this grave threat. Immediately after the imposition of the state of emergency, judges were required to take an oath of allegiance to the Provisional Constitutional Order to continue exercising their functions as judges. A high number of the judges refused to take the oath, as they refused to accept the state of emergency order, declaring it unconstitutional. All the judges of the

Supreme Court who refused to take oath were immediately replaced by new judges. They were not allowed to leave their homes.

In November 2007, lawyers protested against the declaration of the state of emergency. There were indications of extreme brutality in the repression by the police and extensive arrests of lawyers. Some 200 lawyers were arrested. Lawyers had also been attacked by the police inside the Court and the Bar premises and all office bearers of the Bar Association were arrested. The Government suspended the transmission of privately owned local and international television channels, in particular news stations. Agents of the Electronic Media Regulatory Authority together with police officers raided the premises of television and radio channels to confiscate equipment. Internet service providers were also ordered to stop their service, interrupting Internet access for a large number of users. The president promulgated a new ordinance under which the print and electronic media had been barred from printing and broadcasting "anything which defames or brings into ridicule the head of state, or members of the armed forces, or executive, legislative or judicial organ of the state". The ordinance stipulated up to three years in prison as punishment for non-compliance (A/HRC/7/28/Add.1 paras 1553 to 1558).

Conclusion

This commentary maps out the rights provided for in the Declaration on human rights defenders and analyses what the different rights entail as well as the different aspects necessary to ensure their implementation. The commentary also addresses the most common violations faced by defenders and provides a set of good practices and recommendations to facilitate State's implementation of each right.

The aim of the commentary is twofold: to increase awareness of the rights provided in the Declaration and to serve as a practical tool for defenders and other practitioners working to ensure respect for the rights to which they are entitled under this instrument. Despite efforts to implement the Declaration, human rights defenders continue to face numerous violations to their rights. It is hoped that this commentary will assist all relevant stakeholders who strive for a safer and more conducive environment for defenders to be able to carry out their work.

المقررة الخاصة المعنية بحالة المدافعين عن حقوق الإنسان،

联合国人权维护者处境问题特别报告员

UN Special Rapporteur on the situation of human rights defenders

Rapporteuse spéciale sur la situation des défenseurs des droits de l’homme

Специальный докладчик по вопросу о положении правозащитников

Relatora Especial sobre la situación de los defensores de los derechos humanos