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PROMOTION AND PROTECTION OF HUMAN RIGHTS

HUMAN RIGHTS DEFENDERS

**Report submitted by the Special Representative of the Secretary-General
on human rights defenders, Hina Jilani**

Addendum

Compilation of developments in the area of human rights defenders*

* The reason for the late submission of this report is the need to reflect the latest information. As it considerably exceeds the word limitation, this report is circulated as received in the languages of submission only.

Compilation of developments in the area of human rights defenders

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Introduction

1. The purpose of this report is to identify the main areas of progress and the remaining challenges that need to be addressed in relation to the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (hereinafter, the Declaration). Eight years after its adoption by the United Nations General Assembly and on the occasion of her final report to the Commission on Human Rights as first mandate holder, the Special Representative of the Secretary-General on the situation of human rights defenders, finds it important to offer her assessment on the progress made by States in meeting their obligations under the Declaration. She trusts that this report will also provide a clear basis for action by her successor. In order to complete her research and findings and to provide a systematic analysis of developments, the Special Representative sent a questionnaire to all Governments, United Nations Residents Coordinators, relevant intergovernmental organizations, National Human Rights Institutions (NHRI) and local and international human rights non-governmental organizations (NGOs). This questionnaire is attached in the Annex. The Special Representative would like to note that the following should be considered the first step towards a thorough revolving analysis of the situation for human rights defenders and the implementation of the Declaration globally, which will evolve as further information is received and as situations change. The aim is to provide a regular update of such information, and the Special Representative therefore asks that the present document be regarded as a work in progress.

2. The report contains a compilation of the developments to the situation of human rights defenders and the implementation of the Declaration in 118 countries over the past six years. The countries included in the report are for the most part countries to which the Special Representative has addressed communications on individual cases over the past six years. The assessment also includes countries for which, despite not having been the object of communications, consistent and reliable information has been received in response to her questionnaire. The level of detail provided in the analysis is a reflection of the information available to the Special Representative.

3. The country assessments are primarily based on the responses received by the Special Representative to her questionnaire. In this connection, she is very grateful to the 31 Governments, the 25 United Nations offices in the field and the 13 National Human Rights Institutions that have formally replied to her request for information. She is also very grateful to national, regional and international NGOs who have provided her with specific information on 45 countries. She is very pleased that in some cases, she received information from the Government, United Nations partners, the NHRI and NGOs which allowed her to prepare more comprehensive assessments. She also commends United Nations offices that have organized consultations with relevant United Nations agencies based in the field and local civil society with a view to prepare their input to this report. Such consultations contribute to strengthening cooperation between different stakeholders and to the dissemination of the Declaration.

4. For the purpose of adequately assessing the situation in individual countries, the Special Representative also relied on information received over the course of her mandate. This includes the allegations included in her communications to the Governments and the responses received; reports submitted by States to the United Nations treaty-bodies and the concluding observations

of the latter; findings of other Special Procedures of the Commission on Human Rights; reports of the Office of the High Commissioner for Human Rights (OHCHR) and other relevant United Nations programmes and agencies and reports of relevant international and regional intergovernmental organizations. The assessment of this information is seen as the first step towards a more comprehensive assessment of the situation for human rights defenders and the implementation of the Declaration on a global scale.

5. Each country assessment is divided into four sections. Firstly, the Special Representative offers a description of the national human rights community: number of NGOs, their respective area of expertise, the local networks, the main challenges they are facing, their relationship with the authorities, and so on. In this section, she also gives a brief account of the evolution of the human rights situation in the country as well as other factors of social, political and economic background of the country in question that contribute to shaping the environment in which human rights defenders operate and which determines their role and status.

6. The second section consists of an analysis of the international legal framework and the body of ratified conventions, which together with national laws form the juridical framework within which defenders can carry out their activities in the country in question. The Special Representative gives an overview of the main international human rights commitments of the State. According to her, ratification of the core international human rights instruments¹ and relevant regional human rights instruments by the States is an encouraging sign of the country's commitment to human rights. It is essential to ensure the effective implementation of these treaties in domestic law as well as their application by domestic courts, in particular, the International Covenant on Civil and Political Rights, which guarantees key rights for human rights defenders. In this section, the Special Representative also outlines the domestic legislation with direct impact on the freedom of defenders, as guaranteed by the Declaration, to conduct their activities. This means looking at the protection of the rights of, amongst other things, freedom of expression, access to information, freedom of assembly and freedom of association.

7. In the third section, the Special Representative further examines specific measures taken at the country level to ensure the implementation of the Declaration. She includes initiatives taken by the Government, including National Human Rights Commissions, and by civil society. She also reports on the cooperation projects from regional and international organizations.

8. In the last section, the Special Representative looks at the communications she has sent to the relevant Government during the past six years, the responses received, and additional information received and from this indicates the main trends that emerge from the information

¹ The International Covenant on Civil and Political Rights and its two optional protocols, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and its optional protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its optional protocol, the Convention on the Rights of the Child and its two optional protocols, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

received. From this she makes an assessment of the main concerns she has in relation to the situation for defenders in the country and how it has developed since the beginning of her mandate. She gives an overview of the categories of defenders that are most included in her communications, the types of work they are involved in to promote and protect human rights, and the kinds of violations they have reportedly been subjected to. She also in this section gives the number of individual cases sent on women human rights defenders and on violations against defenders of women's rights. Additionally she looks at who the main violators against defenders are alleged to be and she links her main concerns to the relevant provisions of the Declaration where the concerns are serious.

9. In this regard the Special Representative would like to point out that in many cases the information available did not allow her to make a fully comprehensive assessment of trends in the situation for human rights defenders in each country or region. There are several factors that might impact on whether the number and types of communications are high or low, increasing or decreasing from a particular country. These factors include the relative openness of the country in terms of flow of information, the extent to which defenders are worried about retributions from state or non-state actors if they transmit information about the situation in the country, and the extent to which the Declaration and the Special Procedures mechanism are known to defenders in the country. Likewise, an increase or decrease in the communications sent to a specific country might be a result of changes in the above factors rather than changes in the actual situation for defenders in the country.

10. The Special Representative would like to emphasise again that she considers this study to be a first step towards the compiling of an even more comprehensive assessment. The purpose of drawing attention to difficulties and concerns in the following is to identify areas in which there is a need for constructive dialogue and meaningful initiatives to improve the situation. As stated in numerous of the sections, the Special Representative would appreciate receiving additional and updated information from Governments, non-governmental sources, both national and international, on the country-specific situations and the developments in terms of the situation for human rights defenders and the implementation of the Declaration.

Afghanistan

11. The Special Representative thanks the Independent Afghan Human Rights Commission for providing her with a response to the questionnaire transmitted for the preparation of this report. She regrets that the Government has not provided her with information at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

12. There is still serious instability in the post-Taliban Afghanistan, and most of the country is still dominated by warlords and armed factions, including Taliban forces, who are reported to routinely violate human rights, in particular the rights of women and girls. US forces operating in Afghanistan are also held responsible for human rights violations against the civilian population. Such allegations include arbitrary arrests, mistreatment of detainees and use of excessive force. Additionally there are reports of abuse by local military and police forces, in Kabul as well as outside the capital, including allegations of arbitrary arrests, abductions,

extortion, torture, extrajudicial killings, rape of women and in general systematic violence against women, girls and boys, forced displacement, human trafficking and forced marriage. The volatile security situation in the country is reportedly also making it very difficult to guarantee a safe return for Afghan refugees.

13. The media, and in particular the private TV-channels, but also national TV, have played an important role in focusing on the role of civil society in social justice, protection of human rights, securing appropriate development and fighting corruption.

The human rights defenders community

14. There are several NGOs dealing mainly with development issues and reconstruction who also incorporate human rights in their work, but there are about 20 smaller NGOs who are solely devoted to the promotion and protection of human rights.

15. The UN-staff in Afghanistan are playing an important role in the rebuilding of the country. The efforts of the United Nations in working with refugees, within the area of human rights, in relation to elections, and in several other areas, continue to be an important contribution to the future of Afghan society.

16. Because of a persistent lack of an adequate security framework, it has reportedly been impossible for the United Nations to carry out many parts of its mandate in the country. The instability and lack of security, in addition to obstacles rooted in certain conservative traditional practices, also makes for a difficult environment for human rights defenders to work in.

Legal framework

17. Afghanistan is a State party to most of the core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). Still, Afghanistan has not yet acceded to the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the ICCPR, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

18. The Constitution of Afghanistan guarantees the right to freedom of expression, freedom of assembly and the right to form associations and political parties. The bill of rights in the new Constitution is mostly consistent with the international bill of human rights. The Constitution also guarantees that individuals who have suffered human rights abuses can make complaints to the authorized court for remedial compensation. In general the legal framework is fairly liberal in terms of the laws and provisions relevant for the work of human rights defenders. Nevertheless, in practice human rights defenders seldom benefit from the Constitutional guarantees and their work for the promotion of human rights remains restricted and fraught with difficulties.

Measures taken at national level for the implementation of the Declaration

19. Since the establishment of the Interim Administration of Afghanistan in January 2002, some positive changes have taken place in Afghanistan in the field of human rights and democratic processes. The Afghan Independent Human Rights Commission (AIHRC) was established within the framework of the Bonn Agreement in December 2001. It was stated in Article III C 6) that “The Interim Administration shall, with the assistance of the United Nations, establish an independent Human Rights Commission, whose responsibilities will include human rights monitoring, investigation of violations of human rights, and development of domestic human rights institutions”. Its existence was further guaranteed by its inclusion in the National Constitution in 2005.

20. The AIHRC has informed the Special Representative that they are working on promotion and protection of human rights both at the national and the provincial level. Their activities include workshops on human rights awareness for different groups such as school-teachers, students at the Faculty of Journalism, officers of the National Army departments and NGO workers. Workshops are also held on more thematic issues for protection of human rights, and have been held for police officers, prison staff, prosecutors and clergy. In addition the AIHRC has supported tens of NGOs financially in order to increase their capacity to work in the area of human rights.

21. Afghanistan’s press and media in general have been reinvigorated after the fall of the Taliban, under whose rule publications and radio-transmissions were heavily censored. The Law of Mass media, states that every individual has the right to access to communication and information and to establish and run private radio and TV stations as well as print publications. A Press Complaint Commission has been established, and includes a representative from the Afghan Independent Human Rights Commission.

22. The United Nations Mission in Afghanistan (UNAMA) was established in 2001 as provided for in the Bonn Agreement. The UNAMA is mandated to monitor the human rights situation in the country and works to promote human rights through, for instance, workshops for people from different walks of society. There are also other United Nations agencies, such as UNICEF, UNIFEM and UNHCR who have been involved in the promotion and protection of human rights in Afghanistan. The Special Rapporteur on Violence against Women was informed during her official visit to Afghanistan in July 2005 that a network of women human rights defenders had been established with the assistance of UNHCR, with the aim of bringing together women activists from across the country to share experiences and develop common strategies (E/CN.4/2006/61/Add.5, para. 64).

23. Some limited legal reform processes and training of more judges and lawyers has begun in the country. At present, the judiciary reportedly lacks independence, is ineffective, corrupt and susceptible to intimidation from armed groups, there is also a lack of sufficiently competent judges and lawyers. Courts barely function in rural areas and judges and lawyers allegedly permit the severe discrimination against women to continue.

Communications and concerns

24. From the establishment of her mandate to 1 December 2005, the Special Representative has sent two communications to the Government. She regrets that she has not had the opportunity to hear from more individual defenders or defenders' organizations and this might show a greater need for training in human rights and for creating a more enabling environment for human rights defenders. The Special Representative regrets that the Government has not responded to her communications and she would appreciate receiving any information both from the Government and from civil society on the situation for human rights defenders and the implementation of the Declaration in the country.

25. The Special Representative is concerned with the continuing lack of security and the ensuing instability in much of Afghanistan, which impacts negatively on the ability of human rights defenders to carry out their work to promote and protect human rights. This can be illustrated by one of the communications sent which concerned the case of a female staff member of UNHCR who was killed in 2003 when two men riding a motorcycle reportedly shot her as she was driving in her clearly marked "UNHCR" car.

26. It is a grave concern that in some remoter areas of Afghanistan, there are still no proper governmental structures or government activity, and thereby no protection by national law. The Special Representative is concerned that this is leading to a great degree of impunity for violations against human rights defenders. In general, civilians who are arrested during military operations have no means of challenging the legal basis for their arrest and detention, or to obtain hearings before an adjudicative body, in addition to having no access to legal counsel. US forces are widely reported not to comply with legal standards applicable to their operations in Afghanistan, including the Geneva Conventions and other applicable standards of international human rights law. The Special Representative would like to remind the Government about article 9 of the Declaration which states that "[...] everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain and to have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law [...]".

27. Women and girls still suffer the worst effects of the continuing insecurity in Afghanistan. Women who organize politically or who are involved in any kind of criticism against local rulers often face threats and violence. In addition there have been reports of cases of election officials who were registering women voters and because of this were intimidated or even killed by armed groups. The Special Representative notes that the Special Rapporteur on Violence Against Women stated after her official visit to Afghanistan in July 2005 that "the multiplicity of normative systems in Afghanistan favours the power structures intent on oppressing women in the private sphere and in public life, facilitates their impunity, and presents a significant obstacle for women and defenders of women's rights" (E/CN.4/2006/61/Add.5, para. 79).

Albania

28. The Special Representative thanks the United Nations Resident Coordinator in Albania for responding to her questionnaire. She notes with appreciation that this response is based on two-month research work jointly undertaken with human rights activists. Several United Nations agencies present in the country were also contacted for their inputs. She is also very grateful to

the Albanian human rights NGO that submitted another response to her questionnaire. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

29. Albania has recently undergone important legislative and institutional reforms aimed at bringing its law and system closer in line with international and European standards in the field of human rights and democracy. Encouraging improvements have been reported in various areas of human rights, but numerous problems allegedly persist.

30. The United Nations Resident Coordinator has provided the Special Representative with a list of the main human rights NGOs and human rights coalitions in Albania together with a brief description of their respective activities. As the information indicates, some NGOs deal with the whole spectrum of human rights and other work on specific issues. Several of them provide assistance to victims and to vulnerable groups. Others are specialized in monitoring, lobbying, or undertaking legal research. Albanian NGOs community is reported to be very active in providing public education on human rights, sensitization and capacity building of state institutions, in particular with regard to children's rights, prisoners' rights, and women rights.

31. The Special Representative has been informed that positive efforts have been made in communication, knowledge sharing, coordination and the establishment of human rights networks. In addition, the United Nations Human Rights Network, supported by the office of the United Nations Resident Coordinator in Albania has been created with a view to facilitating a multi-stakeholders discussions on human rights issues and their respective role in promoting human rights agendas and human rights on development programmes and initiatives. Despite these efforts, it has been reported to the Special Representative that there is still a need for strengthening coordination between organizations.

32. The great majority of human rights defenders are reportedly situated in Tirana or in other main cities, whereas most of the cases of human rights violations reportedly take place in poor rural areas. This geographical distance is said to hinder access to information and to make human rights education and awareness raising campaigns difficult.

Legal framework

33. Albania is party to most of the core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). It has not yet ratified the two optional protocols to the ICCPR, the optional protocol to the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, the two optional protocols to the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. At a regional level, Albania has ratified relevant treaties, such as the European Convention for the Protection of Fundamental Human Rights and Freedoms.

34. Article 116 of the Albanian Constitution defines ratified international agreements as “normative acts that are in force throughout the territory of the Republic of Albania”. Article 122 of the Constitution foresees that every international agreement that has been ratified “becomes part of the in country juridical system after it is published in the *Official Gazette*”. According to this article “international agreements that have been ratified have priority over the laws of the country that are not in accordance with them, these agreements are directly mandatory.

35. It is the opinion of Albanian non-governmental sources that the legal framework for the protection of human rights and freedoms enshrined in the Declaration is comprehensive and adequate. The major problem is its implementation in practice.

36. In connection with the right to freedom of association, Law No. 8788 for non-governmental institutions and Law No. 8789 for registration of non-governmental institutions have reportedly created a strong legal basis for the establishment and functioning of non-governmental institutions. The Special Representative has been informed that their adoption resulted in a growth in the number of NGOs and in improvement of legal practices in their registration.

Measures taken at country level to ensure the implementation of the Declaration

37. The Special Representative welcomes measures taken to improve the situation and promotion of human rights, which can in turn enhance the work and status of human rights defenders. In particular she welcomes the establishment of a “State Council of Minorities”, a “National Strategy for the Improvement of the Roma Living Conditions”, a “Committee for Equal Opportunity” and investigative parliament commissions that examine violations of human rights.

38. She also welcomes the establishment of the People’s Advocate, an independent institution created and regulated in accordance with articles 60-63 of the 1998 Constitution, Law No. 8454 of February 1999, Law No. 8600 of April 2000 and by Law No. 9398 of May 2005. The People’s Advocate is elected for five-year periods by three fifths of members of the Parliament and its main duty is to prevent conflicts between the public administration and individuals.

39. The Special Representative is pleased to learn that NGOs note progress in access to State institutions. Cooperation between the State and civil society reportedly has improved, allowing the human rights community to offer and provide legal assistance in defence of human rights in line with the Declaration. Civil society has had repeated invitations to offer its opinion regarding draft-law, its implementation, or changes which can be made for better respect of the rights of citizens.

40. The Special Representative has also been informed that in accordance with article 49 of the Law No. 8577 on the Constitutional Court, after all avenues of complaint through the courts have been exhausted, NGOs have the right to file complaints before the Constitutional Court for violations of rights in legal proceedings.

41. The Special Representative also takes note of the there is a technical cooperation project that the Government is implementing in cooperation with OHCHR and UNDP in Albania, aiming at building sustainable capacities for human rights treaty reporting.

Communications and concerns

42. The Special Representative has not transmitted any communications to the Government over the past six years. The Special Representative would appreciate being informed by the Government and by civil society of concerns they might have in relation to the situation for human rights defenders and the implementation of the Declaration.

43. The Special Representative shares the concerns expressed by the Human Rights Committee, in particular with regard to “instances of harassment and physical violence against journalists as well as about threats of defamation suits against them” (CCPR/CO/82/ALB, para. 19). She is aware that the Government has submitted information to the Secretariat of the Committee on the implementation of its recommendations, and she would appreciate receiving information from the Government on the developments of the situation with regard to threats and violence against journalists.

44. The Special Representative has been informed that individuals face severe difficulties when trying to access information. These difficulties reportedly diminish when information is requested by NGOs who are aware of their rights. Despite the fact the Ministry of Justice has a policy to give human rights defenders access to police stations, pre-detention sites and prisons, in practice defenders report serious impediments in getting permissions for visiting prisoners and monitoring prison conditions.

Algeria

45. La Représentante spéciale regrette ne pas avoir reçu de réponse du Gouvernement algérien à sa demande de renseignements avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme en Algérie

46. Après avoir été lourdement marquée par le violent conflit qui l'a secouée pendant une décennie. En août 2005, le Président de la République a promulgué un décret sur un projet de Charte pour la paix et la réconciliation nationale qui a été soumis à référendum le 29 septembre 2005.

47. La Représentante spéciale regrette de ne pas disposer de suffisamment d'informations pour pouvoir donner une description détaillée de la communauté des défenseurs dans le pays.

Cadre juridique

48. L'Algérie a accédé ou ratifié la plupart des traités internationaux relatifs aux droits humains, y compris le Pacte international relatif aux droits civils et politiques. L'Algérie n'est pas encore partie du deuxième protocole facultatif se rapportant au Pacte international relatif aux droits civils et politiques, du protocole facultatif à la Convention pour l'élimination de toutes les

formes de discrimination contre les femmes, du protocole facultatif à la Convention contre la torture et autres peines ou traitements cruels, inhumains et dégradants, ainsi que des deux protocoles facultatifs à la Convention relative aux droits de l'enfant. L'Algérie a ratifié la Charte africaine des droits de l'homme et des peuples. Les engagements internationaux de l'Algérie ont la primauté sur la loi nationale.

49. Le Gouvernement a informé la Représentante spéciale que les obligations internationales ont priorité sur le droit interne, ce qui a été confirmé par une décision de la Cour Constitutionnelle du 20 août 1989.

50. La Représentante spéciale regrette ne pas avoir de plus amples renseignements à sa disposition pour être en mesure de présenter une analyse plus élaborée de la législation nationale portant sur les droits énoncés dans la Déclaration sur les défenseurs des droits de l'homme.

Mesures adoptées pour la mise en œuvre de la Déclaration dans le pays

51. La Représentante spéciale a été informée de l'établissement, par décret présidentiel n° 01-71 du 25 mars 2001 modifié le 23 septembre 2002, de la Commission nationale consultative de la promotion et de la protection des droits de l'homme (CNCPPDH), comme une «une institution indépendante, placée auprès du Président de la République, garant de la Constitution, des droits fondamentaux des citoyens et des libertés publiques». La CNCPPDH a été créée comme organe à caractère consultatif de surveillance, d'alerte précoce et d'évaluation en matière de respect des droits de l'homme. Cette institution a remplacé l'Observatoire des droits de l'homme (ONDH), dissous en vertu du décret présidentiel relatif à la création de la CNCPPDH suscitée.

Communications envoyées par la Représentante spéciale et motifs de préoccupations

52. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé 18 communications au Gouvernement portant sur au moins 22 défenseurs des droits de l'homme, dont six femmes. Ces personnes étaient pour la plupart membres d'organisations non gouvernementales de défense des droits de l'homme, avocats, journalistes ou parents de victimes de violations des droits de l'homme. Les communications concernaient en majorité des cas de harcèlement, de menaces, de détention et des cas de violences lors de la dispersion de manifestations. Dans un cas, un avocat aurait été condamné par contumace à 20 ans de prison. La Représentante spéciale remercie le Gouvernement des réponses qu'il a envoyées à la plupart de ses communications.

53. En dépit des éclaircissements que ces réponses contenaient, la Représentante spéciale reste préoccupée par la situation des membres des familles de personnes supposément disparues lors du conflit armé en Algérie. Ces familles auraient à de nombreuses reprises été harcelées et certaines auraient même été agressées par des forces de la sécurité en raison de leurs efforts pour réclamer la fin de l'impunité. Le Gouvernement a informé la Représentante spéciale que la poursuite des auteurs des violations de droits de l'homme est garantie par :

- la disposition légale concernant la non-proscription de toutes les actions du pouvoir judiciaire et les sanctions pour les crimes qui menacent la sécurité et la stabilité, comme le terrorisme, le crime organisé et la corruption ;

- de nombreux accords bilatéraux concernant l'extradition des criminels vers d'autres pays.

54. La Représentante spécial exprime également sa préoccupation devant les rapports faisant état de certaines restrictions à la liberté de réunion en particulier concernant l'interdiction et la répression des manifestations de familles de personnes supposément disparues au cours du conflit armé algérien. Concernant le droit à la liberté d'assemblée, elle considère préoccupante l'interdiction, imposée en 2001 et selon ses informations toujours en vigueur, de manifester dans la capitale du pays.

55. La Représentante spéciale voudrait également exprimer l'inquiétude par suscitée les allégations portant sur la fermeture d'entreprises de presse et les poursuites pour diffamation contre des journalistes défenseurs des droits de l'homme qui auraient dénoncé des actes de corruption ou qui auraient dénoncé publiquement des représentants de l'État et des forces de sécurité.

56. Par ailleurs, l'interdiction de sortir du pays imposée à des défenseurs des droits de l'homme qui s'apprêtaient à se rendre à des conférences internationales de droits de l'homme est également préoccupante.

Angola

57. The Special Representative thanks the Angola Office of the OHCHR for providing her with a response to the questionnaire transmitted for the preparation of this report.

58. The Special Representative conducted a country visit to Angola from 16 to 24 August 2004. The report of her visit is contained in document E/CN.4/2005/101/Add.2, and the Special Representative would like to refer to this report for an elaborated presentation of her findings.

The human rights defenders community

59. After almost 30 years of civil war, the situation in Angola has been comparatively peaceful over the past three years after the signing of the ceasefire agreement in April 2002 between the Government, led by the People's Movement for the Liberation of Angola (Movimento Popular de Liberação de Angola, MPLA) and the opposition National Union for the Total Independence of Angola (União Nacional para a Independência Total de Angola, UNITA). Hopes of a peaceful transition from one-party rule to democracy is further strengthened by the announcement by the Government that national elections will be held in late 2006. While the Special Representative acknowledges that Angola is in the midst of political, economic and social transitions, she remains concerned that most Angolans are not yet seeing the benefits of peace in their daily life. The basic indicators of development are amongst the lowest in the world.

60. Human rights defenders are mostly present and active in Luanda, and in a few of the provincial capitals. Most of the cities and municipalities in the provinces are severely lacking any groups or individuals working to promote and protect human rights. According to information received, the decreasing United Nations presence in the provinces further contributes to a feeling of insecurity which results in NGOs deciding not to conduct human rights activities.

61. A majority of the defenders in Angola work from within NGOs, but there are also defenders working on an individual basis. Defenders are most commonly lawyers, paralegals, teachers, journalists and church officials. Before the 1990s it was difficult for civil society to develop any kind of movement across the large country because of the then conflict. Defenders work on addressing a broad range human rights issues, including civil and political rights, penal reform, the rights of the unemployed, the right to education, rural development, health concerns, humanitarian assistance, disarmament and de-mining, family reunification, anti-corruption, violence against women and gender concerns, discrimination in the work-place, the rights of minorities, land rights and the right to adequate housing.

62. From the 1990s a development towards a larger and more active civil society began, and with the official ceasefire in 2002 there has been a significant growth in the number of civil society organisations in the country. In addition to national organisations and initiatives, a large number of international organisations have been contributing directly to the respect and protection of human rights in Angola.

63. There are reportedly several factors impacting on the effectiveness of the work done by human rights defenders. An absence of legal and procedural tools for promoting and protecting human rights is a major constraint on defenders and a factor impeding their effectiveness. The Government has yet to acknowledge and fully understand the role of human rights defenders, in order that their independence and functions are respected. NGOs are generally short of funding resulting in limiting their capacity and outreach. Poor coordination amongst NGOs and lack of well defined mandates also weakens the impact of their work.

Legal framework

64. Angola has acceded to most of the core international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR). Angola is not yet a State party to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment or its Optional Protocol, the Second Optional Protocol to the ICCPR, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Angola is also a State party to the African Charter on Human and Peoples' Rights.

65. Article 21 of the Constitution of Angola states that “[t]he fundamental rights provided for in the present Law shall not exclude others stemming from the laws and applicable rules of international law”. The Constitution guarantees the rights of freedom of expression, assembly, demonstration and all other forms of expression.

66. The present Constitution of Angola entered into force in 1992 and was drafted as a function of the peace process at the time. In 1998, a Constitutional Commission was created, which now incorporates both Government and opposition members. This Commission is currently reportedly working on the adoption of a law for the revision of the Constitution.

Measures taken at national level for the implementation of the Declaration

67. The Special Representative would like to refer again to her report in which she reflects information she gathered during her visit in relation to institutions supporting the work of defenders in Angola, in particular, provincial human rights committees and police complaints mechanism and training (*ibid.*, paras. 31-35).

68. She also examined the role of the United Nations in supporting human rights defenders (*ibid.*, paras. 93-97). In January 2004, the Government, in cooperation with the United Nations, began the work on developing a national plan of action on human rights.

69. The “Provedor de Justiça”, which will be the Angolan National Human Rights Institution and have the function of Ombudsman was established in 2005, but is so far not operational.

70. From 7 to 9 December 2005, the Conference on Human Rights Defenders was held in Angola with the support of the OHCHR in Angola. More than 85 defenders participated from human rights organizations, trade unions, humanitarian groups, community-based organizations, churches, women’s rights organizations, in addition to journalists and professionals. This included participation of representatives from the provinces, and The General and Provincial Prosecutor and the Ombudsman also participated. The conference aimed to create awareness of the Declaration and the concept of human rights defenders, to examine the situation of defenders in Angola, to define actions required by main actors to improve/ensure protection of defenders and to examine and discuss recommendations given by the Special Representative after her visit to Angola. The Special Representative is looking forward to receiving further information on the outcome of the conference.

71. During the National Conference on Access to Justice in May 2005, which was organized by the Justice Reform Commission (headed by the Ministry of Justice) with the support of OHCHR Angola, UNDP, UNICRI and UNICEF, the role of human rights defenders such as certain NGOs, associations and churches, in the area of conflict resolution was formally recognized. It has in relation to this been officially announced that activities such as mediation and counselling will be officially regulated to the necessary extent. The Special Representative would appreciate receiving further information on this future regulation.

72. Part of the Modernization and Development Plan 2003/2007 was reportedly dedicated to improving police-community relations, and to providing training-programs to the police forces. Nevertheless, reports about human rights violations committed by the police are still being received, including violations against defenders.

73. Human rights defenders are increasingly engaging with government in initiatives for promotion and protection of human rights. This interaction has largely removed the negative perceptions on human rights in the official minds. However, the remnants of this perception still

persist and are manifested in remarks by officials denigrating the importance of the respect for human rights. Such a trend could mar the climate for the work of human rights defenders.

Communications and concerns

74. From the establishment of her mandate to 1 December 2005, the Special Representative has sent one communication to the Government on the detention of two individual defenders. The Special Representative notes that the Government transmitted to her its willingness to cooperate but she regrets that she has not been provided yet with information on the case.

75. While she acknowledges improvements in the situation of human rights defenders, in her report she also examines issues of concern such as the misconception of human rights defenders' role, the lack of response to defenders' concerns and human rights violations and challenges faced by defenders, including limitations to their exercise of their rights to freedom of expression and access to information and to freedom of association and assembly, intimidation and occasional arrests, and lack of redress mechanisms. The Special Representative also refers to her report where she comments on the absence of defenders at the local level, restraints on human rights activity, impediments to collective action, barriers to outreach and funding.

76. The Special Representative is concerned about reports of violations of the right to freedom of assembly in Angola, although there seems to have been improvements in this area since 2004. Freedom of assembly seems to be more respected in Luanda and the other coastal regions.

77. The Special Representative refers to her report on her visit to Angola where she notes that despite the existence of constitutional guarantees (see article 32.1 of the Constitution complemented by provisions in the Press Law), national legislation concerning freedom of expression is unduly restrictive and constitutes a potential hindrance to legitimate human rights work (E/CN.4/2005/101/Add.2, para. 21). The Special Representative would like to remind the Government about article 2 (2) of the Declaration which states that "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".

78. The Special Representative would also like to reiterate concerns expressed in her report from the official visit to Angola, that access to information is not constitutionally guaranteed and has been limited on the grounds of national security (*ibid*, para. 22). She is concerned that this could hinder defenders' access to information relevant to their work. Laws are also reportedly difficult to access and that they are allegedly not being translated into local languages and explained.

79. The Special Representative notes the complex process NGOs must go through in order register that in accordance to the Law (*ibid*, para. 26). She remains concerned about the ill-defined and wide grounds for dissolution of NGO, although this dissolution shall be pronounced through the courts, and about the overly broad powers vested in the coordinating body to monitor, control and audit NGOs' activities, define programmes to be implemented by NGOs and determine regions. The Special Representative is concerned that such laws may reflect a "willingness on the part of the Government to keep tight control over NGOs" (*ibid*, para. 30).

80. The Special Representative is concerned about reports of impunity for perpetrators against human rights violations in Angola. There is consensus in public reports published by United Nations bodies in 2003 and 2004 of sexual harassment, unaddressed and widespread domestic violence against women, individual instances of rape by soldiers that continued to occur after the ceasefire agreement, restrictions on freedom of movement in some parts of the country, and dispossession of property. When the Special Representative visited Angola she met with defenders in Cabinda who told her about instances of abductions, summary executions and rape, all committed by soldiers. The defenders also relayed to the Special Representative that cases that were reported to the police were not taken action on and no cases ever reached court, resulting in lack of redress for the victims. The Special Representative would like to remind the Government about article 9 (5) of the Declaration which states that “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”.

81. Access to justice and the absence of a functioning judiciary has also severely affected human rights defenders’ capacity to work adequately. According to the United Nations in the country, only 13 out of 164 municipal courts are operating, and access to professional legal assistance is almost impossible in the provinces due to the lack of lawyers in most of the provinces and to the cost of those that are to be found.

82. In Luanda, an independent press has been flourishing in the past years, whereas the situation outside of Luanda is still that information mainly comes from state-controlled radio-transmissions. The Special Representative was informed during her visit to Angola that the Government was reported to have systematically obstructed efforts to set up community radio stations across the country (ibid, para. 68). Journalists voicing criticism of the government, also on issues of human rights, have reportedly been victims of harassment such as physical abuse, threats and defamation campaigns, and these kinds of harassments against journalists are allegedly still quite frequent.

83. Law 14/1991, together with the Council of Ministers Decree 84/02, regulates the creation, functioning and dissolution of the NGOs. In this connection, the Special Representative reiterates her concern that the categorization of human rights activities as political activities as provided by article 8 of law 14/91 may result in confusion between human rights work and political opposition (ibid, para. 24).

Argentina

84. La Representante Especial lamenta que en el momento de finalizar este informe, el Gobierno no le haya remitido información en respuesta al cuestionario distribuido para la preparación del presente informe. La Representante Especial insta al Gobierno que transmita la información relativa para que este informe pueda ser actualizado en el futuro.

La comunidad de defensores de los derechos humanos en Argentina

85. Argentina cuenta con un gran número de ONG de derechos humanos con un alto nivel de competencias y conocimientos. Por lo general estas ONG conocen bien los sistemas internacionales y regionales de derechos humanos y saben como recurrir a ellos. En el contexto

de la dictadura militar que gobernó el país hasta 1983, las ONG argentinas se han especializado en la lucha contra la represión política y la defensa de los derechos civiles y políticos.

86. Frente a las crisis económicas que ha atravesado el país en los últimos años, ha surgido en la sociedad civil un movimiento de defensa de los derechos económicos, y sociales. Este movimiento, en gran medida compuesto por sectores económicamente marginados, se ha organizado principalmente entorno a grupos de geográficamente limitados y expresa sus reivindicaciones en forma de protestas sociales. Si bien las autoridades sostendrían una política de aceptación de la protesta social, al mismo tiempo se habrían llevado a cabo campañas mediáticas con el objeto de deslegitimar diferentes expresiones de protesta social.

Marco jurídico

87. Argentina es parte de los principales instrumentos internacionales de derechos humanos, incluido el Pacto Internacional de Derechos Civiles y Políticos. Todavía no ha ratificado el Segundo Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos. Ha firmado pero no ratificado el Protocolo Facultativo de la Convención sobre la eliminación de todas las formas de discriminación contra la mujer y la Convención internacional sobre la protección de los derechos de todos los trabajadores migratorios y de sus familiares. A nivel regional, Argentina ha ratificado la Convención Interamericana de Derechos Humanos y otros instrumentos regionales de derechos humanos.

88. El párrafo 22 del artículo 75 de la Constitución de 1994 estipula que “la Declaración Americana de los Derechos y Deberes del Hombre; la Declaración Universal de Derechos Humanos; la Convención Americana sobre Derechos Humanos; el Pacto Internacional de Derechos Económicos, Sociales y Culturales; el Pacto Internacional de Derechos Civiles y Políticos y su Protocolo Facultativo; la Convención sobre la Prevención y la Sanción del Delito de Genocidio; la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial; la Convención sobre la Eliminación de todas las Formas de Discriminación contra la Mujer; la Convención contra la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes; la Convención sobre los Derechos del Niño: en las condiciones de su vigencia, tienen jerarquía constitucional, no derogan artículo alguno de la primera parte de esta Constitución y deben entenderse complementarios de los derechos y garantías por ella reconocidos. Solo podrán ser denunciados, en su caso, por el Poder Ejecutivo nacional, previa aprobación de las dos terceras partes de la totalidad de los miembros de cada Cámara. Los demás tratados y convenciones sobre derechos humanos, luego de ser aprobados por el Congreso, requerirán del voto de las dos terceras partes de la totalidad de los miembros de cada Cámara para gozar de la jerarquía constitucional.”

89. La Representante Especial no ha podido recoger suficiente información para llevar a cabo una evaluación en profundidad relativa al marco jurídico que gobierna las actividades de los defensores de derechos. Sin embargo quisiera remitirse al informe del Relator Especial sobre la libertad de opinión y expresión sobre su visita al país en el año 2000. En dicho informe, el Relator Especial ofrece un análisis pormenorizado sobre el marco jurídico e institucional relativo al derecho de expresión.

90. En relación con el derecho al acceso a la información, la Representante Especial ha sido informada de la aprobación, el 2 de noviembre de 2004, del dictamen sobre el proyecto de Ley

de Acceso a la Información Pública. Varias ONG argentinas expresaron su preocupación ante este proyecto de ley. Pues, según ellas, el acceso a la información pública se veía restringido. La Representante Especial agradecería recibir información más detallada sobre la adopción y aplicación de esta ley.

Medidas tomadas a nivel nacional para la implementación de la Declaración

91. Desde el restablecimiento de la democracia se han creado varias instituciones encaminadas a promover y proteger los derechos humanos como la Subsecretaría de Derechos Humanos del Ministerio de Relaciones Exteriores, Comercio Internacional y Culto y el Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo. En el seno del Congreso se han establecido las Comisiones de Derechos Humanos y Garantías del Senado y de la Cámara de Diputados y la Comisión de Libertad de Expresión del Senado. En diciembre de 1993 el Congreso estableció el Defensor del Pueblo.

92. La Representante Especial toma nota del informe del Grupo de Trabajo sobre la Detención Arbitraria sobre su visita a Argentina en el año 2003. En este informe el Grupo de Trabajo observa que “el Gobierno realiza también esfuerzos para des-criminalizar la protesta social. En efecto, ha creado una comisión, conformada por destacados juristas, cuyo objetivo es proponer soluciones institucionales para hacer compatible los derechos de terceros con el ejercicio de las libertades de expresión y manifestación y evitar así la penalización de los reclamos sociales. No se han producido últimamente detenciones por estos motivos y se está trabajando para que no sean realizadas en el futuro, con un proyecto de ley de reforma del artículo 194 del Código Penal. Asimismo, se incorporan en la legislación interna las disposiciones del Código de conducta para funcionarios encargados de hacer cumplir la ley, y los Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por los Funcionarios Encargados de Hacer Cumplir la Ley. En el mismo ámbito, se han creado observatorios de derechos humanos hacia el interior del país para poder trabajar en conflictos agudos de derechos humanos, incluyendo en esta institución un área de recepción de denuncias.” (E/CN.4/2004/3/Add.3, para. 29)

93. Por lo que respecta a la protesta social, según fuentes no-gubernamentales, si bien la Secretaría de Derechos Humanos difundió públicamente su intención de impulsar un proyecto de derogación de tipos penales vinculados a la judicial de los reclamos, dicho proyecto todavía estaría por empezar. Se alega igualmente que el Poder Judicial tendría una fuerte tendencia a actuar a favor de la judicialización de los reclamos sociales contra los reclamantes. Sin embargo, la Representante Especial no ha recibido información que puede confirmar si los progresos que han sido tomados. Quisiera recibir más información si estos progresos han sido tomados.

Motivos de preocupación y Comunicaciones enviadas por la Representante Especial

94. Basándose en la información recibida para la preparación de este informe y en las comunicaciones transmitidas al Gobierno a lo largo de estos seis últimos años, la Representante Especial quisiera expresar su preocupación por los ataques y amenazas de muerte. Desde el inicio de su mandato y hasta el 1 de diciembre de 2005, la Representante Especial ha transmitido 12 comunicaciones al Gobierno, relativas a 16 defensores de los derechos humanos y a una ONG cuyas oficinas habrían sido allanadas y algunos de sus documentos y parte de su material robados. 4 de estos casos se refieren a mujeres defensoras de los derechos humanos. Los

defensores de los derechos humanos que han sido objeto de dichas comunicaciones incluyen miembros de ONG, sindicalistas, periodistas, manifestantes, personas que han denunciado casos de tortura y malos tratos, e incluso un defensor del pueblo. La mayoría de estas personas han sido objeto de amenazas y hostigamiento por parte de agentes de la policía o grupos anónimos. Una de estas personas era una defensora de los derechos de los travestís que habría sido asesinada. El número de casos transmitidos por la Representante Especial ha variado poco a lo largo de estos últimos seis años. La Representante Especial agradece al Gobierno su respuesta a la mayor parte de las comunicaciones y le invita a contestar a aquellas para las cuales todavía no se ha recibido ninguna respuesta.

95. La Representante Especial expresa su preocupación en relación con la impunidad persistente. Nota que las respuestas indican que en algunos casos, han iniciado investigaciones pero lamenta que hasta ahora, no ha sido informada ningunos perpetradores de las supuestas violaciones hayan sido llevados ante la justicia. La Representante Especial nota que esta impunidad pueda favorecer la vulnerabilidad de los defensores de derechos humanos.

Armenia

96. The Special Representative thanks the Government of Armenia and the Office of the Human Rights Defenders for their respective responses to the questionnaire transmitted for the preparation of the present report.

The human rights defenders community

97. The Government has informed the Special Representative that as at 1 October 2005, there are 110 voluntary organizations involved in human rights protection activities, in Armenia with legal status. Armenian human rights organizations engage in a wide sphere of activities such as intellectual property, social welfare, public health, ecological and environmental protection and migration. In addition, there are over 700 trade-union organizations, including those who work in State institutions. The Government adds that there are also artistic, scientific, pedagogical and other workers' organizations, and organizations for private employers. In addition, Armenia has a lawyers' union with 300 members, the mandate of which includes defending the rights of individuals and legal entities in civil and criminal proceedings.

98. According to the Office of the Human Rights Defender the human rights defenders community is fragmented and cooperation between different human rights organizations could be strengthened.

Legal framework

99. Armenia is party to most of the core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). It has not acceded yet to the Second Optional Protocol to the ICCPR, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment, the

two Optional Protocols to the Convention of the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Armenia has also ratified relevant regional human rights treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms.

100. The amendments to the Armenian Constitution adopted through referendum on 27 November 2005 were finalized in the process of wide-ranging consultations and discussions held with experts from the Council of Europe and representatives of various international organizations. The amendments restrict the excessive prerogatives previously held by the President, in many aspects of exercising his powers. The amendments additionally contribute to the further separation and balance of power within state structures, namely, its legislative, executive and judicial branches.

101. In its response to the questionnaire, the Government mentioned the following acts as having a special relevance in connection with the Declaration: the Voluntary Organizations Act, the Trade Unions Act and the Parties Act. The Civil Service Act, the Diplomatic Service Act, the Taxation Service Act, the Customs Service Act, the Military Service Act, the National Security Bodies Service Act and the Community Service Act, among others, are also in force. In addition to establishing the principles and procedures for serving the relevant State and local bodies, these acts are also aimed at strengthening the responsibility of such bodies in the protection of individuals' and legal entities' rights and interests. Further more, the Administrative Principles and Procedures Act has been adopted in order to increase the responsibility of administrative bodies and their officials towards citizens and legal entities.

102. In its response to the questionnaire, the Office of the Human Rights Defender indicated shortcomings in the national legislation related to human rights guarantees and admitted that "the implementation of the provisions of the Declaration in the national legislation of the Republic of Armenia remains insufficient, especially the obligation of the state defined by the article 2 of the Declaration to protect, promote and implement human rights and fundamental freedoms is insufficiently presented in the national legislation".

Freedom of expression

103. Article 24 of the Constitution guarantees freedom of expression. This right is further regulated by the Law on Television and the Radio (2000), the Law on Freedom of Information (2003) and the Law on Mass Media (2003). The Government has informed the Special Representative that the 2004 and 2005 amendments to Articles 135, 136 and 318 of the Criminal Code abolished the punishment previously ascribed to the crime of libel and defamation through mass media.

Freedom of assembly

104. Article 26 of the Constitution regulates the right to freedom of assembly. The Previous Law on Public Gatherings adopted in May 2004 was amended and reportedly improved on 4 October 2005.

105. The Special Representative has further been informed that on 25 December 2004, the Government submitted to the National Assembly, amendments to the Criminal Code with a view to establishing criminal responsibility for the organization of unsanctioned public assemblies without any publicity or discussion. It is reported that those found guilty can be fined with 200-500 minimum wages or be deprived of liberty for up to three months.

Measures taken at national level for the implementation of the Declaration

106. The Office of the Human Rights Defender was established in 2004. Its activities are regulated by the Human Rights Defender Act. According to information brought to the attention of the Special Representative by non-governmental sources, independent human rights monitors have criticized the Office for not effectively raising the issue of serious violations and question its partiality in dealing with abusive officials.

107. The Office of the Human Rights Defender stated that there was no programme nor policy aimed at improving the protection of human rights in the country.

Communications and concerns

108. From the establishment of her mandate to 1 December 2005, the Special Representative has sent two communications to the Government on two individual defenders and one NGO. The cases relate to allegations according to which unknown individuals set fire to the premises of a human rights NGO and to reported attacks against human rights defenders after national media spread false accusations of anti-State activities against them. The Special Representative thanks the Government for its response to one of the two communications. She would appreciate receiving information on the remaining case.

109. Since the 2003 presidential elections Armenia has been going through a period of political unrest with increasing polarization between the Government and the Opposition. The Special Representative is disturbed by reports that demonstrations have been held in many parts of the country and are frequently dispersed with an excessive use of force. Opposition leaders and supporters have reportedly been arrested, political party offices raided, critical journalists attacked and citizens prevented from participating in demonstrations.

110. Despite this political climate, the Special Representative has not received reports suggesting that defenders are systematically targeted for their human rights activities. She has nevertheless been informed, as reflected in her communications, of occasional attacks or harassment against human rights defenders by unidentified persons. The Special Representative is concerned that the Office of the Human Rights Defender in its response to the questionnaire indicates that "sometimes media, especially pro-authorities and national media, are forming a negative public opinion on human rights defenders". The Special Representative is also concerned that false accusation and defamation spread by media may have a negative impact on the legitimacy of the work of human rights defenders.

111. While welcoming the establishment of a national human rights institution, the Special Representative notes that to date it does not meet the standards enshrined in the Paris Principles.

Australia

112. The Special Representative thanks Australia's national human rights institution, the Human Rights and Equal Opportunity Commission (HREOC), for providing her with a response to the questionnaire transmitted for the preparation of this report.

The human rights defenders community

113. HREOC advises that there are hundreds, or possibly thousands of human rights defenders operating at the federal, state, territorial and local level in Australia. Numerous human rights groups are involved in advocacy, education and various actions on a local and national level. Groups work on specific issues such as the rights of indigenous Australians; the human rights of refugees, migrants and asylum-seekers ; violence against women, lesbian, gay, bisexual and transgender (LGBT) rights; and they also work in general on legislation issues with regard to human rights. New security legislation in relation to "combating terrorism" and the impact this legislation has on civil and political rights has emerged as an important issue in the last few years.

114. Australia is the only western, common law country without a Bill of Rights. The Declaration has not been enacted into domestic law, nor are there any separate laws or policies which protect, or regulate, the activities of human rights defenders. Despite this, HREOC is of the opinion that Australia has an environment that is conducive to the formation of non-governmental organizations and the work of defenders.

Legal framework

115. Australia is a State party to nearly all international human rights instruments. It has yet to ratify the Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It is still only a signatory to the two optional protocols to the Convention on the Rights of the Child.

116. The Special Representative would like to recall the recommendation of the Working Group on Arbitrary Detention (WGAD) which visited Australia in 2002, where the WGAD pointed out that legal precedence exists for Australia to fulfil its obligations under the International Covenant on Civil and Political Rights, despite the fact that it is the position of the Government that international treaties are not self-executing and that they must be incorporated into national law by the adoption of specific legislation (E/CN.4/2003/8/Add.2).

Freedom of expression and access to information

117. The Special Representative is informed that it is generally accepted that people in Australia are free to express their opinions subject to certain limits, as defined in various statutes and in the common law. Exceptions to this right concern discriminatory speech, racial vilification, defamation, and issues of privacy, sedition and national security.

118. According to HREOC, NGOs are free to publish study and engage in any other form of communication in relation to human rights issues. According to information received, there is limited constitutional recognition of the right to freedom of communication.

Freedom of association

119. HREOC informed the Special Representative that as far as they are aware, there are no restrictions, in law or policy, on freedom of association for organizations dedicated to advancing human rights. Defenders are free to meet and to form associations and to communicate with the Government as well as other defenders and associations.

Measures taken at national level for the implementation of the Declaration

120. The Human Rights and Equal Opportunity Commission is Australia's national human rights institution and was established in 1986. The Commission has responsibilities for inquiring into alleged infringements under five anti-discrimination laws - the Racial Discrimination Act 1975, the Sex Discrimination Act 1984, Disability Discrimination Act 1992 and the Age Discrimination Act 2004 as well as inquiring into alleged infringements of human rights under the Human Rights and Equal Opportunity Commission Act 1986. In addition, the Aboriginal and Torres Strait Islander Social Justice Commissioner has specific functions under the HREOC Act and under the Native Title Act, 1993. These functions relate to the monitoring of the enjoyment or otherwise by Indigenous people of their rights under the law.

121. In 2004, the Australian Capital Territory enacted Australia's first statutory human rights Act. The State of Victoria is reportedly considering following suit.

122. Human rights courses are taught at universities and there are a number of publications aimed at disseminating and debating human rights issues. HREOC also has a strong focus on the dissemination of human rights information and education, and publishes its inquiries and submissions to the Government on its website.

Communication and concerns

123. From the establishment of her mandate to 1 December 2005, the Special Representative has sent one communication to the Government of Australia. The communication sent in 2005 concerned the Aboriginal and Torres Strait Islander Commission (ATSIC) and the reported restrictions on its activities, threats to withdraw funding, and legal prosecution pursued against an ATSIC member, all of which finally lead to the closure of the ATSIC. The Special Representative acknowledges the response from the Government to this communication where the Government informed her that the Australian Parliament decided to abolish the ATSIC because it was of the opinion that the ATSIC model did not succeed in leveraging improved outcomes for indigenous Australians. The Special Representative would appreciate receiving further information from the Government and civil society on the situation for human rights defenders and the implementation of the Declaration in Australia.

124. The Special Representative notes that concerns have been expressed that Indigenous Australians lack a forum to discuss and to participate in political decisions that relate to them. The Government abolished ATSIC in 2004, after the Government decided that it did not fulfil its

intended functions. The Special Representative notes it has not been replaced by another democratically elected, national body for the rights of indigenous people. The absence of such a body deprives defenders of forums before which and procedure under which they can raise critical issues and complaints regarding the rights of the indigenous population.

125. The Special Representative is concerned regarding information that measures to combat “terrorism” have led to legislative amendments that have implications for civil and political rights. New measures proposed by the Prime Minister in 2005 included the introduction of preventative detention for up to 14 days and the authorization of several “control orders” such as electronic tracking devices attached to suspects, house arrests etc. These proposed control orders could be in place for up to one year without any criminal charges having been filed against the suspect. The Special Representation draws the attention of the Government to her report to the General Assembly in 2003 (A/58/380), in which she has raised concerns regarding the erosion of human rights norms by laws, policies and practices adopted for countering terrorism, and their impact on the work and security of human rights defenders.

Azerbaijan

126. The Special Representative thanks the Government of Azerbaijan for its response to the questionnaire transmitted for the preparation of the present report. She also notes the communication dated 12 December 2000 in which the Government of Azerbaijan set out its methods to safeguard the rights and freedoms of individuals and citizens, and confirmed that the international treaties to which Azerbaijan is a party are an integral part of the Azerbaijani legal order (see E/CN.4/2001/94, para. 57).

The human rights defenders community

127. More than 14 years after its independence, Azerbaijan is still undergoing its political transition to democracy. Incidences of repression against opposition members and journalists have been reported in the context of the parliamentary elections of 6 November 2005. The forcible and violent dispersion of opposition rallies was reportedly continuing during the preparation of this report.

128. The Government advises that 1,782 NGOs are currently working in Azerbaijan and that 67 of them are defined as human rights organizations. Most human rights defenders are generally said to operate without interference by the State authorities. According to the Government, there is a constructive cooperation between the Government and human rights NGOs, which is illustrated by the signature of a joint memorandum in June 2005 and the creation of a joint working group, established at the initiative of the Government. The Special Representative, however, notes that despite these positive initiatives, NGOs and human rights defenders have reportedly been subjected to criticism and intimidation by the authorities.

129. It has been alleged that the Government is attempting to impose undue controls on human rights defenders and organizations that are most critical of government policies. It is reported that human rights defenders, in particular those dealing with cases of so-called political prisoners, have been victims of harassment and attacks by extremist groups. Pro-governmental media have reportedly contributed to defamation and hostility against human rights defenders by spreading false accusations against them. Human rights defenders may also face legal

limitations to their right to freedom of assembly under certain circumstances. In addition, human rights defenders reportedly experience difficulties in having their NGOs registered. In its response to the questionnaire, the Government has acknowledged the need to simplify the registration process of NGOs.

130. The Special Representative attended a regional consultation of defenders held in Baku in October 2005. She appreciates the fact that it was possible to hold this meeting without any apparent obstructions and encourages the Government to facilitate such gathering of defenders. It is important for governments in the region and for Azerbaijan to hear and take effective measures in response to concerns expressed by human rights defenders.

Legal framework

131. Azerbaijan is party to most of the core international human rights instruments, including the International Covenant on Civil and Political Rights. Azerbaijan is not party yet to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the two Protocols to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of Discrimination against Women and the Optional Protocol to Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. At the regional level Azerbaijan has ratified relevant European human rights instruments, including the European Convention on Human Rights. According to article 151 of the Constitution, in the case of a divergence between domestic legislation (with the exception of the Constitution and acts accepted by way of referendum) and international treaties, the latter shall prevail.

132. The legal framework of Azerbaijan is in general fairly liberal in terms of the laws and provisions relevant for the work of human rights defenders. Nevertheless, the Special Representative is concerned that the information received over the past six years seems to indicate that the laws and provisions are used in ways detrimental to the creation of an enabling environment for human rights defenders.

133. The Government reported to the Special Representative that the rights and freedoms contained in the Universal Declaration on Human Rights and the Declaration are widely enshrined in the Azerbaijani Constitution.

Freedom of expression

134. The Constitution guarantees freedom of speech and freedom of the press and specifically bars press censorship. Press censorship was also abolished by law in 1998. However, publishers, editors and journalists have reported that they practice self-censorship due to various pressures that range from financial restrictions to Government intimidation. A new media law was adopted in 2001. Despite some improvements, it is reported that this law does not meet all international standards subscribed to by Azerbaijan. According to this law, grievances can be filed against media that insult the honour and dignity of the State and the Azerbaijani people or that publish or broadcast information contrary to the national interest. Other laws regulating freedom of expression concern the mass media (1999), and protection of information.

135. In a recent resolution, the Parliamentary Assembly of the Council of Europe “welcomes the decision to transform the second state television channel (AzTV2) into a public service broadcaster, takes note of the first steps taken with the confirmation of a board by parliament, the subsequent election of its director and the allocation of the necessary premises, and expects it to start operating nationwide as soon as possible. It regrets that the first state television channel (AzTV1) will only be partially privatised and that the controlling share remains in state hands. In Azerbaijan, television is the main source of information for the majority of the population. With political pluralism on the airwaves being put on hold and with the authorities retaining total control of content, it is unlikely that the media will be able to fulfil its function of allowing voters to make well-informed decisions” (resolution 1456 (2005), para. 7).

136. In this regard, the Special Representative emphasizes that independent media and freedom of expression are critical for the work of human rights defenders and exercise of this freedom to protect and promote human rights is specifically protected in the Declaration.

Freedom of assembly

137. Freedom of assembly is enshrined in article 49 (1) and 49 (2) of the Constitution as well as Freedom of Assembly Act No.537-II and the Decree of the President of the Republic of Azerbaijan “On the application of the Freedom of Assembly Act”. Rights related to freedom of assembly may be restricted upon declaration of war, martial law, state of emergency and mobilization as well on grounds of “prevention of violations of public order”. The right to conduct a peaceful assembly with a political aim is prohibited for the period from 24 hours prior to the election-day until voting polls are closed and prior and during significant international events of nation-wide importance. It is also forbidden to hold gathering, rallies and demonstrations, including those organized by human rights NGOs in a number of places, including within a radius of 300 meters of buildings of legislative, executive and judicial authorities. It is further reported that city or district authorities shall designate specific places for conducting gatherings, rallies and demonstrations. The Special Representative is aware that the Criminal Code imposes serious sanctions for violations of the rules of conducting an assembly.

Freedom of association

138. In addition to the Civil Code and the Tax Code, the main laws regulating NGOs in Azerbaijan are the Law on Non-Governmental Organizations (2000), the Law on Grants (1998, amended in 2003) and the Law on State Registration and State Register of Legal Entities of Legal Entities (2003). The latter is reportedly widely perceived as vague and confusing. As mentioned above, the Special Representative has been informed that registration is a major challenge for Azerbaijan NGOs as their applications are frequently rejected. It is reported that at least ten complaints have been lodged to the Constitutional Court by NGOs that have failed to register officially.

139. The Special Representative welcomes the fact that in accordance with the Law on NGOs, NGOs are allowed to carry out any type of activity that is not prohibited by law and that is consistent with their own Charter. However, NGOs are reportedly prohibited to participate in political elections and to provide political parties with financial and other kinds of assistance.

Based on allegations received under her mandate, the Special Representative is concerned that such legal provisions may have been used as an excuse to prevent some human rights NGOs from conducting their work without restrictions, as the line between rights advocacy and political activities may sometimes be quite blurred.

140. It has been reported to the Special Representative that following amendments to the Law on Grants which came into force in 2003, NGOs are now required to pay contributions to the State Social Security Fund. This new requirement has reportedly increased NGOs' costs substantially.

Measures taken at national level to ensure full implementation of the Declaration

141. The Government has highlighted the following steps taken in Azerbaijan to increase and facilitate the work of human rights defenders: improvement of the human rights legislation; coordination among the different departments dealing with the protection of human rights; organization of trainings and seminars for those working in the protection of human rights; and recruitment of human rights defenders when human rights issues arise and need to be resolved.

142. The Government informed that a Presidential order dated 2 February 1996 created the Commission on legal reforms, which was inter alia aimed at carrying out legal reforms with a view to guaranteeing human rights more effectively. It further informed that a significant decree on human rights guarantees was issued on 22 February 1998 and that a State Program on Protection of Human Rights was approved by Presidential decree No. 832 dated 18 June 1998. One of the reforms envisaged in this State Program was the creation of an Ombudsman, which was eventually established upon the adoption of a Constitutional law dated 28 December 2001 approved by the Parliament.

143. The Government has also informed the Special Representative of the existence of a Council of Independent Experts established by the Ombudsman. The mandate of this Council includes analyzing human rights situation in Azerbaijan, commenting on domestic legislation and international agreements and monitoring their implementation.

144. The Special Representative further notes the existence of an OHCHR technical cooperation project in Azerbaijan that focuses on strengthening capacities related to human rights mechanisms reporting and on training for selected target groups according to their needs, particularly professionals working in law enforcement and in the judiciary. The project involves cooperation with other international and national organizations working in the region, especially the OSCE, the Council of Europe and UNDP.

Communications and concerns

145. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 11 communications to the Government related to the situation of 18 individual defenders, including five women, and the reported violent dispersal of different opposition rallies which resulted in the arrest of numerous opposition activists, journalists and civil society activists. She notes that she has sent only one communication to the Government during 2005. The Special Representative thanks the Government for its responses to most of the communications.

146. Despite positive steps taken and promising measures announced by the Government, the Special Representative remains concerned about attacks on and harassment of human rights defenders and organizations. At least nine of the human rights defenders referred to in the communications were reportedly targeted in the context of the elections of 15 October 2003. Another case relates to the reported expulsion of an international team of election monitors. The Special Representative has also intervened in the case of a human rights defenders working for the promotion of religious freedoms who was accused of disturbing public order. She notes that the Committee against Torture expressed similar concerns when it examined the periodical report of Azerbaijan in 2003 (CAT/C/CR/30/1, para. 6 (e)).

147. The Special Representative is also concerned that independent journalists, including those who report human rights violations or advocate human rights reforms continue to be arrested on questionable charges, such as defamation and that serious fines have been issued against those who have expressed criticism of State officials. In this sense, she wishes to echo the preoccupation of the Human Rights Committee which, at the examination of the periodical report of Azerbaijan expressed concern at “the extensive limitations on the right to freedom of expression of the media” (CCPR/CO/73/AZE, para. 22).

148. The Special Representative notes reported obstacles in relation to registration of NGOs and notes also that the Human Rights Committee expressed concern over “reported obstacles imposed on the registration and free operation of non-governmental human rights organizations” (ibid, para. 23). In this regard, following his visit to the country in 1998, the Special Representative of the Secretary General on Internally Displaced Persons stated in his report that “[...] the legal and administrative environment in which NGOs are required to operate impedes their effective functioning and the fulfilment of their full potential. NGOs are subject to a mandatory registration process, which is cumbersome and lacks transparency, and to a high level of taxation” (E/CN.4/1999/79/Add.1, para. 55). Although new legislation has been adopted since then, some concerns persist.

149. The Special Representative is concerned with the reported use of excessive force against peaceful demonstrators. One of the cases relates to reported acts of violence against participants to a demonstration in favour of women’s rights. She also takes note of the report of the visit to Azerbaijan conducted by the former Special Rapporteur on Torture in 2000. In his report, he explained that prior to and during his mission, he received “a number of reports according to which law enforcement officials have on several occasions used excessive force, especially in the handling of demonstrations organized by political opposition parties, in particular in the context of elections” (E/CN.4/2001/66/Add.1, para. 64).

Bahrain

150. The Special Representative acknowledges the response from non governmental sources to the questionnaire transmitted for this report. She regrets that she has not received a response from the Government to the questionnaire.

The human rights defenders community

151. Bahrain was under Emergency Legislation from 1976 until 1999 when the present King succeeded his father and started liberalizing the country's political system. The National Action Charter was approved in February 2001, by a referendum. This Charter is to be considered the cornerstone of the Bahrain's political liberalization program. In October 2002, Bahrainis elected the members of the lower house of Bahrain's reconstituted bicameral legislature, the National Assembly. Political parties are currently prohibited in Bahrain, however "politically oriented societies" are allowed. The Government has informed the Special Representative that legislation is currently under consideration in the National Assembly which would allow for the full establishment of political parties.

152. According to the information received from non-governmental sources, there are some ten organizations working within the field of human rights in Bahrain. The Bahrain Human Rights Society, established in 2001, produces an annual report with recommendations to the Government on measures to be taken to improve the human rights situation in Bahrain. The Bahrain Centre for Human Rights was active until it was closed by the Government in 2004. These organizations were established with the aim of raising awareness on human rights principles through workshops, seminars and conferences. There are also issue-oriented organizations, such as the Bahrain Women Society, working specifically on the rights of women and children.

153. As of today, Bahrain does not have a national human rights institution and nor a parliamentary human rights committee. In 2004, the efforts of a Shura Council member led to the establishment of the Bahrain Human Rights Watch Society, which reportedly planned to monitor and report on the human rights situation in the country. The Special Representative would welcome further information on this initiative.

Legal framework

154. Bahrain is a State party to a number of international human rights instruments including the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. The Special Representative welcomes indications that Bahrain is in the final stages of ratifying the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The latter is a key instrument for the implementation of the Declaration on Human Rights Defenders as it guarantees those rights enshrined in the 1998 Declaration on Human Rights Defenders rights essential for defenders to carry out their work in particular freedom of opinion and expression, freedom of assembly and freedom of association.

Freedom of expression and access to information

155. The Constitution provides for the freedom of speech and freedom of the press, albeit with certain restrictions. In practice, these rights are limited in particular in relation to the media.

Freedom of assembly and freedom of movement

156. While the Constitution provides for the right to free assembly, the law prohibits unauthorized public gatherings of more than five persons and public gatherings or demonstrations must be notified to the Ministry of Interior 24 hours before they take place. The Constitution prohibits restrictions on freedom of movement, except as provided by law and judicial supervision.

Freedom of association

157. The Constitution provides for the freedom of association. However, the formation of political parties is not allowed, although the Government has permitted some political societies to run candidates. From 2001, human rights societies were allowed to be formed. The Societies Law No. 21 of 1989 prohibits any activity by an unlicensed society and the Ministry of Labour and Social Affairs, reportedly, has the right to reject the registration of any society whose services are not deemed necessary to society, are already provided by another society, are contrary to state security or are aimed at reviving a previously dissolved society. The Ministry also has the right to appoint management of the societies and to close down any society temporarily. However, the Government has informed the Special Representative that these organizations have registered with the Ministry of Justice after having been denied registration with the Ministry of Social Affairs.

158. Despite some positive developments in terms of establishment and registration of human rights organizations over the past six years, there have been reports that several organizations working on human rights issues have been denied registration. Article 29 of the Constitution requires that only duly constituted organizations and corporate bodies may address public authorities collectively, and has, reportedly, been used to hinder public petition campaigns.

159. As a whole, Bahrain's international commitments and the domestic legal framework are too inadequate to remove policies and practices that have adverse effects on the work of human rights defenders.

Measures taken at national level for the implementation of the Declaration

160. The Special Representative acknowledges the information received from the Government that the National Assembly is currently studying the establishment of a human rights committee.

161. Although she has not yet been able to confirm the trend, the Special Representative has received statements indicating that Bahrain has taken measures in the past years to improve the human rights situation on issues such as torture and arbitrary detention. Fewer steps have, reportedly, been taken to protect human rights defenders and to create an enabling environment for them to work in.

162. The Government has informed the Special Representative that Bahrain is currently in the process of establishing a national human rights institution in accordance with the Paris Principles.

Communications and concerns

163. From the establishment of her mandate to 1 December 2005, the Special Representative has sent six communications to the Government on seven individual defenders. Some communications sent concerned the closure of an NGO and most cases related to detention of or accusation against human rights defenders based on reportedly false or unfounded charges of “encouraging hatred of the State” and “distributing falsehoods and rumours”. The Special Representative acknowledges the response from the Government to most of the communications.

164. The Special Representative notes that several defenders were brought to trial for violating articles 165 and 168 of the Bahraini Penal Code for “encouraging hatred of the State” and “distributing falsehoods and rumours”. She is concerned that allegation such as these, frequently imply the risk of suppressing legitimate free speech. The Special Representative would like to remind the Government that she has already communicated her concern over detentions and trials of defenders on the basis of such allegations.

165. She also reiterates her concern voiced in one of her communication at the closing of an organization working to protect and promote human rights. On 28 September 2004, the Bahrain Centre for Human Rights (BCHR) was reportedly closed by the Ministry of Labour and Social Affairs. The official reason stated for the closure was that it was shut down in accordance with the Societies Law No. 21 of 1989. The Government stated that the BCHR had long been operating in violation of this law despite warnings. Prior to the organizations’ closure, the executive director of the centre had been taken into custody and accused, under articles 165 and 168 of the Bahraini Penal Code of “encouraging hatred of the State” and “distributing falsehoods and rumours”. In relation to this case, the Special Representative would like to remind the Government of article 5 of the Declaration which states that “for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right [...] to form, join and participate in non-governmental organizations, associations or groups”.

166. The Special Representative would like to recall the concluding remarks of the Committee Against Torture, stating concern over information received regarding limits on human rights non-governmental organizations to conduct their work, in particular regarding activities relevant to the Convention [against torture], within the country and abroad (CAT/C/CR/34/BHR).

167. The Special Representative emphasizes the importance of implementing legislation protecting freedom of association and freedom of speech in order to provide defenders with the appropriate space to carry out their activity. She reiterates her views that genuine freedom of speech plays a pivotal role in the achievement of the goals that the Bahraini Government has set for itself in relation to human rights. She once again invites the Government to review the relevant regulations, to make sure that Bahrain’s legislation adequately protects the right of persons freely to organize in order to protect human rights.

Bangladesh

168. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

169. The human rights defenders community in Bangladesh is comprised by people from several professional and otherwise backgrounds, such as journalists, lawyers, students, and NGO staff. Defenders are particularly active in the fields of migrants' rights, indigenous' rights, minorities' rights, and peace activism.

Legal framework

170. Bangladesh is party to most of the core international human rights instruments, including the International Covenant on Civil and Political Rights. It has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which it signed in 1998, the two option protocols to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

171. In general the legal framework of Bangladesh is considered by the Special Representative to be very restrictive in terms of the laws and provisions relevant for the work of human rights defenders.

Freedom of expression

172. Article 39 of the Bangladesh Constitution states: “(1) Freedom of thought and conscience is guaranteed. Freedom of thought and conscience, and of speech, (2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence: (a) the right of every citizen of freedom of speech and expression; and (b) freedom of the press, are guaranteed.”

173. Bangladesh Penal Code foresees severe penalties, including life imprisonment, for those who bring or attempt to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government, disaffection including disloyalty and all feelings of enmity. Concerning defamation, the Penal Code punishes it with jail terms, fine, and closure of the publication. The Special Representative has been informed that in practice, whenever a case is filed under Section 501 of the Penal Code on defamation, the court issues an arrest warrant pending investigation. Further, according to Section 505A of the Penal Code, statements or reports that are likely to be prejudicial to the interest of the security of the country with foreign states shall be punished with up to seven-year imprisonment, a fine, or both. Sections 292 and 293 (offences relating to obscenity) and Section 295A (deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious feelings) are reportedly restrict the right to freedom of expression. The Special Representative has also been informed that the 1974 Special Powers Act, which allows for 30 days detention without trial, renewable for 90 days, has been used against outspoken journalists.

Right to access to information

174. The 1923 Official Secrets Act restricts access to information related to “national security”. This law has reportedly been used by successive Governments to classify many

documents as secret. Free flow of information is also restricted in other laws, such as Section 19 of the 1979 Government Servants (Conduct) Rules and the 1869 Post Office Act, as amended in 1973).

Freedom of association

175. The 1861 Societies registration Act, the 1882 Trust Act, the 1962 Waqf Ordinance and the 1913 Companies Act, as amended in 1994) provide for legal status of organizations. The 1961 Voluntary Social Welfare Agencies (Registration and Control) Ordinance, the 1978 Foreign Donations (Voluntary Activities) Regulation Ordinance, and the 1982 Foreign Contributions (Regulation) Ordinance govern relationships between the NGOs and the State.

176. NGOs are regulated by an NGO Affairs Bureau within the office of the Prime Minister. No person or organization can receive foreign funds without the approval of the Government, through the NGO Affairs Bureau. The latter may at any time inspect the accounts and documents of NGOs. According to non-governmental sources, the NGO Affairs Bureau, while auditing and inspecting the accounts of NGOs uses tactics of delay and harassment to hamper the activities of NGOs.

Measures taken at national level to ensure the implementation of the Declaration

177. The Special Representative regrets that she has not received information on the policies and programs adopted by relevant authorities in Bangladesh to ensure an effective implementation of the Declaration.

Communications and concerns

178. Since the beginning of her mandate to 1 December 2005, the Special Representative has sent 14 communications to the Government on 25 individual defenders, including a woman, and at least one non-governmental organization. The Special Representative acknowledges the prompt and detailed response from the Government to most of the communications. Three responses were notifications that the communication had been forwarded to the relevant authorities, and she is still awaiting further response.

179. Concern has been expressed that the provisions mentioned in relation to the protection of basic freedoms in the Constitution fall below international standards, which do not accept “friendly relations with other States” and “contempt of court” as possible grounds for restricting freedom of expression. In addition, international guarantees require any restriction to be “necessary” rather than “reasonable”, as the Constitution does. The Special Representative is further gravely concerned that freedom of expression appears to be limited by a series of stringent pieces of legislation, such as the Printing Presses and Publications (Declaration and Registration) Act, which gives the District Magistrates (DM) the authority to issue or cancel publication licenses, allows police “and any other person empowered in this behalf by the Government” to seize any unauthorized news-sheet or unauthorized newspaper and the printing press believed to have produced them, and makes punishable any criticism of Government actions.

180. In a context of reported deep rooted political polarisation, human rights defenders that are more vocal about human rights abuses are reportedly perceived by the Government as being linked to the opposition and their criticism and their claims are dismissed as such. Following official speeches given by high-rank Government officials, some NGOs have been charged with mismanagement of their funds. They have been placed under investigation and their funds have reportedly been frozen. NGOs seeking the empowerment of women or minorities have reportedly been particularly targeted.

181. The Special Representative is extremely concerned that human rights defenders continue to receive death threats and be at risk of physical attacks, including assassinations, from ruling party activists, members or supporters of Islamic groups and criminal armed gangs. The Special Representative has received disturbing reports that the authorities have persistently failed to respond adequately to the need to protect individuals at risk, investigate the violations committed against them, bring perpetrators to justice and provide victims with reparation. The cases she has sent communications on in connection with these concerns include the murder of one human rights defender, the stabbing of a journalist, serious harassment, threats and assaults against human rights defenders and the detention without medical treatment of a NGO activist. The information gathered by the Special Representative suggests that human rights defenders that are at higher risk of retaliation are those who criticize the authorities and members of the ruling parties for human rights abuses; those who reveal links between politicians, police and criminal armed gangs; those who reveal corruption in the ruling administration and law enforcement personnel; those who work for the enhancement of minorities' rights; and those who criticize human rights abuses by Islamic parties. Bangladeshi journalists have denounced human rights abuses, especially in remote rural areas or areas to which NGO delegates cannot travel or security reasons, and have consequently faced serious threats and attacks. She would like to remind the Government about its responsibilities, according to the Declaration, to "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".

182. The Special Representative notes that the number of cases reflected in the communications sent to the Government substantially increased in 2004, and she is concerned in particular about the number of cases of alleged restrictions on the right to freedom of expression and the reported arrests of defenders in connection with them publishing articles or otherwise disseminating their views on human rights issues. She would like to remind the Government about article 6 of the Declaration which states that everyone has the right "freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms".

183. The Special Representative is extremely concerned by the fact that in most of the cases where she has sent communications to the Government, the alleged perpetrators of the violations against human rights defenders are the authorities. She is also concerned about the arrest of human rights defenders on reportedly unsubstantiated criminal accusations. Some of them have been subjected to torture while in detention.

184. The Special Representative also wishes to express her concern about reported attempts by individuals or groups connected to the ruling parties or to influential politicians from the opposition parties to curtail fundamental rights to freedom of expression and to equality before the law, including severe pressure placed on Bangladeshi journalists to refrain from reporting on human rights abuses. She notes in this regard that eight of her communications to the Government of Bangladesh have been sent jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

Belarus

185. The Special Representative thanks the Government of Belarus, the Office of the United Nations Resident Coordinator in Belarus and international human rights organizations for their respective responses to the questionnaire transmitted for the preparation of this report.

The human rights defenders community

186. After seven decades as a constituent republic of the former USSR, Belarus attained its independence in 1991. The Constitution was adopted in 1994 and amended following a referendum held on 24 November 1996 which reinforced the powers of the President of the Republic. In the past years, the human rights situation in the country has raised serious concerns.

187. In 2004, the United Nations Commission on Human Rights appointed a Special Rapporteur to examine and report on the situation of human rights in Belarus. In his first report to the Commission, he concluded that “the continuous deterioration of the situation of human rights is a matter of grave concern. He also noted that the wider underlying causes would need to be addressed through deep reform of the political system and a restructuring of the society, identifying the authoritarian nature of the regime, the lack of a real and strong civil society and the issue of national identity as major factors. Moreover, he suggested that the geopolitical context is an element that could influence the potential for transformation and the situation of human rights in the country.

188. The number of human rights NGOs in Belarus is reportedly very limited, mainly because of severe restrictions imposed on civil society. According to the information provided by the Office of the United Nations Resident Coordinator, the Belarusian Helsinki Committee is the only nation-wide human rights organization having legal status. Another leading national human rights NGO had its registration cancelled by the Supreme Court in October 2003 for its alleged participation in observation of the presidential elections in 2001. Some other NGOs are specialized in defending specific rights.

Legal framework

189. Belarus is a State party to most of the main international human rights instruments, including the International Covenant on Civil and Political Rights. It has not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In accordance with

article 8 of the Constitution and the 1998 International Treaties Act, norms of international treaties become part of current law and can be directly invoked in courts. The legal framework in Belarus, nevertheless, remains seriously deficient in guaranteeing protection of the work of human rights defenders.

190. The Government, in its response to the questionnaire, assured the Special Representative that all the basic civil, social, economic, cultural and political rights which have been proclaimed in international legal instruments, including those contained in the Declaration, have been enshrined in domestic legislation.

Freedom of expression

191. Despite article 33 of the Belarusian constitution guaranteeing the right to freedom of expression, the scope of this right is severely restricted by a number of defamation provisions of the Criminal Code, including article 188 (defamation), article 189 (insult), article 367 (defamation in relation to the President), article 368 (insult to the President) and article 369 (insult to a government official). These articles foresee sentences of up to five years' imprisonment. According to the information received, in the past those accused of slander and insult to the President were usually charged under the Administrative Code. But they are now increasingly charged under the Criminal Code, which bears heavier sentences.

192. On 2 December 2005, the Chamber of Representatives adopted amendments to the Criminal Code and the Code of Criminal Procedure. These amendments introduce criminal sentences for the illegal organization of activities by an association or a foundation, or participation in their actions (art. 1931), the criminalization of funding for, and the training of any other type of educational activity, including the participation in "mass activities" (art. 293), and the criminalization of funding and training of "group activities which seriously violate public order (art. 342), the criminalization of providing "false information" to a foreign State or international organization, concerning the political, economic, military or international situation of the Republic of Belarus, as well as on the judicial situation of Belarusian citizens, the criminalization of providing information to foreign States or international organizations, when such information is detrimental to the internal security, sovereignty or territorial integrity of Belarus, with harsher prison sentences if such information is distributed through the mass media. In view of the fact that the terms 'mass activity' and 'group activity' are not defined, concern has been expressed that these articles could potentially lead to arbitrary and unjust interpretation, to the detriment, particularly, of members of independent organizations and human rights defenders. It could also be used to penalize those reporting on human rights situation, where the Government disagreed with their assessment.

Freedom of Assembly

193. The Law on Mass Events and other laws and regulations strictly control the organization of public protests and meetings. Amendments made to the Law on Mass Events in 2003 broadened the definition of mass events by removing terms such as "public". According to the information received, the only public form of unsanctioned picket or demonstration for which people are not at risk of arrest, are those based on a 2003 Supreme Court decision allowing people to form a line, standing next to each other holding portraits. However, even in these cases, peaceful demonstrators have suffered from harassment and ill-treatment by police.

Freedom of association

194. The right to freedom of association is enshrined in article 36 of the Constitution of Belarus and Article 2 of the Law on Public Association (adopted in 1994 and amended in 1995, 1999, 2001 and 2003). However, some current national laws and practices reportedly hamper people's ability to exercise their right to freedom of association. According to the information received, human rights organizations must register with the Belarusian authorities. They receive official approval to lawfully function only if they fulfil the requirements as set out in Presidential Decree No.2 of January 1999 "about several measures on regulating the activities of political parties, trade unions and other public associations". After being officially registered, NGOs, including human rights organizations, must abide by a set of strict guidelines. The authorities can close down an organization after issuing it with a maximum of two "warnings" that they have violated the guidelines in any one-year period. Article 22 of the Law on Public Associations states that public associations can only represent and defend the rights and legal interests of its members, and not third parties. A guideline was introduced in June 2003, which enables a court to close down a public organization immediately if it breaches legislation on public meetings.

195. The Special Representative has further been informed that in March 2005 the Ministry of Justice issued new rules on the registration of political parties, trade unions and other public organizations which stipulated that registration of an organization could be cancelled if it did not execute all requirements and requests within one month. An earlier order by the Ministry of Justice had stipulated that political parties, trade unions and NGOs were required to move all offices from residential premises by 1 February 2005. In July, a Presidential Decree was issued which limited the possibility of financial support from Belarusian organizations and donors, and most recently, on 17 August 2005, President Lukashenka signed a Presidential Decree regulating the reception and use of foreign funding by organizations and individuals. It forbids the use of foreign funding for anti-constitutional ends, including for "the seizing and overthrowing of the government, for interference in the internal affairs of Belarus, for the encouragement of such actions that promote war or violence for political ends".

196. According to information received, on 29 June 2005, a new edition of the law "about public associations" was adopted by the Chamber of Representatives of the National Assembly, requiring the registration of all public organizations and unions along with full information regarding numbers of members, structures and measures held during each year. Information is to be provided every year by 1 March. Under the new law, the activity of public associations and their unions can be suspended for up to six months on court decision, public associations can be liquidated for a single violation of the law on mass measures and also for violations of the regulations concerning the use of free foreign aid.

Measures taken at country level for the implementation of the Declaration

197. Belarus has no National Human Rights Institutions or Office of Ombudsman. Similarly, there is no National Human Rights Action Plan to the knowledge of the Special Representative.

198. The Special Representative notes with interest that UNDP is carrying out activities aimed at fostering partnerships among civil society and government, and to build the capacity of civil society to address the development issues faced by the country. UNDP indicated to the Special

Representative that civil society organizations have been traditional partners for them in project implementation in those spheres. International NGOs have also been important donors to UNDP program. The United Nations Office in Belarus also reported publishing and distributing 200,000 copies of the Declaration on Human Rights Defenders.

Communications and concerns

199. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 17 communications to the Government on 26 individual defenders, tens of unnamed defenders arrested during demonstrations, and a large number of non-governmental organizations. Seven cases relate to situation of women human rights defenders or activities related to the promotion and protection of women human rights. While the Special Representative thanks the Government for its responses to most of the communications sent since 2002, she notes with concern that in many cases Government's responses, while justifying its actions, confirmed the veracity of the allegations. She would like to reiterate her concerns that some internal legislation and administrative practices may be restricting human rights activities protected under the Declaration on human rights defenders. She would also like to reiterate that her concerns were not dispelled by the Government's response to cases of NGOs being closed during 2004.

200. The Special Representative has notices a serious deterioration in the environment for the functioning of human rights defenders in the past six years, particularly for the freedom of association. Action based on peaceful political beliefs and critical statements about the human rights situation has, reportedly, become almost impossible. Harassment, intimidation, excessive force, mass detentions and imprisonment are alleged to be increasingly used by the State authorities as methods to quash any civil or political dissent.

201. The Special Representative would like to express serious concern about the fact that in all the communications she has sent to the Government of Belarus over the past six years, the alleged perpetrators of violations against human rights defenders have been Belarusian authorities such as the police, national or local administration, or the judicial system. She would like to remind the Belarusian authorities that the State not only has the prime responsibility to promote and protect human rights but also to ensure conditions that allow the enjoyment of these rights in practice. For this purpose, States are obliged to adopt all the necessary legislative, administrative or other measures (art. 2 of the Declaration).

202. The Special Representative would like to express concern over the use of restrictive legislation, and frequent amendments through Presidential Decree, to hamper defenders' rights to freedom of expression, assembly and association. These concerns are shared by other international human rights mechanisms, including the Working Group on Arbitrary Detention, upon its visit to the country in 2004 (E/CN.4/2005/6/Add.3, para. 80). In addition, in August 2004, the Committee on the Elimination of Racial Discrimination expressed concern "over the restrictions placed by the authorities on civil society organizations" (CERD/C/65/CO/2, para. 15). In May 2002, the Committee on the Rights of the Child noted "with deep concern that nongovernmental organizations are subjected to difficult procedures for registration and that foreign funding in particular is restricted, which may limit their effectiveness and independence" (CRC/C/15/Add.180, para. 22).

203. The information gathered by the Special Representative with regards to freedom of expression and opinion suggests that increased intolerance of public criticism or dissent is making circumstances for human rights defenders in Belarus very difficult. Controversial legislation to restrict the possibilities for NGOs, political parties, trade unions, journalists and individuals to express their peaceful opinion is, reportedly, widely used by the Government. This can be illustrated by the fact that seven of the communications sent during the past six years were joint communications with the Special Rapporteur on the Promotion and Protection of the rights to Freedom of Expression and Opinion.

204. In terms of freedom of association, while recognizing that it is within the ambit of states' authorities to regulate the operation of NGOs and public associations, the Special Representative would like to reiterate her grave concern, previously stated in a communication transmitted to the Government on 28 July 2005, that the framework laid out in the amended law "about public associations" may result in the prohibition of legitimate activities for the defence of human rights in Belarus and lead to the criminalization and closure of many existing human rights and civil society organizations. The Special Representative assesses that this has had disastrous effects on the environment for human rights defenders. Several of her communications throughout the six years relate to the reported official closure of a substantial number of human rights NGO and to warnings reportedly issued to other NGOs. One communication related to proposed changes in the legal framework that was said to undermine the work of NGOs.

205. Dubious criminal charges against NGOs have also resulted in the closing down of NGOs and the imprisonment of defenders. The Special Representative has sent communications on this issue concerning at least ten NGOs. These NGOs have been threatened with closure or they have been ordered to close down on the basis of accusations such as not using quotation marks around the name of the organization on letterheads, for not having notified the authorities about a change of address, and for using foreign funding to buy office equipment.

206. Available information also suggests that the right to freedom of assembly has become increasingly restricted. The afore-mentioned amendment to the Law on Mass Events in 2003, has reportedly led to convictions for holding meetings in private homes. Many peaceful protesters have also been reportedly arrested in accordance with the Code of Administrative Infringements. The Special Representative has sent communications on more than 40 defenders arrested in relation to meetings or peaceful demonstrations throughout the six years of her mandate.

207. The Special Representative would like to remind the Government that concerns similar to those expressed by her have also been expressed by the Special Rapporteur on the situation of human rights in Belarus. He has expressed concerns on the restrictive environment that human rights defenders operate in, in Belarus. He has stated specific concerns over several issues, such as cumbersome registration procedures, the Government's refusal to register or re-register NGOs, the deregistration of NGOs on "frivolous grounds", restriction of access to funding from foreign sources, excessive restrictions on freedom of expression and opinion, and several other serious accusations (E/CN.4/2005/35, paras. 43-54). In his report, he also devoted three sections to freedom of expression, freedom of assembly and freedom of association and gave account on

attacks on human rights defenders. (E/CN.4/2005/35). The Special Representative notes with regret that the Government of Belarus has not responded favourably to the request to visit the country made by the Special Rapporteur and has, generally, not wished to cooperate with him in the fulfilment of his mandate.

208. The Special Representative invites the Government to review the legal framework of Belarus in order to ensure conformity with the Declaration. She reiterates her offer to the Government to provide any support it may find useful in crafting balanced legislation to regulate the freedom of association without restricting the legitimate work of defenders in defence of human rights in accordance with the Declaration.

209. The Special Representative regrets that the Government has not extended to her an invitation to visit the country on an official mission, despite her repeated requests and despite the fact that the Commission on Human Rights in its resolutions 2004/14 and 2005/13, “*Insists* that the Government of Belarus cooperate fully with all the mechanisms of the Commission, including by extending invitations to (...) the Special Representative of the Secretary-General on the situation of human rights defenders”.

Bolivia

210. La Representante Especial agradece al Gobierno su respuesta al cuestionario que envió para la elaboración de este informe.

La comunidad de defensores de los derechos humanos

211. La Representante Especial nota del cambio del Gobierno en enero de 2006 con la elección del Presidente Evo Morales a través de un periodo de agitación social e inestabilidad política en Bolivia.

212. El Gobierno informó que en Bolivia existe una variada comunidad de defensores de derechos humanos que no está únicamente compuesta por ONG sino que también integran a movimientos sociales y a personas individuales como abogados, líderes indígenas, periodistas y sindicales. El Estado no cuenta con un registro oficial sobre el número y el mandato de todas las ONG. El Gobierno opina que se requiere incrementar la transparencia en el manejo de los recursos que las ONG reciben de la cooperación internacional y el impacto que éstas tienen en cuanto a los derechos humanos. También sería necesario crear normas, sistemas, autoridades y políticas de protección de los derechos de los defensores de los derechos humanos.

Marco jurídico

213. Bolivia es parte de los principales instrumentos internacionales de derechos humanos, incluido el Pacto Internacional de Derechos Civiles y Políticos. Todavía no ha ratificado el Segundo Protocolo Facultativo al Pacto Internacional de Derechos Civiles y Políticos y el Protocolo Facultativo de la Convención contra la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes. A nivel regional, Bolivia también es parte de la Convención Americana sobre Derechos Humanos.

214. La Representante Especial no ha podido recoger suficiente información para llevar a cabo una evaluación en profundidad relativa al marco jurídico que gobierna las actividades de los defensores de derechos. La información disponible demuestra que el ordenamiento jurídico boliviano contempla derechos y garantías a través de la Constitución Política del Estado y el Código de Procedimiento Penal de manera general para todos los ciudadanos sin ningún tipo de discriminación. El artículo 7 de la Constitución garantiza, al igual que la Declaración sobre los Defensores de los Derechos Humanos, los derechos a la libertad de asociación, la libertad de reunión pacífica, y el derecho a formular peticiones individual y colectivamente.

Medidas tomadas a nivel nacional para la implementación de la Declaración

215. Como ha informado el Gobierno, en Bolivia todavía no se ha creado un órgano estatal específico que se encargue de la protección de los defensores de derechos humanos. Tampoco se cuenta aún con normativa legal específica para proteger a los defensores de los derechos humanos cuando se encuentran en situación de peligro.

216. Por esta razón y a la luz de los derechos y garantías contenidos en el ordenamiento jurídico boliviano, con el fin de dar cumplimiento a la Declaración sobre los Defensores de los Derechos Humanos, el Vicepresidente de Régimen Interior dependiente del Ministerio de Gobierno, a través de su Dirección General de Seguridad Ciudadana y Prevención del Delito está trabajando sobre un Anteproyecto sobre Defensores de Derechos Humanos. Una vez culminado, éste pasará a consideración del Consejo Interinstitucional de Derechos Humanos para su aprobación. Dicho órgano fue creado por Decreto Supremo No. 27420 en marzo de 2004 y establece un mecanismo de elaboración de políticas públicas en derechos humanos. Dentro de este esquema, el Consejo Interinstitucional es el órgano responsable de la elaboración e implementación de las señaladas políticas públicas. Este proceso se ha denominado Estrategia Nacional de Derechos Humanos.

Motivos de preocupación y Comunicaciones enviadas por la Representante Especial

217. La Representante Especial se encuentra alentada por las iniciativas relativas, por parte del Gobierno, a la elaboración de una Estrategia Nacional de Derechos Humanos y el Anteproyecto sobre Defensores de Derechos Humanos. Espera que estas medidas facilitaran el trabajo de los defensores de los derechos humanos y contribuirán a la implementación de la Declaración sobre los defensores de los derechos humanos.

218. Sin embargo, permanece preocupada por persistentes casos de difamación y campañas de descrédito contra defensores de derechos humanos así como por los informes de ataques y amenazas contra la vida y la integridad física de los defensores en particular contra aquellos defensores que trabajan a favor de los derechos humanos de los campesinos y de los indígenas.

219. Estas preocupaciones están reflejadas en las nueve comunicaciones que la Representante Especial ha enviado al Gobierno desde el inicio de su mandato y hasta el 1 de diciembre de 2005, relativas a 19 nueve defensores, entre las cuales dos mujeres y una organización de derechos humanos. Entre estas personas se encuentran igualmente dos representantes de la Defensoría del Pueblo.

220. La mayoría de estos casos se refiere a personas e instituciones que trabajan para la promoción y defensa de los derechos humanos de las comunidades indígenas y campesinas. Según la información transmitida, oficinas de ONG que trabajaban por los derechos de los indígenas han sido allanadas y activistas de los derechos humanos han sido amenazados, intimidados, detenidos y agredidos. A este respecto, la Representante Especial quisiera referirse a las preocupaciones expresadas en 2003 por el Comité para la Eliminación de la Discriminación Racial por “los informes de que los defensores de derechos humanos que prestan asistencia a los miembros de grupos indígenas en conflictos sobre la tierra siguen siendo amenazados y hostigados por agentes de la policía, especialmente en la región del Chapare” (CERD/C/63/CO/2, párrafo 14).

221. La Representante Especial también intervino juntamente con varios titulares de los mecanismos especiales de la Comisión de Derechos Humanos, a través de llamamientos urgentes y un comunicado de prensa, en relación con las manifestaciones y bloqueos que tuvieron lugar en distintas partes del país en septiembre de 2003 en las que decenas de personas perdieron la vida. La Representante Especial nota que el Gobierno todavía no ha contestado a todas sus comunicaciones y le invita a proporcionarle información sobre todos los otros casos transmitidos a lo largo de su mandato.

Bosnia and Herzegovina

222. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she addressed to it in view of the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

223. Bosnia and Herzegovina is a post-conflict society whose main human rights include the prosecution of war criminals, the fate of disappeared persons, the status of national minorities, the situation of refugees and internally displaced persons, and the trafficking in human beings.

224. The Special Representative regrets that she does not have enough information at her disposal to offer a description of the human rights defenders community. Lack of information is a concern because a comprehensive assessment cannot be made, and may indicate that human rights defenders have difficulty or lack of capacity to communicate. Although there are no indications that domestic legislation or national practices and trends curtail the rights and freedoms of human rights defenders, the Special Representative has received occasional allegations on attacks and threats against human rights defenders.

Legal framework

225. Bosnia and Herzegovina is party to most of the main international human rights instruments, including the International Covenant on Civil and Political Rights. It has not yet acceded to the Optional Protocol to the Convention against Torture and Cruel, Inhuman and Degrading Treatment or Punishment. Bosnia and Herzegovina has ratified relevant regional human rights treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms.

226. The Constitution of Bosnia and Herzegovina and the Constitutions of the Entities guarantee the right to freedom of association. The Law on Associations and Foundations adopted in 2001 provides the right of public associations and NGOs to register for activities within the territory of Bosnia and Herzegovina. The Ministry of Justice is responsible for the implementation of this law.

Measures taken in the country for the implementation of the Declaration

227. The Special Representative regrets that she has not received information on the policies and programmes set up in Bosnia and Herzegovina to ensure an effective implementation of the Declaration.

Communications and concerns

228. From the establishment of her mandate to 1 December 2005, the Special Representative has sent one communication to the Government concerning a human rights defender who was reportedly assaulted and beaten by unknown persons and another communication regarding forced entry into the office of an NGO and removal of material from there. The Special Representative regrets that the Government has failed to respond to either of the communications.

229. Despite the fact that the law on freedom of association is in compliance with international human rights standards, the Special Representative is concerned by reports that NGOs have encountered numerous obstacles when trying to register under the provisions of such a law.

230. The Special Representative notes that the Committee on the Rights of the Child in June 2005, following the consideration of the State's periodical report, that there are no permanent channels of communication between the Government and the NGO sector. (CRC/C/15/Add.260, para. 20).

Botswana

231. The Special Representative thanks the Government of Botswana for providing her with a response to her questionnaire distributed for the preparation of the present report.

The human rights community

232. According to the Government response, there are several human rights defenders' organizations in Botswana. Botswana defenders are involved in a variety of issues such as indigenous' rights, women's rights, HIV and AIDS, children's rights, domestic workers' rights, rights of refugees and asylum-seekers, LGBT issues, and campaigning against the death penalty. The Government has further informed the Special Representative that journalists play a critical role in raising awareness about human rights issues among the public opinion. A number of private lawyers are also reported to pursue individual cases related to human rights violations before domestic courts.

233. The Government has also mentioned the Office of the Ombudsman, the High Court and the Department of Women Affairs as institutions that carry out efforts for the promotion and protection of human rights.

Legal framework

234. Botswana is party to some of the core international human rights treaties, including the International Covenant on Civil and Political Rights (though not its two Optional Protocols), the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Elimination of All Forms of discrimination Against Women, the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families. At the regional level, Botswana is party to the African Charter on Human and Peoples' Rights.

235. As the Government explained in its initial report submitted to the Committee on the Elimination of Racial Discrimination "Botswana has a dual legal system, comprising customary law and what is usually termed received law (or common law). Customary law is the law of any particular tribe or tribal community in so far as it is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice. Customary law is not written and has variations among different communities. The received law consists of English law and Roman Dutch law as it was in force at the Cape on 10 June 1891 and as amended by statutes and interpreted by the Courts. The two systems co-exist although there are differences in the law and its application [...]. The effectiveness of the two systems and the rules that guide them and the interplay of the system both at the cultural and legal levels have an impact on the way rights are protected and promoted in Botswana" (CERD/C/495/Add.1, paras. 82-91).

Freedom of expression and access to information

236. Section 3 of the Constitution recognizes and guarantees the entitlement of everyone to fundamental rights and freedoms of the individual. Sections 4 to 16 relate to the protection of specific rights, including freedom of conscience, freedom of expression, freedom of assembly and association and freedom of movement.

Freedom of assembly and movement and freedom of association

237. The Constitutional provisions grant the freedom to assemble and associate with others and to form or belong to trade unions and other associations for the protection of rights.

238. In addition, the Societies Act of 1972 provides for the registration of societies. According to the Government, in terms of the interpretative section of the Act, a society includes any club, company, partnership or association of ten or more persons, whatever its nature or objects. Section 5 of the Act provides that for a society to be deemed to be established in Botswana it must have at least an office bearer or a member resident in Botswana. Section 7 of the Act lays down ground upon which society may be refused registration but none of the reasons relates to communication and/or association with non-governmental or intergovernmental organizations.

239. According to the information received from the Government, human rights defenders are free to associate and communicate with organizations both within and outside the country. In addition, national law only requires that those who want to hold public meetings in public places even for purposes of staging a demonstration must secure permission. The holding of private

meetings between organizations or individuals is unregulated and therefore not prohibited. It also indicated that although there is no a law that specifically allows for external sourcing of funds nor one that proscribes it, the Government does not place obstacles to such external sourcing of funding.

Measures taken at national level to ensure the implementation of the Declaration

240. The Government informed that the Office of the Ombudsman, the High Court and the Department of Women Affairs contribute to the promotion and protection of human rights.

241. The Government also informed that consultations are held with human rights defenders prior to the preparation of State human rights reports, notably reports submitted to United Nations bodies. UNDP reportedly assists in the preparation of these reports both financially and by providing resource persons.

Communications and concerns

242. The Special Representative has not sent any communications to the Government of Botswana over the past six years. She would welcome more information from human rights defenders on their work to promote and protect human rights, and obstacles they might face in their work. This would allow her to make a more comprehensive assessment of their situation.

243. Concerning the Office of the Ombudsman, the Special Representative notes that in November 2004, the Convention on the Rights of the Child expressed concerns “at the fact that the Office lacks the necessary human and financial resources for proper functioning” (CRC/C/15/Add.242, para. 16). She would appreciate receiving updated information from the Government concerning this issue.

Brazil

244. The Special Representative is very grateful to the non-governmental sources that have provided her with information on the situation of human rights defenders in Brazil. She regrets that the Government has not replied to her request in view of the preparation of the present report. The Special Representative visited Brazil from 5 to 21 December 2005. Her preliminary findings from her visit will be presented in a separate addendum to the forthcoming session of the Commission on Human Rights.

The human rights defenders community

245. The fight against dictatorship (1964-1985) greatly contributed to building awareness of civil and political rights and extensive networks of NGOs were formed. Human rights organizations continued to proliferate with the beginning of the political openness, and in particular in the 1990s. While organizations initially concentrated their efforts in reporting violations of civil and political rights, they gradually adopted more assertive way such as pressuring relevant authorities to adopt concrete public security policies in relation to human rights. They have also expanded the scope of their mandate and have incorporated diverse human rights causes, particularly in relation to economic, social and cultural rights and to discrimination based on ethnicity, perceived sexual orientation and gender.

246. Brazilian defenders come from varied backgrounds including human rights activists, members of the clergy, relatives of victims, community leaders, trade unionists, environmental activists, students, academics, lawyers, journalists and some civil servants. While many defenders work within civil society organizations, much of the human rights defenders activity in Brazil is rooted in grassroots social movements which have organized at the state and federal level to enhance their impact on the local and national policies. In view of the growing number of NGOs and the diversity of issues they deal with, several thematic human rights networks have been put in place in particular, the Special Representative notes the existence of a national network on human rights defenders.

247. Social movements include amongst others those for the rights of landless rural workers, peasants, indigenous communities and people of African descent, LGBT persons, the homeless, and people affected by dams.

248. In addition, universities have recently started to include human rights in their agendas and curricula, playing an increasing role in the production of reliable statistics and research studies.

Legal framework

249. Brazil is party to the main international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). The Special Representative encourages its Government to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the two Optional Protocols to the ICCPR and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Brazil is also party to relevant regional treaties, such as the American Convention on Human Rights.

250. Article 5 of the 1988 Brazilian Constitution provides that “provisions defining fundamental rights and guarantees are applicable immediately” and that “the rights and guarantees established in this Constitution do not preclude others arising out of the regime and the principles adopted by it, or out of international treaties to which the Federative Republic of Brazil is a party”.

Measures taken at national level for the implementation of the Declaration

251. The Special Representative has received with interest information according to which in May 2003 the Federal Government created a Working Group to discuss proposals for the creation of a permanent policy for the defence and protection of human rights defenders. Representatives of civil society also participated in these discussions. In July 2004, during a meeting with the Human Rights Defense Council of the Ministry of Justice (*Conselho de Defesa dos Direitos da Pessoa Humana*, CDDPH), the Working Group recommended to set up a National Program for the Protection of Human Rights Defenders (*Programa Nacional de Proteção dos Defensores de Direitos Humanos*). A National Coordinating Committee for the Program, linked to the CDDPH, was subsequently established with a view to developing the methodological approach of the Program as well as the implementation strategy of state-level committees.

252. Non-governmental sources express the regret that despite its official launching in October 2004, there had been little advance in the implementation of this Program since then. It is the opinion of several civil society organizations that the Program was too premature as it was first necessary to reach an agreement on the methodology to follow, to create a structure within the Secretariat in order to make the implementation of the recommendations of the Program possible and to allow it sufficient resources. Concern has also been expressed that the Program transferred responsibility from federal to state authorities, often the very source of the threat. Civil society representatives have also expressed their regret about the reportedly minor role that they have been allowed to play in the implementation of the Program.

253. The Special Representative has further been informed that in April 2005, the Pará State Coordinating Committee presented a proposal for the structuring and management of the Program. This proposal requested resources and support from the federal government in order to be put in place. Non governmental sources, reported that the State of Pará has offered police protection to a number of defenders, outside of the guidelines foreseen in the original conception of the National Protection Program with policemen allegedly not having received adequate training to protect defenders.

Communications and concerns

254. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 22 communications to the Government on 34 individual defenders, including seven women. She has also intervened in the case of members of at least five human rights entities or communities. Most of the communications relate to harassment and death threats against human rights defenders and their relatives. Eleven cases relate to the reported killing of human rights defenders. The Special Representative regrets that the Government has not yet responded to many of her communications.

255. The Special Representative shares the concern expressed by the Human Rights Committee upon considering the second periodic report of Brazil in October 2005, about “the widespread reports and documentation of threats and murders directed against rural leaders, human rights defenders, witnesses, police ombudsmen and even judges” (CCPR/BRA/CO/2, para. 13 - advanced unedited version).

256. The Special Representative is extremely concerned at attacks against the life and personal integrity of Brazilian human rights defenders. She notes with concern the high number of threats against defenders which against the background of past killings result in a climate of fear in the community.

257. The Special Representative is also concerned about information attesting to the criminalization of social action by human rights defenders. She notes that human rights defenders have been subject to unfair and malicious prosecution, repeated arrests and vilification as retaliatory action by state as well as by powerful and influential non-state entities. Leaders and supporters of social movements, in particular, have suffered and are placed at serious risk for activities in defence of human rights. Nevertheless, in certain instance even government functionaries performing their tasks have not been safe. In particular, the Special Representative received reports of labour inspectors and civil servants who were targeted.

258. She also notes, with grave concern, that peaceful public action for defence of human rights has frequently been met with disproportionate use of force by security forces in particular the state military police.

Bulgaria

259. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

260. The Special Representative regrets that she does not have sufficient information at her disposal to offer a description of the human rights defenders community in Bulgaria.

261. Bulgaria is a candidate to become a member of the European Union. The European Commission's regular report on Bulgaria highlights shortcomings in the use of force by law-enforcement officials, poor conditions in prisons and in social care homes, and deficiencies in the provision of legal aid in criminal processes, in children's rights and in the integration of the Roma minority. Concern has also been expressed in relation to freedom of the media. The Government has assured the Special Representative that the Bulgarian authorities have submitted detailed information on all issues raised and on the progress achieved so far in implementing the recommendations of the European Commission.

Legal framework

262. Bulgaria is Party to the main international human rights instruments, with the exception of the Optional Protocol to the Convention against Torture and Cruel, Inhuman and Degrading Treatment or Punishment and the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families. Bulgaria has also ratified relevant regional human rights treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms.

263. According to the Constitution, international instruments to which Bulgaria is a party constitute an integral part of the domestic legislation and have priority over those domestic provisions that might contravene them.

Freedom of assembly

264. Article 43 of the Constitution guarantees the right to freedom of assembly. Further legislation that regulate issues related to the freedom of assembly are the Law on gatherings, meetings and manifestations, the Law on the Non-Profit Corporate Bodies, the Law on local self-governance and local administration, the Law on Religious Denominations and the Law on Political Parties. Other regulations by regional competent bodies facilitate the full enjoyment of the freedom of assembly.

Measures taken at national level for the implementation of the Declaration

265. The Special Representative regrets that she has not received information on the policies and programmes set up in Bulgaria to ensure and effective implementation of the Declaration.

Communication and concerns

266. In November 2003 the Special Representative sent a communication to the Government on a human rights defender working on Roma rights issues who was reportedly subjected to intimidation. The Special Representative regrets that the Government has failed to respond to this communication. However, the Government informed the Special Representative at a later stage that it is firmly committed to continue to improve the conditions of Roma in Bulgaria

267. The Special Representative regrets that she has not received sufficient information to be able to make further assessment of the situation for human rights defenders in Bulgaria. She would greatly appreciate receiving information from the Government and civil society on the situation for human rights defenders and the implementation of the Declaration in Bulgaria.

Burundi

268. La Représentante spéciale regrette que le Gouvernement du Burundi ne lui ait pas transmis de renseignements en réponse à sa requête avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui en transmettre afin qu'ils puissent être reflétés dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme

269. Le Burundi a été fortement affecté par les violents conflits qui ont marqué la région et connaît actuellement une phase de transition. Suite à la signature d'accords de cessez-le-feu en novembre 2003 et mai 2005, la sécurité s'est généralement améliorée, néanmoins de sérieux problèmes de violence persistent, en particulier dans la province du Bujumbura rural, en dépit de la présence de l'Opération des Nations Unies au Burundi (ONUB) qui a pris le commandement des contingents de la Mission africaine au Burundi (MIAB) en juin 2004 afin d'apporter son assistance au processus de paix.

270. D'après l'Expert indépendant sur la situation des droits de l'homme au Burundi, désigné en 2004 par la Commission des droits de l'homme, « les violations des droits de l'homme demeurent nombreuses et sont extrêmement préoccupantes. Parmi les plus graves d'entre elles, il convient de citer les atteintes au droit à la vie, à la liberté, à la sécurité et à l'intégrité de la personne, au droit de circuler librement et de choisir sa résidence, ainsi qu'au droit à la liberté d'opinion, d'expression et de réunion pacifique et aux droits de la femme et de l'enfant » (E/CN.4/2005/118, para. 22). Le climat d'insécurité et d'instabilité politique est lourd de conséquences pour la situation des défenseurs des droits de l'homme et rend leur travail difficile et risqué, en particulier en raison du climat d'impunité.

271. La Représentante spéciale regrette de ne pas disposer de suffisamment d'informations pour pouvoir donner une description approfondie de la communauté des défenseurs dans le pays.

Cadre juridique

272. Le Burundi est partie à la plupart des principaux instruments internationaux portant sur les droits de l'homme, y compris le Pacte international relatif aux droits civils et politiques. Le Burundi est également partie d'instruments régionaux de défense des droits de l'homme, notamment de la Charte africaine des droits de l'homme et des peuples. La Représentante spéciale note que le Gouvernement du Burundi n'a pas encore signé et ratifié les protocoles relatifs à ces traités ainsi que la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille.

273. En mars 2005, une nouvelle Constitution a été adoptée par référendum. L'article 19 stipule : « Les droits et devoirs proclamés et garantis, entre autres, par la Déclaration universelle des droits de l'homme, les Pactes internationaux relatifs aux droits de l'homme, la Charte africaine des droits de l'homme et des peuples, la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes et la Convention relative aux droits de l'enfant font partie intégrante de la Constitution de la République du Burundi. Ces droits fondamentaux ne font l'objet d'aucune restriction ou dérogation, sauf dans certaines circonstances justifiables par l'intérêt général ou la protection d'un droit fondamental. »

274. La Loi sur les associations du 18 avril 1992 et la Loi portant réglementation des relations entre l'Etat et les ONG agréées au Burundi du 22 août 1990, modifiée le 12 février 1992, régissent les associations, les coopératives, les syndicats et les congrégations religieuses. En vertu de ces lois, les ONG doivent présenter des rapports d'activités périodiques, un accord préalable à toute intervention dans une zone non couverte par la convention d'établissement est nécessaire pour les ONG étrangères et les ONG burundaise doivent déclarer tous leurs nouveaux membres. Ces lois donneraient à l'Etat le pouvoir de dissoudre une association sans but lucratif ou de dénoncer unilatéralement toute convention passée avec une ONG étrangère. Selon les informations reçues, un projet de loi relatif au droit des associations serait en cours de discussion. Il viserait à redéfinir, dans un sens plus restrictif, les modalités de création des associations. L'objectif de cette nouvelle loi serait de freiner la prolifération d'associations dans le pays. La Représentante spéciale souhaiterait recevoir de plus amples renseignements sur ce projet.

275. La Représentante Spéciale regrette ne pas disposer de renseignements suffisants pour présenter un résumé exhaustif des dispositions de la législation nationale portant sur les droits à la liberté d'expression, d'association et d'assemblée qui forment le cadre juridique dans lequel opèrent les défenseurs au Burundi.

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

276. La Représentante regrette de ne pas avoir reçu de renseignements sur les mesures prises au Burundi pour assurer la mise en œuvre de la Déclaration. Elle constate cependant que conformément à la résolution 1545 (2004) du Conseil de sécurité, l'ONUB s'est progressivement

engagée dans la surveillance des violations des droits de l'homme, tâche menée notamment en coopération avec l'Office du Haut-Commissaire aux droits de l'homme au Burundi (OHCDHB). Elle note que dans ce cadre l'OHCDHB a créé un réseau d'observateurs nationaux des droits de l'homme répartis sur tout le territoire. La Représentante spéciale est encouragée par les efforts déployés par les agences et programmes des Nations Unies pour améliorer la situation des droits de l'homme au Burundi.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

277. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé deux communications au Gouvernement du Burundi portant sur un journaliste et deux membres d'un syndicat. Le journaliste aurait été attaqué dans sa maison et son garde du corps aurait perdu la vie lors de cette attaque. Les syndicalistes auraient été arrêtés. La Représentante spéciale regrette que le Gouvernement n'ait répondu à aucune des ses communications.

278. Quoique les informations à sa disposition ne lui permettent pas d'évaluer en profondeur la situation des défenseurs des droits de l'homme au Burundi, la Représentante spéciale souhaite néanmoins exprimer sa préoccupation quant au degré de violence dans le pays qui affecte sérieusement la capacité des défenseurs à mener à bien leur action et met en péril leur sécurité.

Cambodia

279. La Représentante spéciale regrette que le Gouvernement du Cambodge ne lui ait pas transmis de renseignements en réponse à sa requête avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme

280. En 1993, la Commission des droits de l'homme a créé le mandat du Représentant spécial sur la situation des droits de l'homme au Cambodge. En 2005, le quatrième titulaire de ce mandat a été nommé. La Représentante spéciale se réfère aux rapports présentés par les titulaires du mandat à la Commission et à l'Assemblée générale concernant le contexte dans lequel se situent les défenseurs des droits de l'homme.

281. Selon les informations reçues, les ONG locales joueraient un rôle important dans la défense des droits de l'homme, en particulier en ce qui concerne la protection des demandeurs d'asile arrivant du Vietnam. Les ONG locales auraient également développé des initiatives en coopération avec la municipalité de Phnom Penh pour promouvoir une approche de l'urbanisation fondée sur les droits de l'homme.

282. Par ailleurs, la Représentante spéciale prend note de l'adoption, par le Gouvernement, de dispositions législatives prévoyant la mise en place d'un tribunal pénal chargé de traduire en justice les responsables des violations des droits de l'homme perpétrées entre 1975 et 1979 sous le régime des Khmers rouges.

Cadre juridique

283. Le Cambodge a accédé ou ratifié la plupart des principaux instruments internationaux relatifs aux droits de l'homme, y compris le Pacte international relatif aux droits civils et politiques. La Représentante spéciale encourage le Gouvernement du Cambodge à signer et ratifier les protocoles relatifs à ces traités ainsi que la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille.

Liberté de réunion

284. La Constitution cambodgienne garantit les droits à la liberté de réunion et de manifestation, néanmoins la loi de 1991 sur les manifestations restreindrait ces mêmes droits. En outre, des sources non gouvernementales indiquent que les autorités appliqueraient les dispositions de la loi selon des modalités qui portent atteinte aux droits protégés par la Constitution et les instruments internationaux ratifiés par le Cambodge. D'après le Représentant spécial sur la situation des droits de l'homme au Cambodge et d'autres observateurs internationaux, les restrictions à la liberté de réunion et à la liberté d'association se sont systématisées depuis des émeutes anti-thaïlandaises de janvier 2003. En particulier, le Représentant spécial mentionne qu'il a eu connaissance « de plus de 30 cas dans lesquels des demandes d'autorisation de rassemblement pacifique ont été rejetées par la municipalité de Phnom Penh au cours de cette période, les refus ayant souvent été arbitraires et quelquefois non motivés, en violation de la loi sur les manifestations. La police a fermé les yeux sur deux de ces rassemblements non autorisés. Les autres n'ont pas pu se tenir ou ont été dispersés par la force. La liberté de réunion a également été mise à mal par d'autres moyens, notamment l'intimidation des manifestants ou des personnes fournissant les locaux pour les réunions. Il existe des signes inquiétants de ce que les libertés de réunion, d'association et de circulation sont de plus en plus limitées au Cambodge » (E/CN.4/2005/116, para. 37).

285. La Représentante spéciale regrette ne pas avoir de plus amples renseignements à sa disposition pour être en mesure de présenter une analyse plus élaborée de la législation nationale portant sur les droits énoncés dans la Déclaration sur les défenseurs des droits de l'homme.

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

286. La Représentante spéciale regrette ne pas avoir reçu de renseignements sur les mesures prises par les autorités cambodgiennes pour assurer la mise en œuvre de la Déclaration. D'autre part, elle se félicite des efforts déployés par le Bureau du Haut Commissariat des Nations Unies aux droits de l'homme (HCDH) au Cambodge pour améliorer la promotion et la protection des droits de l'homme dans le pays (E/CN.4/2005/111). Elle apprécie également le fait que les précédents Représentants spéciaux sur la situation des droits de l'homme au Cambodge aient examiné la question des défenseurs dans le pays.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

287. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé cinq communications au Gouvernement portant sur trois défenseurs des droits de l'homme. Malgré le nombre relativement peu élevé de communications envoyées, la Représentante spéciale exprime sa préoccupation au vu de la gravité des allégations contenues dans ces communications qui se

rappellent à des attaques contre l'intégrité physique des défenseurs, en particulier l'assassinat d'une personne et également à la détention d'un défenseur des droits de l'homme accusé de diffamation. La Représentante spéciale regrette que le Gouvernement n'ait répondu à aucune des ses communications.

288. La Représentante spéciale note que, dans son rapport sur la visite officielle en 2000, le Représentant spécial sur la situation des droits de l'homme au Cambodge avait mentionné que les militants des droits de l'homme seraient souvent victimes d'actes d'intimidation, de menaces ou d'agressions en raison de leurs activités de promotion et de protection de ces droits. Des propos menaçants qu'auraient tenus des hauts responsables politiques auraient amplifié les inquiétudes quant à la sécurité de ces personnes ainsi que du personnel cambodgien des agences des Nations Unies travaillant dans le domaine des droits de l'homme (E/CN.4/2000/109).

289. La Représentante spéciale exprime sa vive inquiétude quant aux intimidations et aux attaques violentes que subiraient les défenseurs qui au vu de l'impunité qui semblerait persister dans le pays, resteraient impunies et augmenteraient la vulnérabilité des défenseurs et leur sentiment de d'inquiétude.

290. Les restrictions à la liberté de réunion et de manifestation généralement imposées depuis 2003 et dont font état les différents rapports sur la situation dans le pays représentent un obstacle significatif à la mise en œuvre de la Déclaration sur les défenseurs des droits de l'homme et au travail des défenseurs.

291. La représentante spéciale exprime également sa préoccupation devant les informations reçues faisant état de discours émanant des autorités qui seraient publiquement hostiles au travail des défenseurs.

292. Par ailleurs, la Représentante spéciale note avec inquiétude les restrictions à la liberté de mouvement des défenseurs mentionnées dans le rapport du Représentant spécial sur la situation des droits de l'homme au Cambodge qui indique que « le Gouverneur de la province de Ratanakiri a annoncé en juillet que toutes les organisations non gouvernementales devaient recevoir l'autorisation des autorités provinciales de quitter la province » (E/CN.4/2005/116, para. 41).

Cameroun

293. La Représentante spéciale remercie les ONG qui ont répondu au questionnaire distribué pour la préparation de ce rapport. Elle regrette ne pas avoir reçu de réponse de la part du Gouvernement et l'encourage à la lui transmettre rapidement afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme

294. Le nombre exact de personnes et associations qui travaillent pour la promotion et protection des droits de l'homme au Cameroun est difficile à déterminer du fait qu'il n'existerait à ce jour pas de registre ou statistiques fiables. Des sources non gouvernementales ont également indiqué qu'au vu du climat hostile dans lequel les activistes des droits de l'homme travaillent au Cameroun, certains d'entre eux resteraient discrets sur leurs activités et certains

opéreraient même dans la clandestinité. La communauté camerounaise des défenseurs comprend des organisations non gouvernementales, certains acteurs de la presse écrite, de communautés religieuses, de l'université, de syndicats, de la communauté des réfugiés, des spécialistes en développement ou du personnel de justice.

295. D'après les informations reçues de sources non gouvernementales, ces personnes et organisations sont engagées dans un travail de sensibilisation et de formation en droits de l'homme ainsi que de diffusion de la Déclaration universelle des droits de l'homme. Cependant, le manque de moyens pour mener à bien ces campagnes limiterait fortement leur capacité.

296. La Représentante spéciale a également été informée que plusieurs ONG et associations ont été créées par ou fonctionnent grâce au soutien du gouvernement. Ces associations diffuseraient des messages qui non seulement contrediraient le discours des associations plus indépendantes mais qui viseraient en outre à discréditer le travail des défenseurs les plus critiques envers les abus commis par les autorités. Par ailleurs, des sources non gouvernementales indiquent que les associations de droits de l'homme et les défenseurs seraient généralement perçus comme des opposants au régime.

Cadre juridique

297. Le Cameroun a ratifié la plupart des principaux instruments internationaux des droits de l'homme, y compris le Pacte international relatif aux droits civils et politiques. La Représentante spéciale l'encourage à signer et ratifier le Deuxième protocole facultatif se rapportant au Pacte international relatif aux droits civils et politiques, visant à abolir la peine de mort, le Protocole facultatif à la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, le Protocole facultatif à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille et les deux protocoles facultatifs à la Convention relative aux droits de l'enfant. Le Cameroun a par ailleurs ratifié des instruments régionaux tels que la Charte Africaine des Droits de l'Homme et des Peuples.

298. L'article 46 de la Constitution camerounaise dispose que "les traités ou accords internationaux régulièrement approuvés ou ratifiés ont, dès leur publication, une autorité supérieure à celle des lois, sous réserve, pour chaque accord ou traité, de son application par l'autre partie". Les dispositions des instruments ratifiés peuvent donc être directement invoquées devant les autorités nationales, judiciaires ou administratives, qui peuvent les mettre en œuvre directement sans qu'il soit besoin d'adopter un texte interne d'incorporation.

299. En ce qui concerne le droit à la liberté d'expression, la Représentante spéciale a été informée que le délit d'opinion a été supprimé. La loi n° 90/092 du 19 décembre 1990 sur la liberté de communication sociale ne prévoit que des peines d'amende pour toutes les infractions à ses dispositions. Par ailleurs, le 3 avril 2000, le Premier Ministre, chef du gouvernement, a signé le décret n° 2000/158 qui fixe les conditions et les modalités de création et d'exploitation des entreprises privées de communication audiovisuelle. Malgré cela, des sources non gouvernementales indiquent que la liberté d'expression demeure fortement restreinte au Cameroun.

300. En ce qui concerne le droit à la liberté d'association, la Loi 053/1990 reconnaît la liberté de formation et d'exercice des associations. Cependant, cette loi présenterait des lacunes qui limiteraient la protection de la liberté d'association. Par exemple, cette loi interdirait aux associations d'avoir des relations avec d'autres associations de la communauté internationale. Elle permettrait également à la préfecture de refuser à tout moment d'accorder la personnalité juridique à une association. La Loi 014/1999, quant à elle, codifie le statut des ONG. La différence de statut entre associations et ONG serait source de confusion parmi la société civile. En ce moment, il n'y aurait que quatre ONG détentrices du statut prévu par la Loi 014/99. Au mois une de ces quatre ONG aurait pour direction et membres des personnes proches du pouvoir.

Mesures prises dans le pays pour la mise en œuvre de la Déclaration

301. La Représentante spéciale a également été informée de la création d'une Sous-direction des droits de l'homme et de la coopération internationale au Ministère de la Justice. Elle souhaiterait recevoir plus de renseignements sur le mandat et les activités de ce service, en particulier en ce qui concerne la participation de la société civile et le soutien au défenseurs des droits de l'homme.

302. La Représentante a également été informée que l'enseignement de notions fondamentales de droits de l'homme a été intégré dans les programmes scolaires.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

303. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé huit communications au Gouvernement du Cameroun portant sur 15 défenseurs des droits de l'homme, y compris deux femmes, et les membres d'une ONG. La plupart de ces personnes auraient fait l'objet de diverses formes d'intimidation et de harcèlement aux mains des forces de l'ordre. En particulier, certaines auraient été arrêtées sans mandat, d'autres auraient été interrogées et dans un cas les forces de l'ordre auraient procédé à une perquisition sans mandat. Dans un cas, une femme défenseur aurait également reçu des menaces de mort. La Représentante spéciale regrette que le Gouvernement n'ait pas répondu à toutes ses communications.

304. Au cours de ces dernières années, et plus particulièrement en vue de la préparation de ce rapport, la Représentante spéciale a reçu des informations préoccupantes concernant la situation des défenseurs au Cameroun. Le cadre juridique confus régulant la liberté d'association ainsi que l'apparente absence de reconnaissance officielle du travail des défenseurs contribuent à créer des conditions peu propices à la mise en œuvre de la Déclaration sur les défenseurs des droits de l'homme.

305. Elle exprime également sa préoccupation devant les intimidations apparentes dont font l'objet certains défenseurs de la part des forces de l'ordre qui font entrave à leurs activités. Elle note également les informations lui étant parvenues de la part de sources non gouvernementales faisant état de restrictions à leur liberté d'expression, et de refus d'accorder l'accès des défenseurs à certains lieux de détention.

Central African Republic

306. La Représentante spéciale regrette que le Gouvernement de la République centrafricaine ne lui ait pas transmis de renseignements en réponse à sa requête avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme

307. Bien que le conflit armé qui a sévi dans le pays ait pris fin, des affrontements armés continuent d'avoir lieu dans le pays et l'insécurité demeure un motif de préoccupation majeur pour les défenseurs des droits de l'homme et pour le reste de la population. A ces inquiétudes s'ajoute une importante précarité économique.

308. La Représentante spéciale regrette ne pas avoir de plus amples renseignements à sa disposition pour être en mesure de présenter une analyse plus élaborée de la communauté des défenseurs des droits de l'homme dans le pays.

Cadre juridique

309. La République centrafricaine est un Etat partie à plusieurs des principaux instruments internationaux relatifs aux droits de l'homme, y compris le Pacte international relatif aux droits civils et politiques. La Représentante spéciale encourage le Gouvernement de la République centrafricaine à signer et ratifier les protocoles relatifs à ces traités ainsi que la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille. La République centrafricaine est également partie aux instruments régionaux de défense des droits de l'homme, notamment la Charte africaine des droits de l'homme et des peuples.

310. Le Conseil national de transition (CNT), qui agit en tant que Parlement provisoire, a adopté en novembre 2004 une loi relative à la liberté de la presse, rédigée avec le soutien financier et logistique du bureau des Nations Unies en République centrafricaine. En vertu de cette nouvelle loi, la diffamation n'est plus passible d'emprisonnement.

311. En ce qui concerne la liberté d'association, l'article 12 de la Constitution centrafricaine prévoit que « tous les citoyens ont le droit de constituer librement des associations, groupements, sociétés et établissements d'utilité publique sous réserve de se conformer aux lois et règlements. ». La liberté d'association est également régie par la Loi 61/233 du 27 mai 1961. Les associations sont soumises aux limites relatives à la prévention d'actes illégaux ou portant atteinte aux bonnes mœurs, à l'intégrité du territoire national, à la forme républicaine du gouvernement, à la sécurité publique, on de nature à provoquer la haine entre groupes ethniques, à occasionner des troubles politiques, à jeter le discrédit sur les institutions politiques ou leur fonctionnement, et à inciter les citoyens à enfreindre les lois et à nuire à l'intérêt général du pays. Pour se former, les associations doivent entre autres obtenir l'agrément du ministre de l'administration du territoire et de la sécurité publique.

312. La Représentante spéciale regrette ne pas avoir de plus amples renseignements à sa disposition pour être en mesure de présenter une analyse plus élaborée de la législation nationale portant sur les droits énoncés dans la Déclaration sur les défenseurs des droits de l'homme.

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

313. La Représentante spéciale ne dispose pas de renseignements suffisants pour compléter cette partie.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

314. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé deux communications au Gouvernement portant sur deux défenseurs des droits de l'homme. Dans le premier cas, le Président d'une ONG des droits de l'homme aurait été condamné à deux mois de prison et une amende après avoir été déclaré coupable « d'actes de manœuvre de nature à compromettre la sécurité publique ou à occasionner des troubles politiques graves » en relation avec un sondage qu'il aurait effectué sur la démission du Président Patassé. Dans le second cas, un avocat aurait été menacé de poursuites judiciaires, après avoir dénoncé publiquement des dysfonctionnements dans la justice centrafricaine. La Représentante spéciale regrette que le Gouvernement n'ait répondu à aucune des deux communications.

315. La Représentante spéciale regrette ne pas disposer de plus amples renseignements pour être en mesure de présenter une analyse plus élaborée de la situation des défenseurs de droits de l'homme dans le pays.

Chad

316. La Représentante spéciale regrette l'absence de réponse du gouvernement du Tchad à son questionnaire avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme

317. Dans sa résolution 2004/85, la Commission des droits de l'homme s'est déclarée profondément préoccupée par les violences persistant au Tchad, notamment les violences intercommunautaires et la contribution négative des paramilitaires et des démobilisés à cette situation; par la dépendance du pouvoir judiciaire à l'égard de l'exécutif; la carence en ressources matérielles et humaines dans les secteurs judiciaire et pénitentiaire; la culture de l'impunité, conséquence des dysfonctionnements de la justice et de la violence de l'environnement politique et social ; et la faiblesse des structures et institutions nationales des droits de l'homme.

318. Ces préoccupations ont amené la Commission à désigner une experte indépendante chargée de faciliter la coopération entre le Gouvernement tchadien et le Haut Commissariat des Nations Unies aux droits de l'homme dans le domaine de la promotion et la protection des droits de l'homme. La Représentante spéciale se réfère au premier rapport soumis par l'experte indépendante qui contient une description détaillée du contexte national ainsi que de la situation générale des droits de l'homme dans le pays (E/CN.4/2005/121).

319. La Représentante spéciale regrette de ne pas disposer de suffisamment d'informations pour pouvoir donner une description détaillée de la communauté des défenseurs dans le pays.

Cadre juridique

320. Le Tchad est Etat partie de la plupart des principaux instruments internationaux relatifs aux droits de l'homme, y compris le Pacte international relatif aux droits civils et politiques, mais n'a pas encore ratifié tous leurs protocoles ni la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille. Dans le contexte régional, le Tchad a ratifié plusieurs instruments de protection des droits de l'homme, notamment la Charte africaine des droits de l'homme et des peuples. D'après la Constitution tchadienne de 1993, ces traités internationaux ont, dès leur publication, une autorité supérieure à celle des lois.

321. La Constitution du pays garantit les droits fondamentaux, cependant, comme le constate l'experte indépendante sur la situation des droits de l'homme au Tchad, « ce texte ne s'applique que très partiellement, et encore à la lumière de coutumes locales et même de pratiques effectives qui ne trouvent aucun appui dans les habitudes du pays ni dans le droit promulgué » (E/CN.4/2005/121, para. 16). La codification n'étant pas encore achevée au Tchad, la législation écrite cohabite avec le droit coutumier. Chaque communauté a ses coutumes et ses chefs traditionnels, qui sont reconnus par la Constitution.

322. En ce qui concerne la liberté d'expression, la Représentante spéciale prend à nouveau note des observations de l'experte indépendante : « La Constitution institue un Haut Conseil de la communication en tant qu'autorité administrative indépendante qui 'veille au respect des règles déontologiques en matière d'information et de communication; garantit la liberté de la presse et l'expression pluraliste des opinions'. Le Haut Conseil de la communication créé en 1994 permet aux autorités de dire que 'la liberté de la presse est une réalité au Tchad' ou bien que 'nous avons des raisons de nous enorgueillir, nous avons une presse libre'. Par contre, elles préviennent de l'indigence des médias du fait de l'analphabétisme et de la pauvreté de la population. Tout compte fait, certaines publications circulent au Tchad, de pas plus de 10 pages, notamment des hebdomadaires. Au cours de la réunion maintenue avec le Président du Haut Conseil de la communication, il a été fait état que la législation prévoit des peines de prison pour les 'délits de la presse' (...) » (E/CN.4/2005/121, paras. 41-43).

323. La Représentante spéciale regrette ne pas avoir de plus amples renseignements à sa disposition pour être en mesure de présenter une analyse plus élaborée de la législation nationale portant sur les droits énoncés dans la Déclaration sur les défenseurs des droits de l'homme.

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

324. La Représentante spéciale regrette ne pas avoir reçu de renseignements sur les mesures prises par les autorités tchadiennes pour assurer la mise en œuvre de la Déclaration. Elle constate cependant que suite à la demande du Gouvernement tchadien, le Haut Commissariat des Nations Unies aux droits de l'homme (HCDH) a élaboré un programme d'assistance technique et de services consultatifs dans le domaine des droits de l'homme. La Représentante spéciale invite aussi bien le Gouvernement que le HCDH à offrir à la société civile tchadienne, et en particulier aux défenseurs des droits de l'homme, la possibilité de participer à ce programme et à tenir compte de la Déclaration sur les défenseurs des droits de l'homme dans sa mise en œuvre.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

325. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé huit communications au Gouvernement portant sur sept défenseurs des droits de l'homme, dont une femme. Celle-ci, avocate des victimes tchadiennes dans les poursuites judiciaires contre Hissein Habré aurait été attaquée et harcelée à cause de ses activités. La Représentante spéciale est également intervenue sur la base d'allégations portant sur la fermeture d'une radio créée au Tchad par des ONG de défense des droits de l'homme, sur le harcèlement de journalistes et sur la détention et la torture à laquelle aurait été soumis l'un d'entre eux. La Représentante spéciale regrette que le Gouvernement n'ait répondu à aucune des ses communications.

326. La Représentante spéciale souhaiterait exprimer son inquiétude face aux apparentes atteintes à la liberté d'expression ainsi qu'aux représailles dont seraient l'objet les personnes dénonçant les violations des droits de l'homme commises sous le régime de l'ancien Chef de l'Etat, Hissein Habré. Elle regrette que le Gouvernement n'ait pas encore considéré positivement sa demande d'invitation à effectuer une visite officielle dans le pays.

Chile

327. La Representante Especial agradece al Gobierno chileno y a la ONG que le han transmitido información en respuesta al cuestionario distribuido para la preparación de este informe.

La comunidad de defensores de los derechos humanos

328. De acuerdo con la información recibida, la comunidad de los defensores de los derechos humanos en Chile está compuesta por un número aproximado de 40 organismos no gubernamentales registrados. Otros grupos de defensores de los derechos humanos en proceso de formación todavía no estarían registrados. El Gobierno ha informado a la Representante Especial que esta comunidad trabaja con una "enorme eficacia" en la realización de las siguientes actividades: asistencia social, jurídica, médica y psicológica a personas y colectivos víctimas de graves violaciones de derechos humanos, así como promoción y sensibilización de la población en materia de derechos humanos; resguardar la documentación e información vinculada con las violaciones de derechos humanos ocurridas durante el régimen militar en Chile entre 1973 a 1990; perseguir el procesamiento y responsabilidad penal de victimarios de crímenes cometidos durante la dictadura militar; promoción y defensa de los derechos de la mujer; promoción y protección de los derechos de los niños y de los jóvenes; promoción y protección del derecho a la libertad de expresión; y ayuda y protección a víctimas de delitos sexuales y violencia intrafamiliar. Fuentes no-gubernamentales han indicado que también son muy activas las organizaciones y asociaciones que trabajan para los derechos de los gays, lesbianas, transgéneros y bisexuales. La Representante Especial también ha sido informada que los líderes de los indígenas son muy activos.

Marco jurídico

329. Chile es parte de los principales instrumentos internacionales de derechos humanos, incluido el Pacto Internacional de Derechos Civiles y Políticos. Todavía no ha ratificado el Segundo Protocolo Facultativo al Pacto Internacional de Derechos Civiles y Políticos y el

Protocolo Facultativo de la Convención contra la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes. En el contexto regional, Chile es parte de la Convención Americana sobre Derechos Humanos. No existe una norma general explícita que establezca la incorporación automática de las normas consuetudinarias y de los principios generales de derecho en el ordenamiento jurídico interno de Chile. Como el Gobierno explicó en el documento básico que forma parte integrante de los informes de Chile ante los mecanismos de vigilancia de los tratados, “el tema de la compatibilidad entre las normas convencionales de derechos humanos vigentes y las del ordenamiento jurídico interno es actualmente materia de un debate doctrinario y jurisprudencial” (HRI/CORE/1/Add.103, párrafo 74).

330. El artículo 19 del capítulo III de la Constitución contiene los derechos y libertades fundamentales que se protegen los instrumentos internacionales previamente mencionados. Entre estos derechos destacan la libertad de conciencia; el derecho a la libertad personal y a la seguridad individual; la libertad de opinión y la de informar sin censura previa; el derecho a reunirse pacíficamente sin permiso previo y sin armas; a presentar peticiones a la autoridad; y a asociarse sin permiso previo y al pluralismo político.

Libertad de expresión

331. El derecho a la libertad de expresión en Chile se ha visto reforzado después de dos reformas legislativas que han eliminado totalmente, según ha informado el Gobierno, las figuras de desacato de la legislación interna. En primer lugar, la Ley No. 19.733 sobre Libertades de Opinión e Información y Ejercicio del Periodismo, aprobada en el año 2001, modificó la disposición 6 (b) de la Ley No. 12.927 dejando fuera de ese precepto legal “la difamación, injuria o calumnia contra altos personeros del Estado”. Además, mediante la nueva Ley No. 20.048 del 31 de agosto de 2005 se modificó el código penal y el código de justicia militar en materia de desacato.

332. Asimismo el derecho a la libertad de expresión se ha visto reforzado con los límites impuestos a la censura. En efecto, la misma ley No. 19.733 derogó el precepto de la Ley No. 12.927 que facultaba a los jueces para requisar libros e impresos al amparo de esta normativa. La reforma constitucional del año 2001 terminó con la censura previa que pesaba sobre la producción cinematográfica, consagrando el derecho a la libre creación artística.

Derecho de asociación

333. Además del reconocimiento constitucional previamente mencionados, el derecho de asociación también tiene normativa legal que garantiza y regula su aplicación. Así, para obtener el reconocimiento de la personalidad jurídica, los defensores de los derechos humanos pueden constituirse bajo la forma de corporación o fundación, al amparo de las normas del Decreto Supremo No. 110-1979 del Ministerio de Justicia, en concordancia con lo dispuesto en el Título XXXIII del Código Civil de la República de Chile, las cuales regulan los trámites necesarios para la concesión de personalidad jurídica. El Decreto Supremo No. 292-1993 del Ministerio de la Justicia está pensado para agilizar y facilitar el trámite de formación de corporaciones que tengan por objeto la promoción y desarrollo de los derechos humanos. El Decreto también establece los ámbitos de acción y las actividades que pueden realizar estas corporaciones. Por otra parte, el Gobierno ha informado que aquellas entidades que no cuentan con personalidad

jurídica pueden ejercitar derechos ciudadanos como personas naturales, es decir, ejerciendo el derecho a la libertad de expresión, culto, reunión y petición a la autoridad, entre otros derechos.

334. En general Chile tiene un marco jurídico que no impide al trabajo de los defensores de derechos humanos.

Medidas tomadas a nivel nacional para la implementación de la Declaración

335. El Gobierno ha indicado que un avance reciente en relación a la aplicación de la Declaración fue la creación, en el año 2000 de un Plan por la Igualdad y la No-Discriminación elaborado por el Ministerio Secretaría General de Gobierno y cuyo objeto principal es el desarrollo humano del país. Este Plan ha sido implementado a través de programas de sensibilización y capacitación de los funcionarios públicos para que se incorporen los valores de la tolerancia y la no-discriminación en la creación de políticas y programas, y en su contacto con los usuarios.

336. El Gobierno también quiso destacar el esfuerzo del Estado chileno para la creación de una nueva institución en materia de derechos humanos. Estos esfuerzos se materializan en dos reformas normativas: un proyecto de ley que crea el Instituto Nacional de Derechos Humanos y una reforma constitucional que crea el Defensor del Ciudadano. El primero es un proyecto de ley, impulsado por el ejecutivo, y entregado para la discusión parlamentaria el 15 de junio de 2005. Su finalidad es crear un Instituto de carácter nacional que tenga por objeto la protección y defensa de graves violaciones a los derechos humanos que sufran los ciudadanos chilenos. La reforma constitucional, también impulsada por el ejecutivo, se discute en el Congreso desde diciembre de 2003. Este proyecto propone la creación del Defensor del Ciudadano, organismo autónomo, cuya base es la defensa y protección de los derechos de los ciudadanos frente a las acciones desarrolladas por el Estado. A través de él, se pretende inspeccionar perfectamente las actividades de la administración pública, para que éstas se realicen con pleno respeto a los derechos y libertades individuales.

337. Según la información remitida por fuentes no gubernamentales, los únicos programas de derechos humanos que existen a nivel institucional se concentran en los derechos de las víctimas de la represión y las violaciones de la dictadura militar.

Motivos de Preocupación y Comunicaciones enviadas por la Representante Especial

338. Desde el inicio de su mandato hasta el 1 de diciembre de 2005 la Representante Especial ha enviado seis comunicaciones al Gobierno, relativas a siete defensores, entre los cuales dos mujeres y una organización.

339. En la información remitida a la Representante Especial, la mayoría de las ONG chilenas de derechos humanos no indican un hostigamiento general en su contra ni recurrencia de ataques violentos en su contra. En cambio, lamentan su exclusión en las definiciones de políticas gubernamentales de derechos humanos. La supuesta tendencia a marginalizar a los defensores de los derechos humanos y la invisibilidad que esto conlleva frente al resto de la sociedad civil preocupa a este colectivo.

340. Sin embargo, la Representante Especial siente mucha preocupación por las alegaciones que le han sido llevadas a su atención sobre ataques, amenazas e intimidaciones, a veces por parte de las autoridades, contra líderes y activistas indígenas. Ha recibido con igual preocupación informes según la cual la Ley antiterrorista, promulgada en 1984 por Augusto Pinochet y parcialmente modificada en 1991 ha sido utilizada en el arresto y detención de dirigentes de la comunidad Mapuche que se oponen a las empresas forestales para preservar sus territorios ancestrales. En este sentido, la Representante Especial quisiera referirse de nuevo al informe del Relator Especial sobre los derechos humanos y las libertades fundamentales de los indígenas sobre la visita que hizo en Chile en julio de 2003. En este informe, el Relator recomendó que “el Gobierno de Chile considere la posibilidad de declarar una amnistía general para los defensores indígenas de los derechos humanos procesados por realizar actividades sociales y/o políticas en el marco de la defensa de las tierras indígenas” E/CN.4/2004/80/Add.3, párrafo 75).

341. Se ha señalado igualmente que actitudes homofóbicas han llevado a ataques contra aquellas organizaciones y personas que trabajan para el reconocimiento de los derechos de las personas gays, lesbianas y transexuales.

China (People’s Republic of)

342. The Special Representative thanks non-governmental sources for providing her with a response to the questionnaire transmitted for the preparation of this report. She regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. The Special Representative encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

343. The Special Representative is told that because of the political environment the concept of the “human rights defenders” has not taken root, even though several individuals and groups raise human rights issues and report violations committed with respect to civil and political rights as well as social, economic and cultural rights. The vastness of the country and lack of information, however, makes it difficult to estimate the number of human rights organizations or the problems that they confront in defending human rights. Much of the information on the situation of defenders is communicated by international organizations, whose national links are, generally, not able to openly raise the issues inside the country because of the risks that they confront.

344. It is reported that most NGOs that are allowed to, and independent human rights organizations continue to be prohibited in the country. Increasingly, the ability to form associations and non-governmental organizations is being constrained. In 2005 new rules were put into practice, reportedly, making Government surveillance of NGOs more common, and registration of NGOs more complicated. Restrictions on foreign funding continue to be imposed.

345. According to non-governmental sources, there are several categories of defenders in China. They include democracy activists, writers, journalists, people writing blogs and working with other Internet-related activism, academics and intellectuals, lawyers, workers, farmers,

housing rights activists, people involved in social activism, and many others. In addition, a special group is what is sometimes referred to as the “1989 group” which includes ex-student leaders, the group “Tianmen mothers”, and victims of the actions of the Authorities in Tianmen Square in 1989.

346. In terms of activities of defenders there is also a wide array. Defenders, and in particular lawyers and academics, work to promote the rule of law and anti-discrimination. Defenders work to promote the protection of vulnerable groups such as farmers, laid-off workers, miners, migrants, petitioners, disabled, women, children, LGBT persons, families who have been forcibly evicted, religious and ethnic minorities, defenders working on HIV and AIDS awareness, persons who resist forced abortions pursuant to the One Child Policy, and impoverished individuals. Some defenders also work to promote awareness of human rights under international law and obligations, but this remains largely an academic topic so far, as the Government allows for little or no open debate on the issue. There are also democracy activists and activists who in other ways try to challenge the one-party system in China by peaceful means.

347. Despite obstacles to the work of defenders, networking seems to be increasing amongst those working to promote and protect human rights. Networks of people working on more specific issues have also started to develop.

348. The quantity and quality of the work of defenders naturally varies from region to region and between cities and the countryside. The quality, effectiveness and impact of defenders’ work vary according to uneven organizational capacity, social mobilization, access to resources and experience in strategies of campaigning and organizational work. The more experienced defenders organizations are concentrated in the more developed regions such as Beijing, areas along the Yangzi River, the Pearl River, and the south-eastern coast.

Legal framework

349. China has ratified six of the core international human rights instruments. China has not yet ratified the International Covenant on Civil and Political Rights, which it signed in 1998. The latter is a key instrument for the implementation of the Declaration on Human Rights Defenders as it guarantees rights such as freedom of opinion and expression, freedom of assembly and freedom of association. China is not yet a State party to the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It is reported that, in general, the legal framework is very restrictive in terms of the laws and provisions relevant for the activities of human rights defenders.

350. Some legal reforms have been introduced by the administration of Hu Jintao, including an amendment to the Constitution in March 2004 stating that “the state respects and protects human rights”. The Special Representative is, however, told that the new measures have not yet been implemented. The Government has continued to use provisions of the Criminal Law

relating to so-called “subversion”, “state-secrets” and other vague terms for national security offences, in order to prosecute defenders engaged in peaceful protest and work to promote and protect human rights.

Freedom of expression and access to information

351. The Constitution, article 35, stipulates that “citizens have freedoms of expression, press, assembly, association and demonstration”.

Freedom of assembly and freedom of movement

352. In October 1989 the “Act of Assembly, Demonstration and Protest” was promulgated. It stipulates that all assembly and all demonstrations must be approved in advance by the police.

353. New rules have reportedly been issued lately by the State Council concerning petitioning. According to the present rules, five or more individuals petitioning together will be regarded as illegal, making peaceful assembly by petitioners nearly impossible.

Freedom of association

354. According to Government regulations from 1998 a non-profit group has to be approved and sponsored by a supervising unit in the Government and be authorized by it before applying for legal registration.

355. Independent trade unions continue to be banned in China and the only legal union is the government-controlled All China Federation of Trade Unions (ACFTU). The ACFTU is supposed to look after and control the interests of the 16 official national industrial trade unions and regional official unions.

356. In November 2004 China announced new “Religious Affairs Regulations” that were said to contribute towards establishing broader protection for freedom of religion in China. Fears have been expressed that many terms in the new regulations are too broadly defined and therefore will lead to arbitrary implementation.

Measures taken at national level for the implementation of the Declaration

357. The Chinese Authorities are increasingly using a human rights discourse, both domestically and in relations with other states and inter-state organizations. Despite this positive trend of increasing mention of human rights, actual policies often fail to meet international human rights standards, and are considered particularly worrying in the areas of freedom of expression and freedom of association.

358. The mechanism for submitting criticism and proposals regarding public affairs to governmental bodies is rather well established. Channels also exist for citizens to bring their complaints to the Government at the local and national level. However, the problem of public access to these channels and of the Government’s inaction and inability to provide remedies for the complaints that are brought before them continues to limit the benefits of these initiatives.

Communications and concerns

359. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 35 communications to the Government on 72 individual defenders. Approximately 20 per cent of the defenders were women. The communications dealt mainly with limitations on freedom of assembly, arbitrary detention, imprisonment of defenders, alleged torture of defenders in detention, and cases of defenders being detained in psychiatric hospitals. A high number of the communications have been sent jointly with other mandate holders concerning issues of alleged arbitrary detention, restrictions on freedom of expression and alleged torture. In the Special Representative's 2005 report to the Commission on Human Rights, China was given special consideration along with 12 other countries, because of the high number of communications sent to the Government of China during 2004. During this year, there were many reported arrests in conjunction with the planned demonstrations or meetings to commemorate the 15th anniversary of the protests in Tianmen Square. The Special Representative acknowledges the elaborate responses from the Government to 24 of her communications but she regrets that no reply has been received for the remaining 11. She also notes with concern that the Government in its responses have admitted to charging defenders of "attempting to overthrow state power" or similar accusations, for having used their right to freedom of expression or assembly. The Special Representative is also alarmed at the Chinese Government's use of so called "labor re-education" as punishment.

360. The Special Representative is gravely concerned that the Government's policies are still effectively suppressing the work of human rights defenders, limiting dialogue between Chinese defenders and foreign organizations/defenders, placing strong limitations on basic freedoms, and hindering people from seeking redress for violations of human rights carried out in the past. The Special Representative has since the establishment of her mandate sent a number of communications where human rights defenders reportedly have been accused of "Incitement to subvert State power" or similar accusations, on grounds of peaceful work to defend human rights. Included in the communications have also been lawyers who have been detained or otherwise hindered in their work on cases concerning social and economic rights. The Special Representative is concerned with the fact that laws continue to be vaguely worded which to a large extent gives prosecutors and judges the possibility to give politically motivated rulings. She recalls concerns expressed in a statement by the Special Representative on Torture after his visit to the country in November and December 2005, where he recommended that the Chinese authorities abolish imprecise and sweeping definitions of crimes that leave large discretion to law enforcement and prosecution authorities such as "endangering national security" disrupting social order", "subverting public order," etc.

361. The Special Representative is deeply concerned that in all cases communicated to the Government the alleged violations against defenders were reported to have been either committed by government authorities or occurred because of state authorities to take action for the protection of the defenders. The Special Representative would like to remind the Government that according to the Declaration "the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State".

362. The Special Representative is concerned about limitations on the right to freedom of expression in China. According to the information received by her, the authorities maintain tight control over the editorial content of the print-media and the broadcasting media. Measures have

reportedly been put in place to limit access to foreign news providers, including through the Internet, and the Authorities have said that they will only allow foreign broadcasts which do not threaten “national security” or “political stability”. Increasingly defenders in China use the Internet to publish articles and to advocate for greater freedoms and rights protection. The Special Representative regrets that in 2004 the Authorities reportedly attempted to impose stricter control over the Internet and expanded the list of topics subject to censorship. Increased monitoring of all kinds of communications, including SMS, mobile phones and websites have been reported to be putting defenders at ever greater risk. In September 2005, the Government issued the “Regulation on Internet Media Information Services” which reportedly imposes restrictions on the use of the Internet to disseminate information.

363. The Special Representative is concerned about the limitations on the right to freedom of assembly in China. She has received information stating that an exception to the otherwise strict regime concerning campaigns and demonstrations seems to have been some anti-discrimination campaigns. Some of these have reportedly been relatively successful, have gained much public support and have been relatively free to operate. Nevertheless, she is deeply concerned with the fact that fifteen years after the demonstrations in Tianmen Square, where Chinese police forces opened fire on protesters, the Government reportedly continues to ban any public commemoration of this event. A considerable number of the communications sent to the Government dealt with human rights defenders working on issues in relation to the violent suppression of protest in Tianmen Square in 1989. Included in the communications were cases of defenders campaigning for further investigations into these events; groups such as “Mothers of Tianmen”, and persons wanting to organize peaceful commemorations of the Tianmen Square incident.

364. The Special Representative is gravely concerned about the limitations on the right to freedom of association in China. She has received information that hundreds of NGOs are reported to have been forced to close in the beginning of 2005 due to recent crackdowns by the Government. Since October 1989, when the “Act of Assembly, Demonstration and Protest” was promulgated, approvals have rarely been given to any NGO applying for it. It has also been reported that applicants who submitted requests for approval of demonstrations in support of human rights or democracy have become the subject of harassment, threat or imprisonment. According to information received, new petition laws passed in 2005 have contributed further to restricting freedom to take collective action. NGOs in general face increasing crackdowns and activists, scholars, lawyers and others have reportedly been prevented from working together due to intimidation and threats of arrests by the Authorities. She is also concerned about information that rigid laws concerning registration of NGOs lead to some NGOs being forced to register as for profit business. Consequently they were reportedly subjected to official controls through financial regulations and heavy taxation and many of them have allegedly been forced to close down. Most NGOs in China suffer from economic problems and severe under-funding. Instances have been reported where organizations have been penalized for accepting international aid for their work.

365. The Special Representative is concerned by information that access to and communication with non-governmental organizations abroad and intergovernmental organizations is hindered by the Authorities. Human rights defenders are reportedly sometimes placed under house arrest when significant political or human rights related events are taking place in a city or region, in order to prevent defenders from meeting and exchanging information

with officials or foreign NGOs. International human rights NGOs to a large extent continue to be denied access to China, and Chinese citizens who are in contact with human rights NGOs outside the country are under threat of arrest and imprisonment. The Special Representative would like to remind the Government about the acknowledgement in the Declaration of “the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals [...]”.

366. The Special Representative remains gravely concerned about the situation in the Tibet Autonomous Region (TAR) and other Tibetan areas of China, where freedom of expression, as well as freedom of religion, continues to be severely restricted by the Chinese Authorities.

367. The Special Representative is concerned about the Government’s use of the “global war on terror” as a justification for crackdowns on repression in the Xinjiang Uighur Autonomous Region. The Government reportedly has put restrictions on the use of the Uighur language, banned certain books and journals and reportedly arrested Uighur activists and sentenced several Uighur activists with the death penalty. The Special Representative would like to reiterate concerns expressed in her report to the General Assembly in 2003 (A/58/380), which deals specifically with the impact of security legislation and states emergency on the situation for human rights defenders. In particular, she would like to remind the Government about the recognition in the Declaration that “the absence of international peace and security does not excuse non-compliance” with international human rights standards.

368. The Special Representative is disappointed at the level of awareness of the Declaration on human rights defenders among local Government, and that little has been done to implement the Declaration both by national and local Government. The Special Representative would appreciate receiving information from the Government concerning the situation of human rights defenders and the steps taken towards the implementation of the Declaration in the country.

Colombia

369. La Representante Especial agradece al Gobierno de Colombia su respuesta al cuestionario distribuido para la preparación de este informe.

370. La Representante Especial agradece al equipo de las Naciones Unidas en Colombia y a distintas ONG la información que le han transmitido en respuesta al cuestionario distribuido para la preparación de este informe.

371. La Representante Especial visitó Colombia del 23 al 31 octubre de 2001. El informe de esta visita se encuentra en el documento E/CN.4/2002/106/Add.2. En 2004, la Representante Especial hizo una visita de seguimiento al país. En el documento E/CN.4/2005/101/Add.1, párrafos 203 a 216, expuso la información que le fue llevada a su atención durante su visita de seguimiento.

372. Otros mecanismos especiales de la Comisión de Derechos Humanos han visitado el país en los últimos años: el Relator Especial sobre la independencia de los jueces y abogados en 1996; el Representante del Secretario-General sobre los Desplazados Internos, en 1999; la Relatora Especial sobre violencia contra la mujer, en 2001; el Relator Especial sobre formas

contemporáneas de racismo, en 2003, la Relatora Especial sobre el derecho a la educación, en 2003; el Relator Especial sobre el derechos a la libertad de opinión y expresión, en 2004; y el Relator Especial sobre los derechos de los Pueblos Indígenas, en 2004, y más recientemente el Grupo de trabajo sobre las desapariciones forzadas o involuntarias. La Representante Especial constata que todos ellos han mencionado la situación de los defensores de los derechos humanos en sus respectivos informes.

La comunidad de defensores de los derechos humanos

373. El respeto y la protección de los derechos humanos en Colombia está fuertemente determinado por la continuación del conflicto armado interno. A la luz de la información llevada a su atención a lo largo de estos últimos años, la Representante Especial no puede concluir que la situación haya mejorado desde que visitó el país por primera vez en 2001. Al contrario, la Representante Especial teme que la situación se ha degradado en ciertas zonas. A pesar de iniciativas gubernamentales para proteger su seguridad, los ataques, el hostigamiento y estigmatización a los que se enfrentan las ONG y los defensores de los derechos humanos en Colombia siguen siendo sumamente preocupantes. En este contexto, la Representante Especial quisiera referirse al informe de la Alta Comisionada para los Derechos Humanos sobre la situación de los derechos humanos en Colombia (E/CN.4/2005/10), el cual ofrece una visión general sobre el contexto nacional en materia de derechos humanos

374. En respuesta a los altos índices de violaciones de los derechos humanos y al número creciente de víctimas, en los últimos 20 años, la comunidad de defensores de los derechos humanos ha crecido considerablemente. Muchas organizaciones sociales y no-gubernamentales se han organizado en redes. Sin embargo, en algunas zonas del país ONG y defensores de los derechos humanos se han visto obligados a cesar sus actividades por motivos de seguridad.

375. Las actividades realizadas por la mayoría de las ONG de derechos humanos se centrarían principalmente en la promoción y difusión de los derechos humanos mediante seminarios, talleres y publicaciones, y en acciones de movilización. Otras organizaciones menos numerosas y con trabajo jurídico especializado llevarían a cabo actividades de incidencia y cabildeo a nivel nacional e internacional, acciones de protección jurídica, acciones de fortalecimiento institucional, y acciones de investigación. De acuerdo con la información recibida, los defensores han logrado algunos espacios novedosos que buscan que el Gobierno rinda cuentas ante la comunidad internacional sobre sus obligaciones y compromisos en materia de derechos humanos.

Marco jurídico

376. Colombia ha ratificado los principales tratados internacionales de derechos humanos, incluido el Pacto Internacional sobre Derechos Civiles y Políticos. Todavía no lo ha hecho en relación con el Protocolo Facultativo a la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes y el Protocolo Facultativo a la Convención para la Eliminación de la Discriminación contra la Mujer. Colombia también ha ratificado instrumentos regionales de derechos humanos, entre los cuales la Convención Americana sobre Derechos Humanos. De acuerdo con el artículo 93 de la Constitución, los tratados internacionales de derechos humanos prevalecen en el orden interno y los derechos consagrados en la propia Constitución se interpretaran de conformidad con dichos instrumentos. La Corte Constitucional

ha interpretado que la prevalencia en el orden interno de los tratados internacionales de derechos humanos ratificados por Colombia debe ser compatibilizada con las exigencias del artículo 4, el cual consagra la primacía de la Constitución sobre todo otro tipo de normas, de manera que una y otros conformen el llamado bloque de constitucionalidad.

377. Bajo los artículos 20, 38 y 39 de la Constitución adoptada en 1991, la libertad de asociación, reunión y expresión están garantizadas. En el informe sobre su visita a Colombia, la Representante Especial se refiere a las otras leyes que tienen un impacto directo en el trabajo de los defensores de los derechos humanos, como por ejemplo, la Directiva Presidencial 07 relativa al “respaldo, interlocución y colaboración del Estado con las organizaciones de derechos humanos”. (E/CN.4/2002/106/Add.2, párr. 24 a 37).

Medidas tomadas a nivel nacional para la implementación de la Declaración

378. A pesar de los graves motivos de preocupación descritos en el apartado siguiente, durante su visita, la Representante Especial pudo observar medidas positivas tomadas por el Gobierno (ibid. Párr. 249 a 255). Entre ellas, destacan el programa de protección del Ministerio del Interior creado en 1997, la Comisión Inter.-Interinstitucional creada por el Ministerio de Trabajo, la Comisión de Derechos Humanos de los Pueblos Indígenas, Comité especial para la Promoción de las investigaciones de las Violaciones a los derechos Humanos (Decreto 2429 de 1998) y la creación de la Defensoría del Pueblo. Según se ha informado por el Gobierno, el programa de protección del Ministerio del Interior ha desarrollado programas de capacitación en Seguridad Preventiva en las Regiones, mediante la celebración de talleres orientados al fortalecimiento de destrezas individuales. También el programa de protección del Ministerio del Interior cuenta con un programa de Protección en las Región. Han creado y han desarrollado espacios de de participación entre las autoridades civiles y de policía y la población. Sin embargo, como indica la Representante Especial, persisten dificultades que impiden que estas medidas tengan el impacto que tendrían que tener (ibid., párr. 256 a 276). En su informe E/CN.4/2005/101/Add.1, la Representante Especial intentó reflejar otras medidas tomadas a nivel nacional después de su visita al país.

379. De acuerdo con información que a sido llevada a la atención de la Representante Especial más recientemente, la Corte Constitucional se ha pronunciado en varias ocasiones sobre las dificultades a las que se enfrentan los defensores de los derechos humanos. Por ejemplo, en su Sentencia T-1191/04, relativas a declaraciones hechas por el Presidente de la República contra los defensores, la Corte recordó que “al Presidente compete una posición de garante respecto de los derechos fundamentales de todos los habitantes del territorio nacional, que hace que cuando se dirija a los ciudadanos deba abstenerse de emitir cualquier declaración o afirmación que lesione o ponga en riesgo tal categoría de derechos” y que “su comunicación debe contribuir a la defensa de los derechos fundamentales de las personas, en especial de aquellas que merecen protección especial”, como son los defensores de los derechos humanos en Colombia. En general, en su desarrollo jurisprudencial, la Corte Constitucional ha acogido y ha hecho prevalecer los tratados internacionales de derechos humanos, una práctica que ha contribuido muy positivamente al respaldo de los defensores de los derechos humanos.

380. La Representante Oficina en Colombia de a Alta Comisionada para los derechos humanos trabaja sobre la base de un acuerdo celebrado entre el Gobierno y la ONU en 1996. Entre otras funciones, la Oficina observa la situación de los derechos humanos en todo el país, y

el cumplimiento del derecho internacional humanitario por las partes en el conflicto armado interno colombiano, asesora a las autoridades e instituciones colombianas en el desarrollo de políticas y programas para la promoción y protección de los derechos humanos y del derecho internacional humanitario, y presta asesoramiento en materia de derechos humanos a la sociedad civil, incluyendo organizaciones no gubernamentales y personas particulares.

381. La Representante Especial también se acoge con satisfacción que agencias internacionales, como por ejemplo el Alto Comisionado de las Naciones Unidas para los Refugiados, hayan expresado en sus discusiones con el Gobierno y en comunicados públicos sus preocupaciones en relación con la situación de los defensores de los derechos humanos y hayan emitido recomendaciones específicas para garantizarles una mejor protección así como para crear un entorno en el que puedan trabajar en mejores condiciones.

Motivos de Preocupación y Comunicaciones enviadas por la Representante Especial

382. Desde el inicio de su mandato y hasta el 1 de diciembre de 2005, la Representante Especial ha transmitido 110 comunicaciones al Gobierno, relativas a 243 defensores de los derechos humanos y al menos 14 organizaciones o comunidades. 67 de estos casos se refieren a mujeres defensoras de los derechos humanos o a actividades para la promoción y la protección de los derechos de las mujeres. De los 243 defensores cuyos casos han sido objeto de intervención por parte de la Representante Especial, al menos 44 han sido asesinados, muchos otros han sido desaparecidos y la mayor parte de ellos han sido víctimas de intimidaciones y amenazas de muerte. Algunos de ellos también han sido detenidos e incluso sometidos a malos tratos durante su detención. Los defensores que han sido objeto de comunicaciones son miembros de ONG de derechos humanos, sindicalistas, abogados, líderes y miembros de comunidades indígenas, dirigentes campesinos, periodistas, profesores, e incluso representantes de la Defensoría del Pueblo. La Representante Especial agradece que el Gobierno haya mostrado su cooperación con el mandato contestando con detalle a una gran parte de las comunicaciones. Permanece sin embargo preocupada por el hecho que muchos de los casos siguen pendientes y que pocas investigaciones han llevado al enjuiciamiento y la condena de los responsables de violaciones contra defensores de los derechos humanos, lo cual contribuye a reforzar un clima de impunidad en el país.

383. En su informe, la Representante Especial se refiere a las violaciones de los derechos fundamentales perpetradas contra defensores de los derechos humanos en Colombia (*ibid.*, párr. 41 a 174). Cuatro años después de su visita al país, la Representante Especial lamenta que no hayan desaparecido ni se hayan atenuado estas violaciones. Las alegaciones de violaciones en contra de los derechos humanos que le siguen siendo transmitidas regularmente refuerzan las preocupaciones ya expresadas en el mencionado informe.

384. Son motivos de preocupación las violaciones contra el derecho a la vida y la integridad física (tanto los asesinatos como las amenazas de muerte, así como las desapariciones forzadas) y los actos de acoso e intimidación. Éstos no solamente incluyen amenazas sino también acciones legales contra los defensores por injuria o calumnia, rebelión o constitución de grupos ilegales. Durante su visita, la Representante Especial también fue informada de que sindicalistas, activistas políticos, líderes comunitarios, jueces, procuradores, periodistas, educadores y activistas de derechos humanos son desplazados forzosamente a través de un proceso de “limpieza política y social”.

385. En su informe, la Representante Especial observa que los grupos de la sociedad civil más afectados por este tipo de violaciones de los derechos humanos son los sindicalistas, las minorías étnicas, los desplazados internos, las mujeres, las organizaciones campesinas y sociales, los maestros y profesores universitarios, los estudiantes, los profesionales de la salud, los representantes de la Iglesia y las minorías sexuales (ibid., párr. 106 a 174). Las comunicaciones enviadas por la Representante Especial desde su visita hasta el 1 de diciembre de 2005 demuestran que estos grupos siguen siendo los defensores más afectados por las violaciones.

386. La Representante Especial también quisiera referirse a las observaciones emitidas por el Comité de Derechos Humanos y el Comité contra la Tortura. Ambos expresaron, en 2004, sus preocupaciones en relación con los ataques y otras acciones en contra de los defensores de los derechos humanos (véanse los documentos CCPR/CO/80/COL, párrafos 11 y 18, y CAT/C/CR/31/1, párrafos 10 y 11).

387. Además de las violaciones de derechos anteriormente mencionadas, en su informe, la Representante Especial también muestra preocupación por los problemas relacionados con la impunidad y la administración de justicia, la seguridad nacional, y la libertad de opinión y expresión (ibid., párr. 175 a 202). En una gran parte de los casos que han sido sujetos de comunicaciones enviadas al Gobierno por la Representante Especial desde el inicio de su mandato, nadie se ha sido llevado ante la justicia. La impunidad de la que beneficiarían los crímenes cometidos por grupos paramilitares no haría más que agravar esta situación. En base a las comunicaciones sobre casos individuales transmitidas por la Representante Especial al Gobierno, estos grupos serían los principales, pero no los únicos, responsables de las graves violaciones de los derechos humanos perpetradas contra activistas de los derechos humanos.

388. Por lo que respecta al problema de la impunidad, la Representante Especial ha sido recientemente informada de la aprobación, el 22 de junio de 2005, de la Ley 975, conocida también como la “Ley Justicia y Paz”. Esta ley beneficiaría generosamente a los responsables de crímenes graves y obstaculizaría los derechos de las víctimas a la verdad, a la justicia y a la reparación. La Representante Especial toma nota de las Consideraciones sobre esta ley emitidas por la Oficina en Colombia del Alto Comisionado de las Naciones Unidas para los Derechos Humanos y se suma a las preocupaciones expresadas por la misma según las cuales esta nueva ley podría abrir paso a que haya impunidad (<http://www.hchr.org.co/publico/comunicados/2005/comunicados2005.php3?cod=35&cat=58>). La Comisión Interamericana de Derechos Humanos también se ha pronunciado sobre esta Ley (<http://www.cidh.org/Comunicados/Spanish/2005/26.05.htm>). La Representante Especial expresa su preocupación que por resultado de esta ley, los perpetradores de violaciones contra los defensores de derechos humanos tendrán una licencia para continuar cometiendo estas violaciones.

389. Según se ha informado el Gobierno, la “Ley Justicia y Paz” fue concebida como un instrumento para promover la reconciliación nacional y la convivencia pacífica entre los colombianos. Según el Gobierno, con esta ley se pretende la desmovilización y reinserción de los miembros de los grupos armados al margen de la ley, el desmantelamiento de las organizaciones a las cuales pertenecen, la investigación, juzgamiento y sanción de los responsables de los delitos más graves, así como garantizar los derechos de las víctimas. El Gobierno informó que el artículo 50 de la Ley de Justicia y Paz dispone la creación de la

Comisión Nacional de Reparación y Reconciliación (CNNR), que tiene como objetivo establecer la verdad histórica, garantizando la participación activa de las víctimas en el esclarecimiento de los hechos acaecidos en Colombia.

390. Por lo que respecta al problema de la impunidad, el Gobierno informo que el Proyecto de Lucha contra la impunidad ha desarrollado varios estudios tendientes a establecer los obstáculos que enfrentan los entes encargados de la investigación y la sanción de las violaciones a los derechos humanos y el derecho internacional humanitario(DIH), entre estos, una encuesta para el fortalecimiento de la capacidad de la Unidad Nacional de Derechos Humanos y DIH, realizada conjuntamente con la OACNUDH en Colombia.

391. Por otra parte, la Representante Especial toma nota con preocupación de las alegaciones recibidas según las cuales ciertos sectores políticos buscarían relacionar el trabajo de las ONG de derechos humanos con las guerrillas, desprestigiando de esta manera la importante labor que desempeñan. La Representante Especial lamenta que los intentos de desprestigiar la labor de los defensores no ha cesado ni disminuido desde su visita y que ello no solamente crea confusión y malentendidos entre la opinión pública sino que fomenta aún más la situación de riesgo y vulnerabilidad en la que se encuentran los defensores de los derechos humanos en Colombia.

Costa Rica

392. La Representante Especial lamenta que en el momento de finalizar este informe, el Gobierno no le haya remitido información en respuesta al cuestionario distribuido para la preparación del presente informe. La Representante Especial insta al Gobierno que transmita la información relativa para que este informe pueda ser actualizado.

393. La Representante Especial agradece a la oficina del Residente Coordinador de las Naciones Unidas en Costa Rica por su respuesta al cuestionario distribuido para la elaboración de este informe.

La comunidad de defensores de los derechos humanos

394. La Representante Especial lamenta que no haber podido recoger suficiente información para llevar a cabo una evaluación en profundidad de la comunidad de defensores en Costa Rica.

Marco jurídico

395. Costa Rica es parte de los principales instrumentos internacionales de derechos humanos, incluso el Pacto Internacional sobre Derechos Civiles y Políticos, pero todavía no ha ratificado el Protocolo Facultativo de la Convención contra la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes y de la Convención Internacional para la protección de los derechos de los trabajadores migratorios y sus familiares. En el contexto regional, Costa Rica es parte de la Convención Americana sobre Derechos Humanos.

396. Conforme a lo dispuesto en el artículo 7 de la Constitución de Costa Rica, los tratados internacionales de derechos humanos tienen precedencia sobre la legislación nacional. En la medida en que reconocen un conjunto más amplio de derechos o garantías que la Constitución, estos tratados tienen precedencia sobre las disposiciones constitucionales. Los tratados pueden invocarse directamente ante los tribunales.

397. Según el PNUD, en general, los derechos y principios contenidos en la Declaración sobre los Defensores de los Derechos Humanos están garantizados en la legislación nacional. La Constitución defiende el derecho de asociación en su artículo 25; el derecho de reunión y el derecho de petición ante cualquier entidad pública o estatal y obtener una resolución sin demora en sus artículos 26 y 27; el libre ejercicio de la ciudadanía y los derechos de participación política en sus artículos 90, 98, 108 y 131 así como la libertad de opinión en su artículo 28. El Tribunal Constitucional está encargado de proteger estos derechos. En varias ocasiones ha obligado a las instituciones públicas la publicación de información que sea de interés para la opinión pública.

398. Leyes más específicas codifican y regulan el funcionamiento de las organizaciones de la sociedad civil y protegen el derecho constitucional de asociación.

399. Por su parte, el Código Penal contiene un capítulo específico sobre el enjuiciamiento de crímenes en contra de los derechos humanos.

Medidas tomadas a nivel nacional para la implementación de la Declaración

400. Según el PNUD, además del Tribunal Constitucional, la creación de la Defensoría de los Habitantes, en 1992, ha significado un importante paso adelante en la protección de los derechos humanos tanto las Naciones Unidas como defensores de derechos humanos locales han valorado positivamente el trabajo que ha desempeñado hasta ahora. Sin embargo, los últimos lamentan que esta institución no haya dirigido sus acciones hacia problemas estructurales relativos a la situación de los derechos humanos en Costa Rica, sino más bien a problemas concretos y coyunturales. También lamentan que las observaciones y las recomendaciones de la Defensoría de los Habitantes no sean automáticamente acatadas por el poder ejecutivo.

Motivos de preocupación y Comunicaciones enviadas por la Representante Especial

401. Desde el inicio de su mandato hasta el 1 de diciembre de 2005 la Representante Especial ha enviado dos comunicaciones al Gobierno, relativas a los miembros de una ONG de derechos humanos contra los cuales se habrían hecho repetidas amenazas de muerte. La Representante Especial agradece al Gobierno sus respuestas a las dos comunicaciones.

402. A pesar de la tradición protectora de derechos humanos que caracteriza Costa Rica, la Representante Especial ha recabado información según la cual algunos defensores de los derechos humanos no se sienten cómodos con las líneas de actuación del gobierno. Se lamentan del discurso deslegitimador de algunos representantes del gobierno y ciertos medios de comunicación que presentan a los activistas de los derechos humanos como “revoltosos” y “enemigos de la patria”. Asimismo, se han quejado de que defensores de los derechos humanos han sido excluidos de los espacios de discusión y decisión sobre las políticas de bienestar y de derechos humanos.

403. La Representante Especial también ha recabado información procedente de fuentes no gubernamentales sobre amenazas de muerte contra funcionarios y periodistas que atienden o denuncian casos de corrupción, narcotráfico o asesinatos relacionados a estos temas.

404. De acuerdo con la información recibida, algunas comunidades indígenas se quejan de que el Consejo Nacional de Asuntos Indígenas que es el órgano responsable de representarles legalmente, no funge sus funciones como ellos quisieran.

405. La Representante Especial también ha sido informada de que líderes sindicales trabajando en el sector privado vinculado a las actividades de producción agrícola extensiva han sido objeto de prácticas de deslegitimación, intimidaciones y despidos discriminatorios.

Cote d'Ivoire

406. La Représentante spéciale regrette que le Gouvernement ne lui ait pas fait parvenir des renseignements en réponse au questionnaire qu'elle lui avait adressé avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme

407. Selon les informations à sa disposition, les défenseurs des droits de l'homme en Côte d'Ivoire continuent de travailler dans un contexte de tension et de violence. Pour une description détaillée de la situation, la Représentante spéciale renvoie au rapport de la mission d'établissement des faits dirigée par le Haut Commissaire adjoint des Nations Unies aux droits de l'homme, qui s'était rendu en Côte d'Ivoire du 23 au 29 décembre 2002 (S/2003/90) et au rapport de la division des droits de l'homme de l'Opération des Nations Unies en Côte d'Ivoire sur la situation des droits de l'homme en Côte d'Ivoire (Mai – Juin – Juillet 2005).

408. La Représentante spéciale regrette de ne pas disposer de suffisamment d'informations pour pouvoir donner une description détaillée de la communauté des défenseurs dans le pays.

Cadre juridique

409. La Côte d'Ivoire est partie de plusieurs des principaux instruments internationaux relatifs aux droits de l'homme, y compris le Pacte international relatif aux droits civils et politiques, mais n'a pas encore ratifié les protocoles portant sur ces traités ainsi que la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille. Dans le contexte régional, la Côte d'Ivoire est partie de la Charte Africaine des Droits de l'Homme et des Peuples. D'après l'article 87 de la Constitution de la Côte d'Ivoire, les traités ou accords internationaux régulièrement ratifiés ont, dès leur publication, une autorité supérieure à celle des lois, sous réserve pour chaque traité ou accord, de son application par l'autre partie.

410. La Représentante spéciale note que le Comité pour l'élimination de la discrimination raciale a invité le Gouvernement à lui fournir des renseignements sur la place de la Convention dans la hiérarchie des normes juridiques en Côte d'Ivoire, ainsi que sur la possibilité pour les individus d'invoquer directement ses dispositions devant les tribunaux nationaux.

411. L'article 9 prévoit que « la liberté de pensée et d'expression, notamment la liberté de conscience, d'opinion religieuse ou philosophique sont garanties à tous, sous la réserve du respect de la loi, des droits d'autrui, de la sécurité nationale et de l'ordre public ». L'article 10 ajoute que « chacun a le droit d'exprimer et de diffuser librement ses idées. Toute propagande

ayant pour but ou pour effet de faire prévaloir un groupe social sur un autre, ou d'encourager la haine raciale ou religieuse est interdite. ». Les libertés de réunion et de manifestation sont, d'après l'article 11, garanties par la loi.

412. En ce qui concerne la liberté d'association, différents textes juridiques encadrent les différentes formes de regroupement sans but lucratif de personnes privées, notamment la Loi no. 60-315 du 21 septembre 1960, le décret no. 93-921 du 30 décembre 1993 et la Loi no. 97-721 du 23 décembre 1997. La législation prévoit que le directeur de cabinet du ministre de l'intérieur et de la décentralisation signe un récépissé de déclaration d'association, pour les associations nationales et un arrêté de fonctionnement, portant création d'une association pour les regroupements d'origine étrangère. Le délai de signature de ces récépissés pourrait, en pratique, s'étendre sur plusieurs années.

413. La Représentante spéciale regrette ne pas avoir de plus amples renseignements à sa disposition pour être en mesure de présenter une analyse plus élaborée de la législation nationale portant sur les droits énoncés dans la Déclaration sur les défenseurs des droits de l'homme et l'impact de son application sur le travail des défenseurs des droits de l'homme.

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

414. La Représentante spéciale regrette ne pas avoir de renseignements sur les mesures prises en Côte d'Ivoire pour assurer la mise en œuvre de la Déclaration.

Communications transmises par la Représentante spéciale

415. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé quatre communications au Gouvernement portant sur trois défenseurs des droits de l'homme. Trois des communications concernaient la situation de l'organisation non gouvernementale « Le Mouvement ivoirien pour les droits de l'homme » et ses membres qui, à plusieurs reprises, ont été l'objet de graves menaces et d'intimidation en relation avec leur dénonciation publique des violences et abus des droits de l'homme perpétrés dans le pays durant leur participation à la Commission des droits de l'homme en 2004 et à travers leurs rapports. Le président de l'organisation se serait vu obligé en 2004 de passer à la clandestinité. La dernière communication concerne une citoyenne congolaise membre du secrétariat de la Commission d'enquête internationale des Nations Unies sur les violations des droits de l'homme en Côte d'Ivoire qui aurait été attaquée et molestée par des jeunes appartenant à un groupe soutenant le régime. La Représentante spéciale remercie le Gouvernement d'avoir répondu à trois de ses communications.

416. La Représentante spéciale exprime sa plus vive inquiétude face aux attaques, menaces et intimidations dont font l'objet les défenseurs des droits de l'homme dans le pays, et au climat de violence dans lequel ils opèrent.

417. Elle exprime également sa préoccupation quant aux représailles apparentes qui suivent les dénonciations de violations des droits de l'homme par les défenseurs et l'absence d'espace de liberté d'expression qui en résulte.

Croatia

418. The Special Representative acknowledges the detailed information received from the Government concerning numerous human rights issues in Croatia. She regrets that this information was submitted at such a late stage that it was not possible to incorporate it all in this profile, but she assures the Government that the information will be taken into consideration in her work and in future possible updates of the country profile.

The human rights defenders community

419. According reports received from some international NGOs, despite some progress toward membership in the European Union and policy statement by the Prime Minister suggesting a renewed willingness to undertake human rights reforms, only partial progress has been recorded to date in the field of human rights. Key human rights concerns in the country include the accountability for war crimes committed by Croatians, insufficient cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), the situation of displaced or refugee Serbs and the rights of national and ethnic minorities

420. The Special Representative regrets that she has not sufficient information at her disposal to offer a description of the human rights defenders community.

Legal framework

421. Croatia is party to almost all of the core international human rights instruments, including the International Covenant on Civil and Political Rights. Croatia has ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It has not yet ratified the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families. Croatia has also ratified relevant regional human rights treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms. Under the Constitution, international treaties to which Croatia is a State Party take precedence over domestic legislation.

Freedom of expression

422. Legislation on the media was reformed in 2003. However according to the information received, it is still deficient in providing media coverage of election candidates. The Special Representative has been informed of attempts by the Government to establish political control over the media. She has also been informed of protest and resistance against these attempts by journalists, NGOs, and leaders of the political opposition.

423. The Special Representative has also been informed that a provision of the penal code on defamation has been amended so as to make it easier for journalists to defend themselves against defamation charges.

424. Following a campaign by an NGO coalition, a Freedom of Information Act (FOIA) was adopted in October 2003. However, the law is reportedly not systematically implemented. Secondary legislation was introduced in 2004 under the same act which provides public bodies with more detailed information of the FOIA. The Special Representative has also been informed that the Government published a list of public bodies that are obliged to implement FOIA.

Freedom of association

425. Article 43 of the Constitution ensures the right to freedom of association. In 2001, the Parliament adopted a new Law on Associations which replaced 1997 legislation, which was said to contravene international human rights standards and to be incompatible with the Constitution. The Government reports that this law is harmonized with European standards. On the other hand, foundations are regulated by the Act on Foundations and Funds which provides that foundations are to register at the Ministry of Justice. According to information received, the registration procedure for foundations is frequently long and complicated.

Others

426. In a letter dated 12 January 2001, the Government informed the Special Representative that several amendments to the Law on Courts had been adopted to enhance the security of judicial professionals (see E/CN.4/2002/106, paras 132-133).

Measures taken at national level for the implementation of the Declaration

427. In 2003 Croatia established new institutions for the protection and promotion of human rights, such as the Ombudsman for Children. There is also a Commission for Human Rights of the Government of the Republic of Croatia.

Communications and concerns

428. Key human rights concerns in the country include the accountability for war crimes committed by Croatians, insufficient cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), the situation of displaced or refugee Serbs and the rights of national and ethnic minorities. The Government has assured the Special Representative that it fully supports the work of the ICTY. The Government has also assured the Special Representative that current reform in the judiciary will additionally contribute to the enhancement of legal security and protection of human rights in the country, especially in the process of conducting investigation and prosecuting war crimes and crimes against humanity, regardless of the ethnicity of the victims or of the suspected perpetrators.

429. Although there are no indications that domestic legislation or national practices and trends curtail the rights and freedoms of human rights defenders, in 2001 the Special Representative received allegations according to which three unknown men attempted to assassinate a human rights defender and attacked members of his family. The Government promptly replied to this communication (see E/CN.4/2002/106, annex, paragraphs 131-132). The Special Representative has also been informed that organizations promoting lesbian, gay, bisexual and transgender persons' rights receive threats on a frequent basis.

Cuba

430. En su note verbale con fecha 17 Noviembre 2000 el Gobierno de Cuba expreso su preocupación por el significado que se da al termino defensor de derechos humanos, y sobre el hecho de que normalmente este termino esta restringida a los personas que defienden los derechos civiles y políticos, lo cual se puede infringir al principio de la soberanía de los Estados. (E/CN.4/2001/94, Anexe 1)

431. En su respuesta al Gobierno la Representante Especial aseguro el Gobierno que el termino defensor de derechos humanos se aplica a todos los defensores de derechos humanos, igualmente a los que defienden derechos económicos sociales y culturales y los que defienden derechos civiles y políticos (E/CN.4/2001/94, Anexo 2)

432. La Representante Especial lamenta que en el momento de finalizar este informe, el Gobierno no le haya remitido información en respuesta al cuestionario distribuido para la preparación del presente informe. La Representante Especial insta al Gobierno que transmita la información relativa para que este informe pueda ser actualizado.

La comunidad de defensores de los derechos humanos

433. La Representante Especial lamenta que no haber podido recoger suficiente información para llevar a cabo una evaluación en profundidad de la comunidad de defensores en Cuba.

Marco jurídico

434. Cuba ha suscrito algunos tratados internacionales de derechos humanos, pero no ratificado el Pacto Internacional de Derechos Económicos, Sociales y Culturales ni el Pacto Internacional de Derechos Civiles y Políticos. Este último es de considerable relevancia para asegurar la implementación de la Declaración, puesto que garantiza derechos tales como la libertad de opinión y expresión, de acceso a la información, de asamblea y de reunión, así como la libertad de movimiento. Cuba tampoco es parte de la Convención Americana sobre Derechos Humanos.

435. En su documento de base que forma parte integrante de los informes sometidos a los órganos de vigilancia de los tratados, el Gobierno cubano explicó que los instrumentos jurídicos internacionales, en general, tanto los de derechos humanos como los de cualquier otra materia, una vez que se decide por la dirección del país la participación en ellos, conllevan una tramitación jurídica interna que concluye con la aprobación del Consejo de Ministros (artículo 98, inciso ch), de la Constitución) y con la ratificación del Consejo de Estado (artículo 90, inciso m), de la Constitución). Con posterioridad a ese trámite constitucional, se integran en el derecho positivo del país, con la obligatoriedad de su observancia y cumplimiento (HRI/CORE/1/Add.84, párrafo 61).

436. En este mismo informe, el Gobierno aseguró que “los derechos contenidos en la Declaración Universal de Derechos Humanos se encuentran formulados y protegidos por la legislación vigente en Cuba. En particular, la Constitución de la República refrenda cada uno de esos derechos, así como las garantías fundamentales de su ejercicio. Además, todos los derechos y libertades que señala la Constitución están debidamente desarrollados en diferentes normas legales que integran nuestro derecho sustantivo interno” (ibid., párrafo 56).

437. Sin embargo, fuentes no gubernamentales han informado la Representante Especial que la legislación nacional limita rigurosamente el ejercicio de los derechos a la libertad de expresión, asociación, asamblea, movimiento y prensa. Con el propósito de proteger la

seguridad del Estado, se restringen estos derechos. Así, queda criminalizada la propaganda enemiga, la divulgación de “noticias no autorizadas”, y el insulto a los símbolos patrios. Se alega igualmente que el gobierno ha encarcelado u ordenado la vigilancia de personas que no han cometido ninguno acto ilegal, utilizando leyes que penalizan el “estado peligroso” y permiten la “advertencia oficial”.

Medidas tomadas a nivel nacional para la implementación de la Declaración

438. La Representante Especial lamenta no haber recibido información sobre las políticas y los programas llevados a cabo por las autoridades cubanas para garantizar una implementación efectiva de la Declaración.

Motivos de Preocupación y Comunicaciones enviadas por la Representante Especial

439. La Representante Especial siente preocupación por las alegaciones relativas a las limitaciones a los derechos a la libertad de expresión, libertad de asociación y libertad de asamblea impuestas en Cuba. La restricción a estos derechos obstaculiza seriamente los derechos y el trabajo de los defensores de los derechos humanos. Estas preocupaciones están reflejadas en las 13 comunicaciones que la Representante Especial ha transmitido al Gobierno desde el inicio de su mandato y hasta el 1 de diciembre de 2005. Estas comunicaciones estaban relacionadas con al menos 90 defensores de los derechos humanos. Muchos de ellos habrían sido detenidos tras ejercer su derecho a la libertad de expresión o participar en manifestaciones pacíficas. Entre las personas que ha sido el objeto de las comunicaciones de la Representante Especial también se encuentran periodistas que habrían sido detenidos tras ejercer su derecho a libertad de expresión.

440. La Representante Especial también ha intervenido tras recibir información según la cual defensores de los derechos humanos estarían encarcelados en condiciones que podrían considerarse como crueles, inhumanas o degradantes. En otra comunicación, la Representante Especial expresó preocupación acerca de la detención y condena de 78 personas por su oposición al gobierno. Entre estas personas habría defensores, sindicalistas, periodistas y activistas políticos. La Representante Especial agradece el Gobierno sus repuestas a la mayor parte de las comunicaciones.

441. La Representante Especial acoge con satisfacción la puesta en libertad de una parte de los defensores que fueron detenidos en abril de 2003 y condenados a penas que iban de 2 a 28 años de prisión. Sin embargo, lamenta que otros defensores de los derechos humanos sigan cumpliendo largas condenas en cárceles, algunos de ellos en condiciones inadecuadas. Según la información recibida, los presos que denuncian las malas condiciones en las prisiones serían castigados frecuentemente con largos períodos de aislamiento en celdas de castigo, la restricción de las visitas o la negación de tratamiento médico.

442. La Representante Especial lamenta no haber recibido por parte del Gobierno una invitación para visitar el país. Lamenta igualmente que no se haya permitido la realización de misiones de investigación de ONG internacionales de derechos humanos y que se niegue el acceso a las prisiones cubanas al Comité Internacional de la Cruz Roja.

Democratic Republic of the Congo

443. La Représentante spéciale remercie les nombreuses ONG qui lui ont fourni des renseignements en réponse au questionnaire distribué pour la préparation de ce rapport. Elle s'est également basée sur le troisième rapport périodique soumis par la République démocratique du Congo au Comité des droits de l'homme (CCPR/C/COD/2005/3) ainsi que sur les rapports des deux Rapporteurs spéciaux et de l'Expert indépendant qui ont été successivement nommés par la Commission des droits de l'homme pour examiner la situation des défenseurs des droits de l'homme dans le pays.

444. La Représentante spéciale tient à remercier le Gouvernement de la République démocratique du Congo pour avoir répondu favorablement à sa demande d'invitation pour visiter le pays. Elle regrette que des dates n'aient pas pu être fixées à ce jour pour que la mission puisse avoir lieu et espère qu'elle pourra se tenir très prochainement.

La communauté des défenseurs des droits de l'homme en République démocratique du Congo

445. Les défenseurs des droits de l'Homme au Congo continuent de travailler dans un contexte marqué par la persistance de la violence et de l'insécurité. Dans ce contexte, de graves violations des droits de l'homme continuent d'être signalées en particulier des cas d'exécutions sommaires, de torture, de violences sexuelles et le recours aux enfants soldats. Une mission de l'ONU (MONUC) a été créée en 1999 pour apporter son assistance au Gouvernement dans plusieurs domaines en particulier la réforme de ses forces de sécurité et la tenue d'élections. Sur la base de l'Accord global et inclusif signé le 17 décembre 2002 à Prétoria, une constitution a été adoptée, et promulguée le 4 avril 2003, dans le but de mettre sur pied un gouvernement de transition incluant toutes les parties belligérantes, l'opposition politique ainsi que la société civile. Cependant, les difficultés et les retards de la transition sont à noter. Les élections générales, initialement prévues entre mars et septembre 2005, n'ont pas encore eu lieu.

446. Selon les informations reçues, la Communauté de défenseurs des droits de l'homme en République Démocratique du Congo œuvre aussi bien dans les domaines des droits civils et politiques, que socio-économiques et ceux de la promotion et protection de la paix et de l'environnement. Certains estiment qu'elle comprendrait près de 1000 organisations dont plus ou moins 300 seraient vraiment opérationnelles. D'autres sources néanmoins indiquent des chiffres bien moins élevés et il est difficile de connaître le chiffre exact. De nombreuses associations de droits de l'homme se sont organisées autour du Conseil national des associations pour la démocratie et les droits de l'homme (CONADHO).

447. La situation, le rôle et les capacités des défenseurs des droits de l'homme congolais sont intrinsèquement liés à la situation du pays. Les organisations et défenseurs des droits de l'homme se heurteraient aussi à de lourdes contraintes financières, techniques et matérielles.

448. Les informations reçues de sources non gouvernementales indiquent que la communauté des défenseurs des droits de l'homme a néanmoins développé sa capacité à utiliser les mécanismes de protection des droits de l'homme, qu'elle a développé des initiatives visant à

informer et sensibiliser la population sur ses droits et qu'elle est intervenue pour demander le respect des droits fondamentaux à l'occasion des différents accords politiques. Elle a également concentré ses initiatives sur la défense des droits de la femme dans le pays.

Cadre juridique

449. La République démocratique du Congo est partie aux principales conventions internationales relatives aux droits humains, y compris le Pacte international relatif aux droits civils et politiques. Elle n'a cependant pas signé le Protocole facultatif se rapportant à la Convention sur l'élimination de la discrimination à l'égard des femmes, ni celui se rapportant à la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille. De même, elle n'est pas partie au deuxième Protocole facultatif se rapportant au Pacte international relatif aux droits civils et politiques, visant à abolir la peine de mort, ni au Protocole facultatif se rapportant à la Convention contre la torture. En dehors du cadre onusien, la République démocratique du Congo est partie à plusieurs traités régionaux relatifs aux droits de l'homme, dont la Charte africaine des droits de l'homme et des peuples. L'article 193 de la Constitution de la transition dispose que « les traités ou accords régulièrement conclus ont, dès leur publication, une autorité supérieure à celle des lois, sous réserve, pour chaque traité ou accord, de son application par l'autre partie ».

Liberté d'expression

450. La liberté d'expression et la liberté de presse sont garanties par les articles 27 et 28 de la Constitution de la transition et par la loi n° 96-002 du 22 juin 1996 fixant les modalités de l'exercice de la liberté de la presse. Cette loi libéralise l'espace médiatique et autorise toute personne physique ou morale à créer une entreprise de presse ou une station de radio ou une chaîne de télévision. Elle proclame également l'indépendance et la neutralité des médias publics. Par ailleurs, l'article 154 de la Constitution a créé un organe de régulation appelé « Haute Autorité des médias », l'une des institutions d'appui à la démocratie et qui, aux termes de l'article 155, a pour mission d'assurer la neutralité des médias.

451. Dans son rapport au Comité des droits de l'homme, le Gouvernement a assuré que « la liberté de la presse s'est consolidée au fil des ans, à telle enseigne qu'à l'occasion de la Journée internationale de la presse en mai 2004, l'organisation non gouvernementale de défense des droits des journalistes « Journalistes en danger » (JED) a déclaré qu'il n'y a actuellement aucun journaliste en prison arrêté pour délit de presse. » (ibid., para 209)

Liberté d'information

452. L'article 29 de la Constitution de la transition consacre la liberté d'information en ces termes: « Toute personne a droit à l'information. La liberté d'information et d'émission par la radio, la télévision, la presse écrite ou tout autre moyen de communication est garantie. Les médias audiovisuels et écrits d'État sont des services publics dont l'accès est garanti de manière équitable à tous les courants politiques et sociaux. Le statut des médias d'État est établi par la loi qui garantit l'objectivité, l'impartialité et le pluralisme d'opinion dans le traitement et la diffusion de l'information. ».

Liberté de réunion et de manifestation

453. L'article 16 de la Constitution de la transition établit que «La République démocratique du Congo garantit l'exercice des droits et libertés individuels et collectifs, notamment les libertés de circulation, d'entreprise, d'information, d'association, de réunion, de cortège et de manifestation, sous réserve du respect de la loi, de l'ordre public et des bonnes mœurs».

L'article 30 du même texte dispose que « La liberté de réunion et de manifestation pacifiques est garantie sous respect de l'ordre public. Toute personne a le droit de participer à une réunion ou à une manifestation et nul ne peut y être contraint.».

454. En outre, l'article 4 du décret-loi n° 196 du 29 janvier 1999 portant réglementation des manifestations et des réunions publiques dispose que « Les manifestations et réunions publiques sont soumises à une déclaration préalable auprès des autorités politico-administratives compétentes. Toutefois, les manifestations et les réunions organisées sur le domaine public peuvent être subordonnées à l'autorisation préalable». L'article 6 du même texte prévoit la procédure à suivre à cet effet.

Liberté d'association

455. En République démocratique du Congo, les partis politiques, les associations à but non lucratif et les organisations professionnelles peuvent librement se constituer, sous réserve de respecter l'ordre public et des bonnes mœurs.

456. L'article 40 de la Constitution garantit le droit de créer des associations. Il stipule que « les pouvoirs publics collaborent avec les associations privées qui contribuent au développement social, économique, intellectuel, culturel, moral et spirituel des populations et à l'éducation des citoyens et des citoyennes. Cette collaboration peut revêtir la forme d'une assistance par des subventions (...)».

457. La loi 004-2001 contient des dispositions générales applicables aux associations à but non lucratif. Elle détermine entre autres la procédure et les conditions requises pour l'obtention de la personnalité légale. Par rapport à la législation antérieure, cette loi facilite les formalités. Selon l'article 3, la personnalité juridique est accordée par le Ministre de la justice après avis favorable du Ministre ayant dans ses attributions le secteur d'activités visé, alors que la législation de 1965 et celle de 1999 attribuaient cette prérogative au Président de la République.

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

458. La Représentante spéciale a été informée de la création d'un Ministère, chargé de s'occuper spécifiquement de la mise en œuvre des droits humains des Congolais. Certaines sources ont néanmoins indiqué que le ministère ne bénéficierait pas de moyens à la mesure de sa charge.

459. La Représentante spéciale se félicite également de la création de l'Observatoire national des droits de l'homme. Elle prend cependant note des allégations qui lui ont été adressées par des sources non gouvernementales selon lesquelles celui-ci ne remplirait pas, dans sa forme

présente, tous les critères d'indépendance établis par les Principes de Paris et ne recevrait pas l'appui financier et technique nécessaire à la mise en œuvre de son mandat et au déroulement de toutes ses activités. Elle espère que cette institution pourra être renforcée à l'avenir.

460. Pour leur part, les organismes des Nations Unies présents en République Démocratique du Congo, et particulièrement le Haut Commissariat des Nations Unies pour les droits de l'homme et la MONUC, ont également contribué à la mise en œuvre de la Déclaration sur les défenseurs des droits de l'homme surtout pendant des périodes critiques des conflits ou de guerre. Ces organismes sont intervenus auprès des autorités nationales et locales lorsque des défenseurs des droits de l'homme se sont trouvés en situation de danger ou auraient été arrêtés arbitrairement. Les défenseurs des droits de l'homme cependant déplorent que l'appui financier, institutionnel et matériel que les organismes des Nations Unies peuvent fournir aux ONG locales reste très limité.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

461. Depuis le début de son mandat et jusqu'au 1^{er} décembre 2005, la Représentante spéciale a envoyé 45 communications au concernant 75 défenseurs des droits de l'homme, y compris six femmes, la plupart membres actifs d'ONG et journalistes. Ces communications portent sur l'assassinat, la torture et les mauvais traitements, les menaces, intimidations, persécutions et autres formes de harcèlement dont les défenseurs auraient été l'objet à travers le pays. La Représentante spéciale est également intervenue suite à des allégations selon lesquelles on aurait ordonné la fermeture d'organisations de défense des droits de l'homme, ou faisant état de campagnes diffamatoires orchestrées contre elles. La Représentante spéciale regrette que le Gouvernement n'ait répondu qu'à un nombre très limité de communications.

462. La Représentante spéciale exprime sa plus vive préoccupation devant l'apparente aggravation de la situation de nombreux défenseurs des droits de l'homme dans la République démocratique du Congo. En particulier, elle note avec une extrême inquiétude une recrudescence des attaques contre l'intégrité physique des défenseurs. En 2005, on lui a rapporté deux assassinats perpétrés contre des personnalités de la communauté des défenseurs du pays. Dans ce contexte, les nombreuses menaces, la surveillance et le harcèlement dont sont fréquemment l'objet les défenseurs contribuent à créer un climat de peur ayant pour résultat de contraindre certains à s'autocensurer, à entrer dans la clandestinité, voire même dans les cas les plus graves à s'exiler.

463. La Représentante spéciale exprime aussi son inquiétude devant les innombrables cas d'arrestations arbitraires de défenseurs par les forces de l'ordre et de sécurité locales. Elle note avec préoccupation que, fréquemment, ces arrestations ont lieu au secret, et que les défenseurs rapportent être soumis à des actes de torture et autres mauvais traitements. La Représentante spéciale exprime son extrême inquiétude devant le climat d'impunité qui semble entourer ces actes.

464. En outre, les allégations portées à la connaissance de la Représentante spéciale au cours de ces six dernières années illustrent que de sérieux efforts restent à faire pour mettre en œuvre le cadre juridique garantissant la liberté d'expression. Elle note en effet, que les arrestations et la détention de journalistes et défenseurs interviennent le plus souvent lors de leur participation à des manifestations en faveur des droits de l'homme ou de la publication de communiqués de

presse et de rapports dénonçant ouvertement des pratiques allant à l'encontre des droits de l'homme. Certains auraient même été accusés pour « incitation à la rébellion » ou « diffamation criminelle » en raison de leurs activités de promotion et protection des droits de l'homme. Les menaces qui pèsent sur les journalistes et la situation des droits humains ont par ailleurs déjà été signalées par l'Expert indépendant sur la situation des droits de l'homme dans la République démocratique du Congo (E/CN.4/2005/120, para. 37).

465. Enfin, elle exprime sa préoccupation devant les restrictions à la liberté de réunion pourtant garantie par la Constitution de transition, mais qui resterait sujette à autorisation, rarement accordée, en particulier dans le cadre des manifestations liées aux droits de l'homme.

Denmark

The human rights defenders community

466. The Special Representative regrets that she has not sufficient information at her disposal to offer a description of the human rights defenders community in Denmark.

Legal framework

467. Denmark is a State party to all the core international human rights instruments, except the International Convention on the Protection of All Migrant Workers and Members of Their Families.

468. According to the information received, an Incorporation Committee set up by the Government completed its Report No. 1407 on Incorporation of Human Rights Conventions into Danish Law in October 2001 (*Inkorporeringsudvalgets betænkning* nr. 1407). The report describes how international conventions are implemented into Danish law and what status they have in Danish law. It is emphasized that even conventions not implemented independently can be invoked before and applied by Danish courts and other law-applying authorities. Therefore non-incorporated conventions are relevant sources in the interpretation of Danish law. According to the Minister of Justice, in a statement he made in a Parliamentary debate in 2004, the present Government has chosen not to follow the recommendations in report No. 1407 of the incorporation of the above-mentioned treaties. The argument reportedly was that incorporation would have been of a symbolic character only, since Denmark is already obliged by the conventions. The proposal was rejected in parliament 6 May 2004.

469. In relation to the legal framework in Denmark, the Special Representative refers to paragraph 4 of the European Union Profile

Measures taken at national level for the implementation of the Declaration

470. The Special Representative has been informed about the establishment of the Danish Institute for Human Rights (DIHR), at the Danish Centre for International Studies and Human Rights. According to the information received, the DIHR, among other things, conducts reviews of proposed legislation and meets with public officials from especially the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Refugee, Immigration and Integration Affairs

on a regular basis to exchange opinions and information. DIHR also participates in issue-based networks. Furthermore, DIHR publishes reports and books on specific national human rights topics. Finally, DIHR maintains close ties with the international community, especially the United Nations, the European Council and the European Union.

471. The Special Representative has also been informed that the Complaints Committee for Ethnic Equal Treatment was established in October 2003 through the passing of the Act on Ethnic Equal Treatment. This act was a direct result of the implementation of the European Council Directive 43 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. The Complaints Committee was established and given mandate to handle individual complaints in the field of differential treatment on the grounds of race or ethnic origin. In 2004 the mandate was expanded to cover differential treatment on the labour market, through amendments made to the Act on the Prohibition of differential Treatment on the Labour Market.

472. The Special Representative regrets that she has not received information specifically on the implementation of the Declaration in Denmark.

Communications and concerns

473. No communications have been sent to the Government of Denmark during the two mandate-periods.

474. Concern is expressed that the above-mentioned new approach on Incorporation of Human Rights Conventions into Danish Law is a setback to the overall practical implementation and raising awareness of human rights in Denmark. The Special Representative would appreciate receiving further information from the Government concerning this issue. The Special Representative would also appreciate receiving additional information on the situation for human rights defenders in Denmark and on steps taken to implement the Declaration in the country.

Dominican Republic

475. La Representante Especial lamenta que en el momento de finalizar este informe, el Gobierno no le haya remitido información en respuesta al cuestionario distribuido para la preparación del presente informe. La Representante Especial insta al Gobierno que transmita la información relativa para que este informe pueda ser actualizado.

La comunidad de los defensores de los derechos humanos

476. La información disponible demuestra que la mayoría de los defensores de derechos humanos en la Republica Dominicana trabaja por parte de derechos económicos e sociales y también por los derechos de los emigrantes haitianos. El contexto de la intensificación de la crisis económica en 2003 que resulta en huelgas generales y manifestaciones masivas ha tenido un impacto negativo en el trabajo de los defensores de derechos humanos. Numerosos líderes sociales habrían sido detenidos y las ONG han denunciado condiciones de reclusión que constituyen tratos crueles, inhumanos o degradantes, problemas en la administración de justicia,

violencia doméstica, tráfico de personas, incluso de menores, y abusos contra inmigrantes haitianos. La Representante Especial lamenta que no haber podido recoger suficiente información para llevar a cabo una evaluación en profundidad de la comunidad de defensores en la República Dominicana.

Marco jurídico

477. La República Dominicana es estado parte de los principales tratados internacionales de derechos humanos, incluido el Pacto Internacional de Derechos Civiles y Políticos, pero todavía no ha ratificado la Convención contra la tortura y otros tratos o penas crueles, inhumanos o degradantes, que ya ha firmado, la Convención internacional para la protección de los derechos de todos los trabajadores migratorios y de sus familiares, el Segundo Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos y los Protocolos Facultativos de la Convención sobre los Derechos del Niño. En el contexto regional, la República Dominicana ha ratificado la Convención Americana de Derechos Humanos.

478. La Representante Especial lamenta no haber recibido información sobre las leyes y normas nacionales que rigen los derechos y las libertades codificadas en la Declaración.

Medidas tomadas a nivel nacional para asegurar la implementación de la Declaración

479. La Representante Especial lamenta no haber recibido información sobre las políticas y los programas llevados a cabo por las autoridades dominicanas para garantizar la implementación efectiva de la Declaración.

Motivos de preocupación y Comunicaciones transmitidas

480. La Representante Especial lamenta no disponer de suficiente información para llevar a cabo una evaluación en profundidad de la situación y los motivos de preocupación de los defensores de derechos humanos en la República Dominicana.

481. Sin embargo, la Representante Especial nota que, desde el inicio de su mandato y hasta el 1 de diciembre de 2005, ha transmitido tres comunicaciones al Gobierno. Dos de ellas se refieren a las amenazas de muerte contra un defensor de los derechos de los inmigrantes y refugiados haitianos en la República Dominicana e la tercera se refiere a actos de violencia durante una jornada nacional de protesta pacífica. La Representante Especial agradece al Gobierno su respuesta a la primera comunicación. La Representante Especial expresa su preocupación sobre el maltrato de los manifestantes pacíficos y también por los defensores que representan a los refugiados e inmigrantes haitianos, por las autoridades.

Ecuador

482. La Representante Especial lamenta que en el momento de finalizar este informe, el Gobierno no le haya remitido información en respuesta al cuestionario distribuido para la preparación del presente informe. La Representante Especial insta al Gobierno que transmita la información relativa para que este informe pueda ser actualizado.

483. La Representante Especial agradece a la oficina del PNUD en Ecuador por facilitarle una respuesta al cuestionario distribuido para la preparación de este informe. Esta respuesta se basa en parte en un taller organizado por el PNUD en Quito con varias asociaciones de derechos humanos ecuatorianas.

La comunidad de defensores de los derechos humanos en Ecuador

484. Según el PNUD, la comunidad de defensores de los derechos humanos en Ecuador comprende tanto a activistas que trabajan desde ONG de derechos humanos como líderes y grupos sociales que llevan actividades más concretas de defensa de derechos específicos. Esta última categoría incluye por ejemplo periodistas, dirigentes y militantes de organizaciones de base, comunidades y dirigentes indígenas, campesinos o afro-ecuatorianos.

485. Varias ONG de derechos humanos pertenecen a redes nacionales o internacionales y coordinan frecuentemente sus esfuerzos para tratar temas específicos o ejecutar proyectos conjuntos. Pero, según ha sido informada la Representante Especial, no existiría un espacio permanente de coordinación. Las ONG articulan denuncias ante el sistema interamericano de derechos humanos. Estas iniciativas suelen tener efecto sobre el Estado ecuatoriano.

486. La situación de los defensores de derechos humanos se habría deteriorado considerablemente en el transcurso de año 2004. De acuerdo con la información recibida, la intensidad de la persecución habría bajado con el cambio de gobierno en abril 2005 después de las manifestaciones para pedir la renuncia del entonces Presidente del país. Sin embargo, se seguirían registrando episodios represivos, sobretodo en las provincias de Sucumbíos y Orellana y en la Amazonía. Además, muchos acosos contra defensores de los derechos humanos habrían quedado impunes

Marco jurídico

487. Ecuador ha ratificado los principales instrumentos internacionales de derechos humanos, incluido el Pacto Internacional de Derechos Civiles y Políticos, pero todavía no es parte del Protocolo facultativo de la Convención contra la Tortura y otros Tratos o Penas Cruels, Inhumanos o Degradantes. En el contexto regional, ha ratificado varios instrumentos de derechos humanos tales como la Convención Americana sobre Derechos Humanos.

488. Ecuador dispone de un nuevo marco constitucional que incorpora, desde 1998, derechos, libertades y garantías que las Constituciones Políticas anteriores no habían reconocido. La normativa jurídica ecuatoriana mantendría vigentes varias regulaciones específicas para el funcionamiento de las organizaciones no gubernamentales, nacionales y extranjeras, incluso las de derechos humanos. Algunos de los artículos de estas regulaciones restringirían la autonomía e independencia de las ONGs, en especial en el ámbito de la administración de sus propios recursos financieros.

489. La Representante Especial lamenta no haber recibido más información sobre las leyes y normas nacionales que rigen los derechos y las libertades codificadas en la Declaración.

Medidas tomadas a nivel nacional para la implementación de la Declaración

490. La Representante Especial ha sido informada de que el 18 de junio de 1998, el entonces presidente de la República suscribió con todo su gabinete ministerial el Decreto Ejecutivo mediante el cual se establecía un Plan Nacional de Derechos Humanos. Una de las prioridades de este Plan era promover y difundir los principios de los derechos humanos en su concepción de universalidad, integralidad e interdependencia.

491. A nivel institucional, la Defensoría del Pueblo cuenta con un defensor, dos defensores adjuntos y comisionados en todas las provincias. Tiene direcciones nacionales de la mujer; la niñez y adolescencia; del consumidor; de la tercera edad y discapacitados; de los indígenas; y de los pueblos afroecuatorianos. ONG de derechos humanos han expresado preocupación por el rol desempeñado por la Defensoría del Pueblo. La Representante Especial agradecería recibir más información al respecto.

492. En los últimos años, las organizaciones de derechos humanos han organizado cuatro jornadas de análisis sobre la situación de los defensores de los derechos humanos, dirigentes sociales y periodistas en el Ecuador.

Motivos de Preocupación y Comunicaciones enviadas por la Representante Especial

493. Desde el inicio de su mandato, la Representante Especial ha enviado 22 comunicaciones al Gobierno, relativas a 14 defensores y cinco defensoras de los derechos humanos y a miembros de al menos 12 organizaciones. Una gran parte de estos casos se refieren a actos de hostigamiento y amenazas de muerte contra defensores que trabajan para los derechos de los pueblos indígenas y de activistas ecologistas. Algunos de ellos habrían sido agredidos físicamente. El objeto de una de las comunicaciones ha sido el orden de cerrar una fundación que trabajaba para los derechos a la vivienda y a la salud en Quito. La Representante Especial lamenta que el Gobierno no le haya todavía contestado a ninguna de sus comunicaciones.

494. De acuerdo con la información recibida, algunos representantes y funcionarios del gobierno habrían estigmatizado el trabajo de los defensores de derechos humanos. Habrían calificado a los defensores de los derechos humanos de “defensores de delincuentes”, de “narcotraficantes” y les acusarían de “obstaculizar la justicia”. También se nota discursos hostiles en ciertos medios de comunicación. La Representante Especial lamenta que este tipo de actitudes fomente desprestigio hacia los defensores de los derechos humanos ecuatorianos. A pesar de la falta de reconocimiento por parte del Estado, se percibiría una mayor credibilidad por parte de la ciudadanía gracias a los casos que los defensores llevan ante la opinión pública.

495. La Representante Especial toma nota también del acoso del que serían objeto miembros y dirigentes de la comunidad gay, lesbiana, bisexual y transexual, y en particular, los travestis. La Representante Especial también ha intervenido en varias ocasiones en relación con amenazas y ataques contra personas gays, lesbianas, transexuales y bisexuales y sus representantes.

Egypt

496. The Special Representative thanks the Government for its response to the questionnaire transmitted for the preparation of this report. She also acknowledges the responses from non governmental sources to the questionnaire.

The human rights defenders community

497. It is reported that there have been modest improvements in the human rights situation in Egypt in the past two decades, including increased room for freedom of expression and association; improved personal status laws, and the abolition of State Security Courts (although not Emergency Courts). The Government has informed the Special Representative that it sees civil society as an essential partner in the realization of comprehensive development because of “the value that civic work adds to society by strengthening cohesion and solidarity, creating a natural environment that encourages volunteer work, and instilling a sense of patriotism and loyalty to the community”. The Special Representative welcomes this commitment from the Government. Nevertheless, she continues to receive information indicating that the human rights defenders community still faces hardships which are affecting the quality and effectiveness of their work.

498. According to information provided by the Government, there are 81 registered human rights associations in Egypt and 31 foreign NGOs authorized to operate as civic organizations in Egypt. According to information received, there are about 130 organizations that specifically list advocacy and the protection and promotion of human rights as integral parts of their mandate. The human rights community in Egypt has reportedly both grown and matured since the 1980s and human rights organizations have, reportedly, won limited legitimacy with the State.

499. NGOs are active in the defence of various human rights including the freedom of expression and opinion, the freedom of religion, women’s and minority rights, right to adequate housing, right to bodily integrity, right to health, right to fair trial and equal protection of the law, right to education, right to choose representative governments, refugee rights, and children’s rights. Defenders organizations have documented human rights violations, and according to information received have in general managed to increase their local, regional and international advocacy efforts.

500. Associations also provide training for activists on international human rights instruments. In general, however, the human rights defenders community focuses particularly on political and civil rights and issues such as health, housing, and the eradication of poverty are, reportedly, approached from a *needs* perspective rather than an economic and social *rights* perspective.

501. The Government sees the press as “an important mechanism for disseminating a human rights culture, raising awareness of international conventions, and monitoring all important international, regional and national events”.

502. Human rights organizations are reported to be mostly located in major urban centres, in particular in Cairo which restricts their outreach to a broader socio-economic constituency. Human rights organizations suffer from a lack of human and financial resources. The Government and the media have at time used NGOs reliance on foreign funds to de-legitimize

their work. In certain state-sponsored media defenders have been depicted as “agents of imperialism”, a stigmatization that has compelled some human rights organizations to discontinue their reliance on foreign donations which has diminished their capacity to carry out their activities.

Legal framework

503. Egypt has acceded to most of the main human rights instruments, including the International Covenant on Civil and Political Rights. It has ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict. It has yet to sign or ratify the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the two Optional Protocols to the International Covenant on Civil and Political Rights, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women. Egypt is a State party to the African Charter on Human and Peoples’ Rights.

504. While the constitutional framework in Egypt allows the exercise of fundamental freedoms, in practice, with the persistence of the state of emergency, it has remained rather restrictive. Indeed, in February 2003, the Government extended twenty-two years of continuous emergency rule for another three years. The state of emergency in Egypt reportedly imposes serious restrictions on the exercise of the right to freedom of expression and association, which reportedly is having negative effects on the work of human rights defenders in the country. The Emergency Law mentioned above, provides the President with wide-ranging powers.

Freedom of expression and access to information

505. The Egyptian Constitution provides for freedom of expression through its articles 47 and 48. Article 47 states that: “Freedom of opinion shall be guaranteed. Every individual shall have the right to express his opinion and to publicize it verbally, in writing, in images or by any other means of expression within the limits of the law. Self criticism and constructive criticism shall guarantee the integrity of the national body.” Article 48 states that: “Freedom of the press, printing, publishing and the mass media shall be guaranteed. Censorship of newspapers shall be forbidden, as well as the issuance of warnings to, or suspension or administrative closure of, newspapers. However, it is noteworthy that in some of a state of emergency or war, limited censorship may be imposed by law on newspapers, publications and the mass media in matters relating to public safety or for the purposes of national security”.

506. Currently, under Emergency Law freedom of expression is restricted, and the President has the right to impose censorship on all kinds of communications. In addition, article 80 (d) of the Penal Code renders dissemination of “damaging” information abroad punishable by up to five years imprisonment.

Freedom of assembly and freedom of movement

507. Article 54 of the Egyptian Constitution provides that “citizens shall have the right to peaceful and unarmed private assembly, without the need for prior notice. Such private meetings should not be attended by security men. Public meetings, processions and gatherings shall be allowed within the limits of the law”.

508. However, in practice under Emergency Law, freedom of assembly is restricted, and there are several other laws that regulate and restrict this freedom. Permission is needed from the Ministry of Interior is needed for any public meetings, in particular rallies or demonstrations which represents a serious strain on defenders and their work.

509. The Penal Code also contains restrictive articles such as article 86 which allows for prison sentences up to five years for contributing to activities “damaging national unity and social order”. Under the Assembly Law 10 of 1914, articles 2 and 3, the police have the right to disperse any meeting of five or more persons with no warrant. The Rallies and Demonstrations Law 14 of 1923 requires that for all public rallies and demonstrations authorities need to be notified at least three days in advance. Furthermore, the authorities retain the right to prevent rallies and demonstrations and disperse them at any time. Article 86 in the Penal Code also provides for prison sentences for up to five years for founding and/or belonging to organizations “damaging national unity and social order”.

Freedom of association

510. After decades of reportedly denying human rights organizations legal recognition, in recent years the Egyptian Government has allowed several human rights organizations to officially register with the Ministry of Social Affairs under law 84 of 2002.

511. In the past, many human rights NGOs reportedly chose to circumvent restrictions placed by the Ministry of Social Affairs, by registering as civil companies. However, law 84 of 2002 stipulates that all organizations working in the non-profit sector must register within its auspices or face criminal penalties, ranging from fines up to a year imprisonment.

512. According to information received, the State Council (the high administrative court) has on numerous occasions reversed decisions by the Ministry of Social Affairs to deny NGO registration, which demonstrates that the judicial system retains a certain amount of independence vis-à-vis the executive and security forces. However, under Law 84, NGOs may only directly seek intervention from courts in cases of registration rejection. In all other disputes, NGOs must first resort to a three-person dispute committee, whose members are appointed by the State. The Government has informed the Special Representative that the committee includes the following members: one representative of the administrative branch nominated by the Minister of Social Affairs, one representative of the federal region nominated by the governing board of the general federation, and one representative of the association which is a party to the dispute nominated by the general assembly. If the committee fails to decide on the issue within 60 days, NGOs can appeal to the State Council. These administrative hurdles have sometimes reportedly resulting in further costs and delays for NGOs.

Measures taken at national level for the implementation of the Declaration

513. In 2003, the Egyptian Government created the National Council for Human Rights, headed by the former United Nations Secretary General Mr. Boutros-Boutros Ghali. The National Council has the status of a consultative body, and is aimed at improving the human rights situation in Egypt. In its first annual report, the National Council for Human Rights voiced some criticism of the Government and recommended the lifting of Emergency Law. The Government has also informed the Special Representative of the existence of the following

national mechanisms, amongst others, overseeing the effective implementation of human rights instruments: The Department of Human Rights and International Social and Humanitarian Affairs in the Ministry of Foreign Affairs, the Directorate-General for Human Rights in the Ministry of Justice, the Higher Committee for Human Rights in the Ministry of Interior, the Human Rights Committee in the Ministry of Social Affairs, the Human Rights Protection Division of the Office of the Attorney-General and the Human Rights Committee of the Egyptian Parliament.

514. While the Special Representative is encouraged by these measures, she notes that no particular measures have been taken with regards to protecting the rights of defenders and ensuring the specific implementation of the Declaration on human rights defenders.

Communications and issues of concern

515. Since 2000, the Special Representative has been able to identify a number of concerns with regards to human rights defenders some of which are illustrated in the communications sent in the course of her mandate to the Government. Over the past six years, the Special Representative has sent 17 communications regarding 24 individual defenders and 4 human rights organizations, in addition to unnamed inhabitants of a village, to the Government. The Egyptian Government has replied to 12 of the communications sent, and the Special Representative acknowledges the prompt replies of the Government to these cases. Nevertheless the Special Representative notes with concern that in at least one response the Government described defenders as “agents provocateurs” and that the Government in several of its replies denied that the persons concerned should be regarded as defenders and rather that they were a threat to “national security” or spreading “propaganda” or “false information”.

516. One of the first concerns with regards to the situation of human rights defenders in Egypt regards the legal framework in which human rights defenders have to conduct their work. In particular, while the special representative welcomes the steps taken by Egypt in recent years to move towards democracy and a more inclusive attitude towards civil society and human rights organizations she remains concerned with the wide-ranging powers granted to the authorities under Emergency Laws. In that context, the Special Representative would like to remind the Government about the concluding remarks of the Committee on Human Rights that “the Committee is disturbed by the fact that the state of emergency proclaimed by Egypt in 1981 is still in effect, meaning that the State party has been in a semi-permanent state of emergency ever since” (CCPR/CO/76/EGY, para. 6).

517. Apart from the emergency laws, human rights defenders have reported facing difficulties and bureaucratic hurdles under the applicable registration regime which were already brought to the attention of the Egyptian Government in two communications from the Special Representative. In particular, it has been pointed out that Law 84 of 2002 still severely compromises the right to freedom of association by giving the Government unwarranted control over the governance and operations of NGOs. The law which took effect in June 2003 provides for criminal penalties for so-called “unauthorized” activities, including “engaging in political or union activities, reserved for political parties and syndicates” (art. 11). In addition, it provides for up to six months in prison for receiving donations on behalf of an NGO without prior ministry approval. Persons carrying out NGO activities prior to the organization’s formal registration are also liable to a three-month prison term.

518. The Special Representative reiterates her concern expressed previously to the Government of Egypt in one of her communication about information received regarding the difficulty for organizations working with human rights to receive funding from abroad to carry on promoting and protecting human rights. In particular, she notes allegations of long delays imposed on receiving already granted funds from abroad. The Special Representative would like to remind the Government that according to article 13 in the Declaration “everyone has the right [...] 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”.

519. The Government has reportedly curbed its arrests and harassment of leading human rights defenders in the last few years, and has given defenders a larger margin for freedom of expression. Nevertheless, there are still reportedly measures in place to suppress freedom of expression of political opposition which also applies to human rights defenders’ work and a number of the communications sent by the mandate in the past 6 years have concerned cases of defenders being arrested or harassed for being in possession of written material which the Government reportedly considered as “threatening national security” or for recommending legal reforms in order to comply with international human rights standards. Defenders’ freedom to communicate with international NGOs has also been restricted and on a number of instance defenders have been charged for sharing information that could be “harmful to Egypt’s reputation” and with “disseminating false information abroad”.

520. Concern is also expressed over allegations of restrictions on defenders’ right to freedom of assembly, often imposed on the basis of security needs. A majority of the communication sent by the Special Representative over the course of her mandate concerned cases of defenders arrested or harassed by the police in relation to their participation in peaceful demonstrations. In relation to this, she is concerned about information that the Emergency Law, Law No. 162 of 1958, allows for arbitrary arrest and indefinite detention without trial, and has been said to create an atmosphere of impunity, especially in relation to violations by the security forces and police.

521. The Special Representative would like to reiterate her concern voiced in certain of her communications that several defenders have been on trial before State Security Courts rather than before courts of ordinary jurisdiction. She would also like to reiterate concerns that the convictions of members of civil society for their human rights activities will have a chilling effect on the activities of other human rights defenders in Egypt.

522. Finally, the Special Representative recalls that she has repeatedly requested an invitation to visit Egypt, and regrets that the Government, despite assurances that her request will be given serious consideration, has not given her a positive response yet.

El Salvador

523. La Representante Especial agradece al Gobierno su respuesta al cuestionario que envié para la elaboración de este informe.

La comunidad de defensores de los derechos humanos en El Salvador

524. En su respuesta al cuestionario, el Gobierno ha indicado que si bien el Ministerio de Gobernación cuenta con una Dirección encargada del registro de Asociaciones y Fundaciones sin Fines de Lucro, no se tiene a disposición el número exacto de las organizaciones privadas de defensores de los derechos humanos. Non obstante el Gobierno ha mencionado la Fundación de Estudios para la Aplicación del Derecho, el Instituto de Derechos Humanos de la Universidad Centroamericana “José Simeón Cañas” y la Asociación de Mujeres para la Dignidad y la Vida, como organizaciones que han cobrado cierta relevancia en la sociedad salvadoreña.

525. El Gobierno también ha destacado el desempeño de las instituciones públicas en la promoción y protección de los derechos humanos (véanse párrafos siguientes).

526. La Representante Especial lamenta que no haber podido recoger suficiente información para llevar a cabo una evaluación en profundidad de la comunidad de defensores en El Salvador

Marco jurídico

527. El Salvador es parte de los principales instrumentos internacionales de derechos humanos, incluido el Pacto Internacional de Derechos Civiles y Políticos, pero todavía no ha ratificado el Segundo Protocolo Facultativo al Pacto Internacional de Derechos Civiles y Políticos y el Protocolo Facultativo de la Convención contra la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes. En el contexto regional, El Salvador es parte de la Convención Americana sobre Derechos Humanos.

528. El Gobierno informó que los derechos reconocidos en la Declaración sobre los Defensores de los Derechos Humanos se encuentran garantizados y protegidos en la Constitución, así como en tratados y en algunas leyes secundarias. El Gobierno ha proporcionado a la Representante Especial un estudio comparativo en el que muestra como la Declaración sobre los Defensores de los Derechos Humanos se encuentra reflejada en la Constitución salvadoreña. Por ejemplo, el artículo 6 de la Constitución reconoce la libertad de expresión y difusión de sus pensamientos, siempre y cuando no subviertan el orden público, ni lesione la moral, el honor y la vida privada de los demás; y el artículo 7 garantiza el derecho de asociarse libremente y a reunirse pacíficamente y sin armas para cualquier objeto lícito. El Gobierno también indica en su respuesta que la Constitución garantiza el derecho a realizar cualquier actividad lícita, aunque también establece una prohibición relativa en el sentido que la ley no puede autorizar ningún acto o contrato que implique la pérdida o el irreparable sacrificio de la libertad o dignidad de la persona.

Medidas tomadas a nivel nacional para la implementación de la Declaración

529. El Gobierno informó la Representante especial sobre la existencia y funcionamiento de la Fiscalía General de la República, que cuenta con una División de la Defensa de los intereses de la Sociedad; la Procuraduría para la Defensa de los Derechos Humanos, el Instituto Salvadoreño para el Desarrollo de la Mujer, el Instituto Nacional de Protección Integral para la Niñez; el Consejo Nacional de Atención Integral para la Persona con Discapacidad; el Consejo Nacional de Salud Mental.

530. El Gobierno considera que para efectos de fortalecimiento de la función y situación de los derechos humanos debe contarse con programas continuos de capacitación para el personal de las instituciones que trabajan en este ámbito así como con la disposición de recursos económicos y materiales para su mejor desempeño.

531. La Representante Especial toma nota de la colaboración de la Oficina del Alto Comisario de las Naciones Unidas para los Derechos Humanos (OACNUDH) en el fortalecimiento de la Procuraduría para la Defensa de los Derechos Humanos en El Salvador.

532. El Gobierno informo que las instituciones públicas se han fortalecido desde la firma de los acuerdos de paz en 1992. Muchas de estas instituciones, como por ejemplo la Escuela de Capacitación Judicial y la Academia de Seguridad Pública, cuentan con programas de capacitación en derechos humanos. Según el Gobierno, existe una mayor confianza de los habitantes del Estado en sus instituciones para demandar la protección de sus derechos, lo cual ha llevado, a partir de 1992, a un gran incremento en procesos de amparo ante la Sala de lo Constitucional de la Corte Suprema.

Motivos de preocupación y Comunicaciones enviadas por la Representante Especial

533. Desde el inicio de su mandato hasta el 1 de diciembre de 2005, la Representante Especial ha transmitido tres comunicaciones al Gobierno. Una de estas comunicaciones refirió a una defensora de los derechos humanos que habría recibido amenazas de muerte. Las otras refirieron a dos miembros de la Procuraduría para la Defensa de los Derechos Humanos y su chofer que habrían sido detenidos, y a una ONG cuyas oficinas habrían sido saqueadas. La Representante Especial agradece al Gobierno sus respuestas a las tres comunicaciones.

534. La Representante Especial comparte la preocupación expresada por el Comité de los Derechos del Niño según la cual no se proporcionarían suficientes fondos a la Procuraduría para la Defensa de los Derechos Humanos para que puedan cumplir con su mandato. (CRC/C/15/Add.232, párrafo 11)

535. La Representante Especial también quisiera referirse a las observaciones finales que el Comité de Derechos Humanos emitió cuando examinó, en 2003, el informe presentado por El Salvador. El Comité tomó nota con preocupación “de las afirmaciones de la delegación en las cuales se reconocen las limitaciones del derecho a sindicalizarse, haciendo constar, sin embargo, que no tiene lugar de manera sistemática”. (CCPR/CO/78/SLV, párrafo 20)

536. De acuerdo con la información recibida, fuentes no gubernamentales han manifestado su preocupación sobre la falta de recursos para llevar a cabo denuncias y programas de sensibilización y educación de los derechos humanos, y también la falta de apoyo por parte del Estado. De acuerdo con la información recabada, autoridades estatales habrían tildado de ilegales a organizaciones de derechos humanos y habrían retrasado el proceso para la adquisición de personerías jurídicas. Por otra parte, si bien las ONGs agradecen el reconocimiento de su trabajo por parte de algunos sectores, fuentes no gubernamentales también han manifestado su preocupación sobre la falta de consultación por parte de algunos sectores del Gobierno.

537. La Representante Especial comparte la preocupación expresada por el Comité de los Derechos del Niño según la cual no se proporcionarían suficientes fondos a la Procuraduría para la Defensa de los Derechos Humanos para que puedan cumplir con su mandato. (CRC/C/15/Add.232, párrafo 11)

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Equatorial Guinea

539. La Representante Especial lamenta que en el momento de finalizar este informe, el Gobierno no le haya remitido información en respuesta al cuestionario distribuido para la preparación del presente informe. La Representante Especial insta al Gobierno que transmita la información relativa para que este informe pueda ser actualizado.

La comunidad de defensores de los derechos humanos en Guinea Ecuatorial

540. La Representante Especial lamenta que no haber podido recoger suficiente información para llevar a cabo una evaluación en profundidad de la comunidad de defensores en Guinea Ecuatorial.

Marco jurídico

541. Guinea Ecuatorial ha accedido a todos los instrumentos internacionales principales de derechos humanos, incluido el Pacto Internacional de Derechos Civiles y Políticos, pero todavía no ha ratificado la Convención Internacional para la protección de los derechos de los trabajadores migrantes y sus familias y cuatro de los seis Protocolos facultativos a los mencionados instrumentos internacionales. A nivel regional, Guinea Ecuatorial ha ratificado la Carta Africana de Derechos Humanos y de los Pueblos. El artículo 8 de la Ley fundamental de Guinea Ecuatorial dispone que el Estado “acata los principios del derecho internacional y reafirma su adhesión a los derechos y obligaciones que emanen de las cartas de las organizaciones y organismos internacionales a los que se ha adherido”.

542. La Ley fundamental, en su artículo 13 (b) y (k) protege el derecho a la libertad de expresión, a la libre asociación, reunión y manifestación, dentro de los límites previstos en el artículo 11 de esta misma Ley.

Libertad de expresión

543. La Ley no. 6/1997 de prensa, imprenta y medios audiovisuales regula el registro, el funcionamiento y el control de “todas las formas y modos de comunicación social. Su artículo 1 establece que el derecho a la libertad de expresión, de pensamiento, ideas y opinión, reconocido en Guinea Ecuatorial, se ejercerá cuando se difundan a través de los medios de comunicación social conforme a lo dispuesto en la Ley fundamental y en la presente ley. Esta ley también establece sanciones penales, civiles y administrativas por la violación de sus disposiciones.

544. Por su parte, el Pacto Nacional Vinculante, firmado por el Gobierno y los partidos políticos reconocidos en 1993 y revisado ulteriormente con el fin de establecer un marco “para crear las premisas políticas del medio externo de pluralismo político que aseguran el libre desarrollo de los partidos políticos”, contiene normas y reglamentos que rigen algunos aspectos del derecho a la libertad de opinión y expresión.

Libertad de asociación

545. La Ley no. 1/1999 del 24 de febrero de 1999 rige el régimen jurídico de las ONG, sus derechos y sus obligaciones. Si bien esta Ley reconoce las ONG y les otorga ciertas ventajas, como por ejemplo exoneraciones fiscales, también impone obligaciones como la de remitir un informe trimestral sobre sus actividades al Ministerio del Interior.

546. Si bien las disposiciones legales han mejorado en los últimos años, el contexto legal sigue impidiendo al trabajo de los defensores de derechos humanos.

Medidas tomadas a nivel nacional para la implementación de la Declaración

547. La Representante Especial lamenta no haber recibido información sobre las políticas y los programas llevados a cabo por las autoridades de Guinea Ecuatorial para garantizar una implementación efectiva de la Declaración.

Motivos de preocupación y Comunicaciones transmitidas por la Representante Especial

548. Según la información recibida, el artículo 19 de la Ley no. 1/1999 previamente mencionada prevé que las autoridades pueden disolver a una ONG en cuatro casos, entre los cuales uno muy ambiguo que se define como “falsedad u omisión en la información facilitada”. La Ley no. 1/1999 excluye del registro a las ONG que trabajan en la esfera de los derechos humanos y los asuntos sociales. La Representante Especial se refiere a su comunicación con fecha de 10 de mayo de 2001, en la que expresó preocupación sobre esta ley (E/CN.4/2002/106, párr. 162), la única comunicación que la Representante Especial ha transmitido al Gobierno desde el inicio de su mandato y hasta el 1 de diciembre de 2005. Lamenta no haber recibido respuesta alguna del Gobierno a esta comunicación.

549. La Representante Especial toma nota del informe del Relator Especial sobre el derecho a la libertad de opinión y expresión sobre su visita a Guinea Ecuatorial realizada en diciembre de 2002. (E/CN.4/2003/67/Add.2) En dicho informe el Relator Especial señaló que “(p)ese a los obstáculos en relación con el registro, todas las ONG con que se reunió el Relator Especial admitieron que las autoridades les permiten llevar a cabo sus actividades, incluso sin reconocimiento jurídico. No obstante, debe observarse que todavía no existen ONG locales encargadas de vigilar la situación de los derechos humanos, o de otra manera ocuparse directamente de cuestiones de derechos humanos en Guinea Ecuatorial. Las ONG también se quejaron de la falta de apoyo, en particular financiero, del Gobierno para llevar a cabo sus tareas, en particular cuando se trata de organizaciones que desarrollan actividades con un marcado interés social y desean ser la voz de los sin voz, como los ancianos, los jóvenes, las mujeres, las niñas, etc. También se mencionaron el grave problema de la corrupción y la abrumadora falta de

moralidad de los funcionarios como factores que obstaculizan la labor de las ONG en el país. Con respecto a las dificultades de las ONG para obtener la autorización necesaria para funcionar, el Primer Ministro observó que varias ONG están modificando sus metas y propósitos al desviarse de la esfera de actividad para la que en un principio obtuvieron la autorización, lo que es ilegal” (ibid., paras. 44-48)

550. La Representante Especial toma nota de las observaciones finales emitidas en noviembre de 2003 por el Comité de Derechos Humanos y en las que éste “lamenta que el derecho a la libertad de circulación siga siendo objeto de limitaciones, según los informes que alegan la existencia de numerosas barreras militares, la imposición de visados para salir del país y la práctica del confinamiento político” (CCPR/CO/79/GNQ, párr. 13).

551. Finalmente, la Representante Especial lamenta que el Gobierno de Guinea Ecuatorial todavía no haya dado respuesta positiva a su solicitud de invitación para llevar a cabo una visita al país.

Eritrea

552. The Special Representative acknowledges the responses from non-governmental sources to the questionnaire transmitted to her for the preparation of this report. She regrets that the Government of Eritrea has not responded to the questionnaire at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

553. Eritrea is a one-party State and no political party other than the President’s People’s Front for Democracy and Justice (PFDJ) is allowed to exist. No national elections have been held in Eritrea since independence in 1993, as elections scheduled for 1997 and later 2001 were cancelled. Regional non-partisan assembly elections were held in 2004, but the offices concerned have little actual power.

554. The United Nations Mission to Ethiopia and Eritrea (UNMEE) was established on 31 July 2000 by Security Council resolution 1312 (2000) and following the signature of the Cessation of Hostilities Agreement in June 2000. UNMEE is mandated to monitor the cessation of hostilities and assist in the implementation of the Peace Agreement signed in December 2000. The human rights component of the UNMEE is the Human Rights Office, which was established in 2001. The mandate of this office focuses on addressing human rights concerns resulting from the Ethiopia/Eritrea conflict. In October 2005, the Government banned United Nations helicopter flights to the United Nations monitoring posts and imposed other restrictions on the mission which severely reduced its ability to fulfill its mandate. In December 2005, Eritrea requested that nationals of the United States, Canada and Europe, including Russia, leave the UNMEE and Eritrea within ten days. The request drew immediate condemnation from the Security Council and the Secretary General.

555. Non-governmental political, civic, and social institutions and organizations are reportedly largely prohibited from functioning as are minority religious institutions. The Special Representative regrets that she has not received sufficient information concerning the human

rights defenders community in Eritrea to be able to make a complete assessment, nevertheless the information currently at her disposal suggest that human rights defenders in the country face many difficulties.

Legal framework

556. Eritrea is a State party to the main international human rights instruments. Nevertheless, it has not yet acceded to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and its optional protocol, the two optional protocols to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Eritrea has ratified the African Charter on Human and Peoples' Rights.

557. In 1997, a Constitution was drafted and subsequently ratified by referendum, but so far it has not been implemented. The draft Constitution protects the rights of freedom of the press, freedom of speech, freedom of religion, and the right to peaceful assembly and to form organizations, amongst other provisions.

558. Reportedly it is forbidden for any group of more than seven people to assemble without approval by the Government.

Freedom of association

559. Under Proclamation No. 145/2005 of 11 May 2005, "to determine the administration of non-governmental organizations", international NGOs are limited to relief and rehabilitation activities, and are not permitted to work with local communities independently of the Government. The proclamation further makes requirements to all NGOs, national and international, to submit quarterly progress reports and audited financial reports, pay taxes on all imported goods including food aid, deposit substantial funds in an Eritrean bank.

Measures taken at national level for the implementation of the Declaration

560. The Special Representative regrets that she has not received information on the policies and programmes adopted by Eritrean relevant authorities to ensure an effective implementation of the Declaration.

Communications and issues of concerns

561. From the establishment of her mandate to 1 December 2005, the Special Representative has sent one communication to the Government of Eritrea. The communication concerned the arrest and reported incommunicado detention of three union leaders by security police. The Special Representative regrets that she has not yet received a response from the Government to this communication. She is concerned at the lack of information from defenders in the country may indicate difficulties or lack of capacity to communicate with the mandate. This has limited her ability to make a more comprehensive assessment of the situation of defenders or the implementation of the Declaration in Eritrea.

562. She would appreciate receiving information on the legal framework of Eritrea with regards to the activities of human rights defenders, and in particular she would appreciate receiving additional information on the reported restrictions on the right to freedom of association and freedom of expression.

563. The information at her disposal suggests that freedom of expression and of information has suffered particular limitations. In particular, reports indicate that in 2001, the Government closed the private press, and has since kept a monopoly on access to information. In 2004, the Government placed all Internet cafes under government supervision, and expelled the only resident foreign correspondent left in the country, from the British Broadcasting Corporation (BBC). As result, there has been a near black-out on the situation in the global media, also on human rights issues.

564. The Special Representative is further concerned by information received that in 2003, the Government decided to post guards outside two information centers operated by the UNMEE, in order to prohibit access to the centers. Subsequently the UNMEE was asked to close down the centers.

565. Freedom of movement has also been curbed limiting further the ability to access information. Reports indicate that in 2004, the Government imposed travel restrictions on all foreign diplomats, by which they were required to seek Government approval for all travel outside Asmara, and reports that international organizations are continuously denied entry to Eritrea and international humanitarian agencies and NGOs are restricted in their travel and their activities. She would like to remind the Government of the acknowledgement in the Declaration of the “important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals [...]”.

566. The Special Representative is also concerned about reports that all prison visits by international human rights organizations are prohibited and that human rights violations by members of the security forces are reported to be committed with total impunity. She would like to remind the Government that according to the Declaration, “the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State”.

Estonia

The human rights defenders community in Estonia

567. The information received from non-governmental sources on the human rights defenders community in Estonia is contradictory on several points, including the number of NGOs working to promote and protect human rights in the country. Information ranges from 1 to 30 NGOs working within this field. The Special Representative thus regrets not having the necessary information enabling her to assess the actual situation. However, she is able to ascertain that activities of human rights defenders in the country include monitoring cases of xenophobia, training in human rights for police and local authorities, working on minority rights, giving legal assistance and working for the rights of women and the rights of disabled people.

568. The Special Representative has also been informed about the establishment of the position of Ombudsman for Human Rights, but understands that no actual appointment has yet been made the position has not come into being in practical terms yet. She would appreciate receiving further information from the Government on this issue.

Legal framework in Estonia

569. Estonia is a State party to most of the core international human rights instruments. It has not yet signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Estonia has signed, but not ratified, the Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

570. The rights to freedom of speech, freedom of assembly, freedom of association, freedom of movement, and access to information are all protected by the Estonian Constitution. The Special Representative has been informed that pickets are limited to those having asked and received permission from local authorities. She has also been informed that all NGOs need to be registered officially according to Estonian law.

571. In relation to the general legal context in Estonia, the Special Representative refers to paragraph 4 of the European Union Profile

Measures taken to implement the Declaration

572. The Government has informed the Special Representative that the Chancellor of Justice is an independent constitutional institution that combines the function of the Ombudsman and the guardian of constitutionality and has and has one of its functions to promote principles of equality and equal treatment. The function of the Chancellor of Justice was expanded in 2004 to include allowing people to file petitions requesting verifications of alleged violations of fundamental rights and freedoms by local government agencies or bodies, legal persons in public law, natural persons or legal persons in private law performing public duties, in addition to by state agencies.

Communications and concerns

573. No communications have been sent to the Government of Estonia from the establishment of the mandate until 1 December 2005.

574. The Special Representative regrets the very limited contact she has had with the human rights defenders community of Estonia during her two mandate periods and the fact that the information available to her is too limited, and on certain points, contradictory, to enable her to make a proper assessment of the situation for human rights defenders in the country. She would appreciate receiving information from the Government and from civil society on the situation for human rights defenders in the country and on steps taken for the implementation of the Declaration.

Ethiopia

575. The Special Representative thanks the non-governmental organization that has provided her with a response to the questionnaire transmitted for the preparation of this report. She regrets that the Government has not responded to her request of information at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

576. Reports of police brutality, torture, extrajudicial killings, arbitrary arrests, unfair trials, and non-access to basic economic, social and cultural rights continue to attest to a concerning human rights situation. Divisive ethnic policies are said to give rise to human rights violations and to contribute to a political and social environment that inhibits the work of human rights defenders and puts them at greater risk. The human rights situation is also affected by anti-terrorist measures that have reportedly been used to repress opposition, peaceful civil protests and human rights defenders. The 15 May 2005 Parliamentary elections were followed by a wave of protests which were reportedly cracked down by the security forces. Violent repression resulted in the killing of a number of protesters, massive arbitrary detentions and cases of torture and other forms of ill-treatment. On the other hand, Ethiopia has expressed its willingness to uphold its international commitments and hosts regional and international inter-governmental organizations, such as the African Union and the United Nations Economic Commission for Africa headquarters.

577. There is a large range of individuals and organizations that work for the promotion and protection of human rights defenders in Ethiopia. Each of them has its own methodology (raising awareness, education, advocacy, monitoring, reporting, legal assistance) and focus on general or specific issues, such as women's rights, the rule of law or democracy-related rights.

578. The Special Representative has also been informed that with the creation by the Government of parallel NGOs, the authorities have tried to replace independent civil society organizations by pro-governmental ones. Reports of Government's interference into NGO's operations have also been brought to the attention of the Special Representative.

Legal framework

579. Ethiopia has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of all forms of Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is also a party to the African Charter on Human and Peoples' Rights. According to article 13 (2) of the Ethiopian Constitution, the fundamental rights and freedoms enumerated in it shall be interpreted in a manner consistent with the Universal Declaration of Human Rights, international human rights covenants and conventions ratified by Ethiopia. The constitutional

framework in Ethiopia is in general fairly liberal in terms of the laws and provisions relevant for the work of human rights defenders, nevertheless, the Special Representative remains concerned that additional provisions, laws and proclamations are creating an environment which is fairly restrictive for the activities of human rights defenders.

Freedom of expression

580. Article 29 of the Constitution provides that “everyone shall have the right to freedom of expression without interference (...) including freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through other media of his choice” and that “the press shall be granted institutional independence and legal protection to enable it to accommodate different opinions and ensure the free flow of information, ideas and opinions that are necessary in a democratic society”.

581. In January 2003, the Government issued a very restrictive draft law entitled “Proclamation to Provide for the Freedom of the Press”. Following its rejection by civil society and recommendations by international experts, the Government presented a slightly modified version at the beginning of 2004, which motivated further protests. A third text was presented in July 2004, reportedly maintaining restrictive provisions included in the original draft, including heavy fines and prison sentences of up to 5 years for violating the law. The bill includes a list of conditions (including age, nationality, and legal background) to be met in order to obtain a license and provides for the creation of a government-controlled Press Council in charge of drawing up a code of conduct for journalists, and gives the courts pre-censorship powers. Despite continuous protests, in March 2005, the Parliament passed into law a number of articles as additions to the new Criminal Code, among which appeared articles of the draft Proclamation referring to liability for press offences.

Freedom of association and assembly

582. Article 30 (1) of the Constitution provides that “everyone shall have the freedom, in association with others, to peaceably assemble without arms, engage in public demonstration and the right to petition. Appropriate procedures may be enacted to ensure that public meetings and demonstrations do not disrupt public order or that such meetings and demonstrations do not violate public morals, peace and democratic rights”.

583. Proclamation No. 3/1991 deals with the Peaceful Demonstration and Public Political Meeting Procedure. Its article 4.1 requires that the organizers of peaceful demonstrations or political meetings shall submit written notice to local authorities. The notice should specify: the objective of the demonstration or meeting; its place, date, and hour; estimates of the number of expected participant; the required assistance from authorities for maintaining law and order.

584. Article 5.1 requires the organizers to provide their full name, address, and signature. Article 6.1 empowers the concerned official to notify the organizers for the need of holding the event in a different place or time if this was deemed necessary for maintaining law and order.

585. In accordance with the 1960 Civil Code's provisions on associations and the 1964 Associations, associations and NGOs are obliged to register with the Ministry of Justice. As a result of this restrictive framework, the registration process is said to be complicated and essentially controlled by the authorities. The license to carry out activities needs to be periodically renewed by the Ministry of Justice, which is reportedly free to discretionally withdraw or modify it.

586. It is reported that the Ministry of Justice has been considering a new draft law on NGOs that would grant the Ministry extensive powers to get involved in the internal affairs of NGOs. The bill was scheduled to be submitted to the Council of Ministers in 2005 and then to the Parliament for adoption as a law. The Special Representative would appreciate receiving updated and detailed information about this law.

Measures taken at national level for the implementation of the Declaration

587. The Special Representative regrets that she has not received sufficient information on the policies and programmes adopted by relevant Ethiopian authorities to ensure an effective implementation of the Declaration, to enable her to write a comprehensive assessment on this.

Communications and concerns

588. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 10 communications to the Government on 23 individual defenders and members of at least 3 non-governmental organizations. The Special Representative thanks the Government for responding to most of the communications. Nevertheless, the Special Representative notes that the Government in some of its responses has informed her that defenders in their opinion were "inciting violence" and that in some cases defenders were involved in "violent activities" or "illegal activities".

589. Although the repression against human rights defenders has seemingly decreased in terms of violence in the last decade, the Special Representative is concerned about activists reportedly remaining at serious risk of arrest, harassment and retaliation from the authorities. As reported by an international NGO that visited the country recently, new restrictive press and NGOs laws are currently under review, and several associations face legal actions initiated by the Government that are aimed at curtailing their activities.

590. The Special Representative is deeply concerned by the information received indicating an unfavourable environment and dangerous conditions that inhibit the work of human rights defenders. Smear and discredit campaigns as well as continuous harassment and reprisals against human rights defenders that have taken the form of arbitrary arrests – including incommunicado detention - judicial prosecution, and attacks that have been reported to her, are highly disturbing. The Special Representative transmitted most of her communications based on allegations received according to which human rights defenders were subjected to harassment or arrested without charge or on fallacious accusations. Some of them have reportedly been held incommunicado.

591. The Special Representative further regrets that the new draft NGO and press laws may lead to further clampdown on freedoms of expression and association. In her communications, the Special Representative also previously referred to the reported shortcomings in a proposed new press law. The Special Representative sent one communication on the situation of a number of journalists, opposition leaders, human rights defenders and members of the civil society that were reportedly arrested in connection with demonstrations which took place in November 2005. In this connection, the Government reportedly issued a list with 58 names of persons that the authorities plan to prosecute for attempting to violently undermine the constitutional order in the country that amounts to treason. This is allegedly punishable by death.

592. The Special Representative is concerned over information received about the Government's alleged interference into NGO's operations. In this regard she wishes to refer to a letter she sent to the Government in 2004 regarding the decision of the Ministry of Justice to re-elect the executive committee of the Ethiopian Free Journalist Association, a private association defending the rights of journalists in the country (see E/CN.4/2005/101/Add.1, para. 253). One communications was also sent concerning a women rights' NGO which was reportedly forced to suspend its activities. The Special Representative has also intervened in cases where human rights NGOs were reportedly forced to suspend their activities or their offices were forcibly shut.

593. The Special Representative is concerned that according to information received, demonstrations critical of the Government's policies are regularly banned in many parts of the country.

The European Union (EU)

594. In view of common features among the European Union (EU) countries and the limited information received for each of its countries, the Special Representative has prepared a single analysis for the EU, which includes separate sections on the countries where additional information was available, either in the form of communications with a Government during the past six years or in the form of a response from the Government or non-governmental sources, to the questionnaire transmitted for the preparation of this report.

595. The Special Representative acknowledges the responses to the questionnaire transmitted for the preparation of this report from the Government of Ireland, the Government of Portugal, and the Government of Slovakia. She acknowledges responses from the National Human Rights Institutions of Denmark, Ireland, and the United Kingdom, the ombudsman against ethnic discrimination in Sweden, and the Parliamentary Ombudsman in Finland. She also acknowledges NGOs that have provided her with information on the situation for human rights defenders and the implementation of the Declaration in Denmark, Estonia, Hungary, Spain and the United Kingdom. She regrets that she has not received information on the other EU countries or from the holders of the EU chairmanship.

596. From the establishment of her mandate until 1 December 2005, the Special Representative has sent communications to Estonia, France, Poland, Slovakia and the United Kingdom, which are all included in this section.

EU-General context

597. The environment prevailing in the EU continues to be generally conducive to the promotion and protection of human rights and implementation of the Declaration in EU countries is generally satisfactory, although the level of awareness about it amongst the general population remains low. Citizens at large and human rights defenders in particular, fully enjoy the right to freedom of opinion and expression, the right to freedom of assembly and the right to freedom of association. European human rights activists working on human rights in connection with immigrant and integration issues and anti-terrorism measures are increasingly facing criticism and new legislation may even hamper their work.

Measures taken to implement the Declaration in the EU

598. In June 2004, during the General Affairs and External Relations Council, the EU Foreign Ministers adopted the EU Guidelines on Human Rights Defenders. These Guidelines provide that Embassies of EU Member States and European Commission Delegations will maintain suitable contacts with human rights defenders by receiving them in Missions and visiting their areas of work. In addition, they will address the situation of human rights defenders in their periodic reporting, including condemnation of threats and attacks against human rights defenders, as well as for demarches and public statements where human rights are at imminent or serious risk. However, the Guidelines do not make reference to temporary visas or facilitated and speedy asylum procedures for those human rights defenders at imminent and serious risk in their country. Where appropriate, the situation of human rights defenders will be included in the human rights component of political dialogues between the EU and third countries and regional organizations.

599. The Guidelines further recommend that the EU assist with the setting up of networks of human rights defenders at an international level and call for efforts to ensure that human rights defenders in third countries can access resources, including financial, from abroad. The Guidelines also spell out how support will be given to the Special Representative and other special procedures of the United Nations Commission on Human Rights. They also provide for the strengthening of existing regional mechanisms for the protection of human rights defenders.

600. The EU Council Working Party on Human Rights is responsible for the implementation, follow-up and review of the guidelines in order to promote the integration of the protection of human rights defenders into relevant EU policies and actions.

601. The Special Representative welcomes the information received by the EU that it has decided to devote particular attention to the protection and promotion of women human rights defenders. She also appreciates the information from the EU concerning the fact that NGOs active in the field of human rights defenders were instrumental in the process of elaborating the Guidelines and that they constantly provide the EU with crucial information on defenders at risk.

602. The Special Representative has been informed that the EU's Forum on Human Rights Defenders took place in December 2005 with the participation of numerous NGOs and EU government representatives and enabled an exchange of information on how to improve the implementation of the Guidelines.

603. The Special Representative welcomes the initiative which recognizes the role of human rights defenders and supports the principles enshrined in the Declaration. The Special Representative would like to encourage continued implementation and awareness-raising of the Guidelines in the external-relations policies of the member countries and she would appreciate information on the practical implementation of the Guidelines by the member states of the EU.

604. According to information available to the Special Representative, Germany and Belgium both have initiatives for passing the Declaration into national law. She would appreciate receiving further information from the Government of Germany and the Government on Belgium on these initiatives and on any similar initiatives by other EU member-States.

EU-Issues of concern

605. The Special Representative has been informed about the EU-Commission's draft recommendation to Member States regarding a code of conduct for non-profit organizations to promote "best practices" in relation to transparency and accountability (JLS/D2/DB/NSK D (2005) 8208). This draft recommendation is reportedly aimed at helping non-profit organizations not being exploited for "financing of terrorism". Concerns have been raised that these recommendations may impose measures that weaken and limit NGOs' independence from State parties, which would be contradictory to the very nature of NGOs as independent parties. The Special Representative would appreciate receiving further information on these draft recommendations and the implications it could have for the activities of human rights defenders.

606. The Special Representative is concerned that the new or amended "anti-terror" legislation having been put through in several of the EU countries in the past years is in danger of contributing to an environment which is less enabling to the work of human rights defenders. She would like to reiterate concerns expressed in her report to the General Assembly in 2003 (A/58/380), which deals specifically with the impacts of security legislation and emergency situations on the situation for human rights defenders. In particular, she would like to remind the EU countries that have adopted such legislation about the recognition in the Declaration that "the absence of international peace and security does not excuse non-compliance" with international human rights norms.

Fiji

607. The Special Representative acknowledges the response from the Fiji Human Rights Commission and the joint response from the UNDP and the Regional Rights Resources Team (RRRT) to the questionnaire transmitted for the preparation of this report. She regrets that the Government has not provided her with information at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future. She would also like to refer to the section on The Pacific Islands for a general overview where the situation in Fiji is also included.

The human rights defenders community

608. According to information received, the human rights defenders community in Fiji consists of several NGOs working within areas such as constitutional issues, legal reform, governance issues, human rights advocacy, training in human rights issues, literacy, monitoring

of human rights violations, women's rights, LGBT rights, workers' rights, environmental rights and a nuclear free pacific. Most NGOs are registered as charities under the Charitable Trust Act and are dependent on the Government's approval for registration and re-registration. The RRRT has also informed the Special Representative that there are many more NGOs in Fiji, but that they are mostly so-called "service delivery NGOs". There is reportedly not a strong support-base for human rights NGOs, and there is a perception that human rights are a western concept that is not in line with traditional culture.

Legal framework

609. Fiji is a State party to some of the core international human rights treaties, with the notable exception of the International Covenant on Civil and Political Rights (ICCPR). This Covenant is a key instrument for the implementation of the Declaration on Human Rights Defenders as it guarantees rights such as freedom of opinion and expression, freedom of assembly and freedom of association. In addition to the ICCPR, Fiji has not yet acceded to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the ICCPR, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (signatory), or the Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (signatory).

610. The rights to freedom of expression, assembly and association are all protected by the bill of rights in the Constitution of Fiji. The Special Representative does not have sufficient information at her disposal to make a proper assessment of the strength of the legal framework in terms of the activities of human rights defenders.

Measures taken at national level for the implementation of the Declaration

611. The Fiji Human Rights Commission is the national human rights institution and was established pursuant to the Human Rights Commission Act of 1999. Section 7 (1) (c) of the Act states that the Commission shall "consult and co-operate with other persons and bodies concerned with the promotion and protection of human rights". The Special Representative welcomes this as a positive step and takes note of information received stating that the Government of Fiji is now taking defenders' views more seriously than what has allegedly previously been the case. However, she would welcome more information that would enable her to assess how the creation of the Commission has affected the work of defenders in practice.

Communications and concerns

612. No communications have been sent by the Special Representative to the Government of Fiji during in the past six years. The Special Representative regrets the limited contact she has had with defenders and their associations in Fiji during the six years, and would appreciate receiving information from civil society and the Government concerning the situation for human rights defenders and the implementation of the Declaration in Fiji.

613. The Special Representative notes that according to information from the Fiji Human Rights Commission, the Declaration is neither well known amongst defenders nor amongst officials.

Finland

The human rights defenders community

614. The Special Representative regrets that she has not sufficient information at her disposal to offer a description of the human rights defenders community.

Legal framework

615. Finland is a State party to most of the core international human rights instruments. It has not yet ratified the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography, nor has it signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

616. The Special Representative has been informed that section 12 of the Finnish Constitution guarantees the right to freedom of expression and the right to access to information. Section 13 guarantees the right to freedom of assembly and association. In addition, the Association Act (26.5.1989/503) sets rules for the establishment of an association. A new Act on the Exercise of Freedom of expression in mass media (13.6.2003/460) entered into force in January 2004. The Special Representative would appreciate further information on both of these acts and their implications for the work of human rights defenders.

617. In relation to the legal framework in Finland, the Special Representative refers to paragraph 4 of the European Union Profile

Communications and concerns

618. No communications have been sent to the Government of Finland during the two mandate periods.

619. The Special Representative regrets the lack of contact with the human rights defenders community in Finland. She would appreciate receiving information from the Government and civil society in Finland on the situation for human rights defenders and on steps taken to implement the Declaration in the country.

France

620. La Représentante spéciale regrette que le Gouvernement de la France ne lui ait pas transmis de renseignements en réponse à sa requête avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui en transmettre afin qu'ils puissent être reflétés dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme

621. La Représentante spéciale regrette de ne pas avoir reçu d'informations lui permettant de compléter cette section et se réfère à la description du contexte général européen.

Cadre juridique

622. La France a ratifié la plupart des principaux instruments internationaux portant sur les droits de l'homme.

623. Concernant le cadre juridique, la Représentante spéciale se réfère à la description du contexte général européen (Cf para. 4)

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

624. La Représentante regrette de ne pas avoir reçu de renseignements sur les mesures spécifiques prises par la France pour assurer la mise en œuvre de la Déclaration.

Communications envoyées et motifs de préoccupation

625. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé deux communications au Gouvernement français, toutes deux portant sur des femmes. La première concernait le cas d'une pédo-psychiatre dénonçant des abus sexuels sur des enfants qui aurait subi des représailles administratives de la part du Conseil de l'Ordre des médecins et ayant dû faire face à de nombreuses poursuites judiciaires. La seconde concernait le cas d'une femme ivoirienne demandeuse d'asile prétendant être une défenseur des droits de l'homme.

626. La Représentante spéciale remercie le Gouvernement français pour les mesures immédiates qu'il a prises dans le second cas et qui ont permis de faire toute la lumière sur ladite situation. Elle remercie le Gouvernement pour sa réponse concernant son autre communication. Elle demeure préoccupée par la situation des médecins soulevant les questions d'abus sexuels sur mineurs en France.

Gambia

627. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community in the Gambia

628. The Special Representative regrets that she does not have sufficient information at her disposal to be able to make an assessment of the human rights defenders community in the Gambia. Lack of information is a concern because a comprehensive assessment cannot be made, and may indicate that human rights defenders have difficulty or lack of capacity to communicate.

Legal framework

629. The Gambia is party to most of the core international human rights instruments, including the International Covenant on Civil and Political Rights, but has not ratified all the Protocols to these instruments. It has signed but not ratified the Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. In the regional context, The Gambia has ratified relevant regional human rights instruments, in particular, the African Charter on Human and People's Rights. According to the information received, The Gambia has not integrated the legislative and legal provisions contained in the international human rights treaties it has ratified into its legislation.

630. The Special Representative regrets that she has not received sufficient information to give a complete overview of the domestic legislation related to the rights and freedoms enshrined in the Declaration.

Measures taken at national level for the implementation of the Declaration

631. The Special Representative regrets that she does not have sufficient information at her disposal to enable her to make a proper assessment of any steps taken towards the implementation of the Declaration.

Communications and concerns

632. From the establishment of her mandate to 1 December 2005, the Special Representative has sent one communication to the Government related to a Red Cross volunteer that was killed and dozens of protesters that were reportedly injured during a demonstration. She regrets that the Government has not yet provided her with a response to this communication.

633. The Special Representative shares the concerns on issues related to her mandate expressed by the Human Rights Committee in July 2002 when it considered the situation of civil and political rights in the Gambia, in the absence of a periodic report: "According to information brought to the Committee's attention, numerous members of the political opposition, independent journalists and human rights defenders have been subjected to arbitrary arrest and periods of detention of varying length without charges. In many instances these actions have been carried out by the National Intelligence Agency (NIA) in application of decrees issued by the AFPRC that legitimize the practice of detention without trial and charges. The Committee is further informed that NIA continues to practice incommunicado detention. This practice is contrary to article 9 of the Covenant." (CCPR/CO/75/GMB, para. 11).

634. The Committee also considered that "legislation passed in May 2002, creating a National Media Commission vested with the power to order the detention of journalists and to impose heavy fines on journalists, is incompatible with articles 9 and 19 of the Covenant. The Commission's procedure for the licensing of journalists is equally incompatible with article 19" (ibid, para. 19).

635. While noting the constitutional protection of the right to freedom of expression, the Committee further expressed concern “that numerous journalists have been subjected to intimidation, harassment, and occasionally to detention without charges, for having published material critical of the Government. The resort to libel and defamation charges against journalists for similar reasons is equally cause for concern” (ibid, para. 20).

636. The Committee also expressed concern about limitations to the right to freedom of assembly (ibid., para. 22).

637. The Special Representative is concerned by information received that adoption of the Indemnity Amendment Act in 2001, which effectively granted immunity from prosecution to members of the security forces who were involved in the break-up of the demonstrations of April 2000 in Banjul and Brikama, has raised concerns about impunity for human rights violations in the country.

Georgia

638. The Special Representative thanks the Government of Georgia for its response to the questionnaire transmitted for the preparation of this report.

The human rights defenders community

639. Following the so-called Rose-Revolution in November 2003 and elections in January and March 2004, a new Government replaced the 12-year-old previous regime. The new Government denounced the corruption and disregard for the rule of law by the previous administration and announced far-reaching reforms in the country. Human rights NGOs claim that these reforms announced to strengthen human are delivering mixed results.

640. The Government informed the Special Representative that there are a large number of human rights NGOs in the country. Each of these organizations work on concrete target groups (e.g. women, children, national or religious minorities) or on specific rights (e.g. anti-trafficking, torture, anti-slavery). The Government is of the opinion that NGOs’ activities should be better coordinated and that the resources available to them be used purposefully.

641. The Government assured the Special Representative that although under the former Government, attacks on NGOs’ representatives were frequent; nowadays Georgian NGOs do not face serious problems. According to the Government, since the Rose Revolution the position of NGOs has been strengthened considerably and the authorities now give due regard to their opinion in the decision making process. Active members of a number of NGOs are reportedly widely represented in the legislative and executive branches of the Government, which reflects the political will of the Georgian authorities.

Legal framework

642. Georgia is a State Party to most of the core international human rights treaties, including the International Covenant on Civil and Political Rights, but has not yet ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or

Punishment, the two Protocols to the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Georgia has also ratified relevant European human rights instruments, including the European Convention for the Protection of Human Rights and Fundamental Freedoms.

643. In accordance with article 6.2 of the Constitution, Georgian legislation shall be consistent with the universally recognized principles and norms of international law. International treaties or agreements by Georgia that are not contrary to the Georgian Constitution prevail over internal normative acts. Although the legal framework of Georgia seems to be fairly liberal in terms of the laws and provisions relevant for the work of human rights defenders, the Special Representative regrets that she does not have sufficient information available to her to assess the practical benefits of these provisions for the work of human rights defenders.

Freedom of expression

644. The Special Representative has been informed that in June 2004, the Georgian Parliament adopted a new law on freedom of expression. She would appreciate receiving further information on this new piece of legislation.

Freedom of association and regulation of NGOs

645. Article 26 of the Georgian Constitution provides that every individual has the right to create and join any association, including trade unions. This right can be restricted, however, if the association's goals include overthrowing or changing the constitutional order by force, violate the independence of the country, violate the country's territorial integrity, advocate war and violence or attempt to induce ethnic, racial, social and national unrest.

646. The Civil Code defines and regulates the registration and functioning of associations and foundations (see inter alia, articles 30, 31, 39-43, 46, 48 and 49).

Measures taken at national level for the implementation of the Declaration

647. The Government informed the Special Representative of the establishment in 1998 of the Constitutional Institute of the Georgian Public Defender.

648. According to the Government, it can be argued that a certain level of progress has been achieved in Georgia with respect to the human rights situation, including the situation of human rights defenders.

Communications and concerns

649. From the establishment of her mandate to 1 December 2005, the Special Representative has sent seven communications to the Government on 10 individual defenders, including one woman. The Special Representative regrets that the Government has only responded to one of these seven communications.

650. Most of the communications sent to the Government concerned defenders who have been subjected to threats and harassment. Some defenders have been reportedly physically assaulted. An observer of the Parliamentary elections of November 2003 was reportedly arrested, beaten

and accused on unsubstantiated grounds of acts of hooliganism and resistance against the protector of public order. In the light of the allegations brought to her attention over the last six years, the Special Representative is concerned at the harassment of members of non-governmental organizations, particularly those defending human rights. She refers to the Human Rights Committee, which expressed similar concerns when it examined the periodical report of Georgia in 2002 (CCPR/CO/74/GEO, para. 20). She notes that in its comments on the Committee's concluding observations, the Government shared these concerns but assured that they were based on isolated incidents (CCPR/CO/74/GEO/Add.1, paras. 99-100).

651. The Special Representative sent communications concerning allegations that at least two non-governmental organizations' premises had been attacked or burgled.

652. On 4 November 2003, the Special Representative sent an urgent appeal to the Georgian Government regarding the draft law on "Suspension of Activities, Liquidation and Banning of Extremist Organizations" (see E/CN.4/2004/94/Add.3, para. 177). Concern was expressed that, should it be passed, such law could be used as a means to obstruct the work of NGOs working in the field of human rights. The Special Representative invites the Government to respond to this communication, for which no reply has been received yet.

653. The Special Representative also notes that when it examined the periodical report of Georgia in 2002, the Committee on Economic, Social and Cultural Rights was concerned that the National Ombudsman was not able to function in an effective manner, owing to severe resource constraints.

654. The Special Representative also wishes to echo the Europe Parliamentary Assembly, who stated in its resolution of January 2005 (resolution 1415 (2004)) that "the post-revolutionary situation should not become an alibi for hasty decisions and neglect for democratic and human rights standards".

655. Despite the Government's assurances of NGOs' positions being strengthened, the Special Representative has been informed by non-governmental source that independent NGOs may have been ostracised in consultative or monitoring bodies, such as, for instance, the Council for the Control of the Penitentiary System. The Special Representative is receiving reports of action against an independent human rights organization as this report is being submitted, which raises concerns about the consistency of the Government in its commitment to the promotion and protection of human rights.

Guatemala

656. La Representante Especial agradece al Gobierno, al Residente Coordinador de las Naciones Unidas en Guatemala, a la Procuraduría de Derechos Humanos y a distintas ONG la información que le han transmitido en respuesta al cuestionario distribuido para la preparación de este informe.

657. La Representante Especial visitó Guatemala del 26 de mayo al 1 de junio de 2002. El informe de esta visita se encuentra en el documento E/CN.4/2003/104/Add.2.

La comunidad de defensores de los derechos humanos en Guatemala

658. Durante su visita al país, la Representante Especial quedó muy impresionada por la madurez de las organizaciones de la sociedad civil y por su resistencia ante las difíciles circunstancias reinantes. A pesar de que hayan disminuido substancialmente las violaciones contra los derechos humanos, persisten graves motivos de preocupación.

659. Según ha informado el Gobierno, los defensores de los derechos humanos se organizan entorno a 140 ONG y cuatro instituciones gubernamentales con presencia nacional, así como 447 ONG en los departamentos y municipios del país. Pueden clasificarse según estas categorías: campesinos, desarrollo, diferencias sexuales, indígenas, justicia, mujeres, niñez y juventud, periodistas, religiosos, mayas, sindicalistas y búsqueda de la verdad. Un alto porcentaje de ellas se dedicarían a investigaciones relacionadas con violaciones de derechos humanos ocurridas durante el conflicto armado y otros participarían en la promoción de derechos económicos, sociales y culturales y de los derechos de los pueblos indígenas.

660. En su respuesta, el Residente Coordinador constata que se está produciendo al interior de las ONG un proceso de descentralización de actividades desde la capital hacia el interior del país, se invierten mayores esfuerzos en establecer mecanismos de coordinación y comunicación, así como la profesionalización y crecimiento de experticia en los temas coyunturales de derechos humanos, lo que aumenta la calidad de sus propuestas y sus análisis y su capacidad de ser contrapartes de las instituciones del Estado en la discusión de materia legislativa, políticas del Estado, justicia y seguridad.

661. Muchas ONG guatemaltecas se organizan en redes y alianzas, como por ejemplo, el Movimiento Nacional de Derechos Humanos de Guatemala. Éste ha sido pionero en la creación de una Unidad para Defensores y, en diciembre de 2004, creó una Unidad de Protección.

Marco jurídico

662. Guatemala ha ratificado los principales tratados internacionales de derechos humanos, incluido el Pacto Internacional de Derechos Civiles y Políticos, pero todavía no lo ha hecho en relación con el Segundo Protocolo Facultativo al Pacto Internacional de Derechos Civiles y Políticos y el Protocolo Facultativo a la Convención contra la Tortura y otros Tratos o Penas Cruels, Inhumanos o Degradantes. Guatemala también ha ratificado instrumentos regionales de derechos humanos, entre los cuales la Convención Americana sobre Derechos Humanos. De acuerdo con el artículo 46 de la Constitución de Guatemala, en materia de derechos humanos, los tratados y convenciones aceptados y ratificados por Guatemala tienen preeminencia sobre el derecho interno.

663. En el informe sobre su visita a Guatemala, la Representante Especial se refiere a la legislación nacional que regula la libertad de asociación, reunión y expresión y a las leyes que tienen un impacto directo en el trabajo de los defensores de los derechos humanos. En general, la Representante Especial concluyó que el marco jurídico en Guatemala no impide al trabajo de los defensores de derechos humanos (E/CN.4/2003/104/Add.2, párrafos 14 a 27).

664. La Representante Especial ha sido posteriormente informada de la aprobación, en el año 2003, de una Ley de ONG que regula mecanismos de transparencia para las ONG en el manejo de fondos públicos. La Representante Especial agradecería recibir información más detallada sobre dicha ley.

665. En relación con la libertad de expresión, la Representante Especial ha sido informada que el 14 de junio de 2005, la Corte de Constitucionalidad suspendió la vigencia de los artículos 411, 412 y 413 del Código Penal. Éstos prevén el castigo con prisión a quienes ofendieren en su dignidad o decoro, o amenazaren, injuriaran, o calumniaran a cualquiera de los Presidentes de los Organismos del Estado o a una autoridad o funcionario público en el ejercicio de sus funciones o con ocasión de ellas. En febrero de 2006 la Corte de Constitucionalidad resolvió en definitiva suprimir los artículos 411, 412, 413 del Código Penal.

666. Por otra parte, la Ley Marco de los Acuerdos de Paz, que entró en vigor en septiembre de 2005, contempla una serie de compromisos que el Estado guatemalteco debe cumplir y que pueden favorecer la aplicación de la Declaración. Pues el apartado VII sobre Garantías y Protección a las Personas y Entidades que Trabajan en la Protección de los Derechos Humanos establece que el Gobierno “tomará medidas especiales de protección, en beneficio de aquellas personas o entidades que trabajan en el campo de los derechos humanos. Asimismo investigará oportuna y exhaustivamente las denuncias que se le presenten, relativas a actos o amenazas que los pudieran afectar” y “reitera el compromiso de garantizar y proteger en forma eficaz la labor de los individuos y entidades defensoras de los derechos humanos”.

667. La Procuraduría de Derechos Humanos ha explicado a la Representante Especial que está en proceso de elaboración de una ley específica para la protección y dignificación del trabajo de los defensores de los derechos humanos, que se hará llegar en su debido momento y a través de los canales adecuados, al Congreso de la República. La Representante acoge muy favorablemente esta iniciativa e invita a la Procuraduría a mantenerla informada sobre su desarrollo.

Medidas tomadas a nivel nacional para la implementación de la Declaración

668. En su informe sobre su visita al país, la Representante Especial reportó sobre las instituciones guatemaltecas que se ocupan de los derechos humanos (ibid., párrafos 28 a 36), como por ejemplo, la Procuraduría de los derechos humanos, la Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos (COPREDEH), la Defensoría de la Mujer Indígena, la Secretaría de la Presidencia de la República para la Paz, el Desarrollo y la Reconciliación Nacional (SEPAZ), y el Gabinete de Seguridad y Derechos Humanos de la Presidencia. También mencionó el trabajo de la Secretaría de Análisis Estratégico (SAE), que en los meses anteriores a la visita empezó a asumir un papel protagónico en el Gobierno en lo que respecta a la cuestión de las amenazas y atentados contra defensores de los derechos humanos.

669. Según se ha informado el Gobierno otras instituciones nacionales que promueven y protegen los derechos humanos y libertades fundamentales son: la Defensoría Indígena, a cargo del Instituto de la Defensa Pública Penal, La Comisión Contra la Discriminación y el Racismo (CODISRA), el Consejo Nacional para la Prevención de la Violencia y el Delito Juvenil, el Consejo Asesor de Seguridad, la Comisión Nacional de la Niñez y la Juventud, la Comisión

Nacional para la Prevención de la Violencia Intrafamiliar y contra la Mujer, el Consejo Nacional de la Juventud, la Secretaría Presidencial de la Mujer, la Comisión Asesora del Ejecutivo en Temas Indígenas, la Comisión Nacional de Búsqueda de niños Desaparecidos durante el Conflicto Armado y el Consejo Nacional de los Acuerdos de Paz, creada a través de la Ley Marco de los Acuerdos de Paz.

670. La Representante Especial ha sido posteriormente informada sobre la creación, en mayo de 2004, de la Unidad de Coordinación para la Protección de Defensores de Derechos Humanos, Administradores y Operadores de Justicia, Periodistas y Comunicadores Sociales de la COPREDEH. Las funciones de esta Comisión incluyen el coordinar las instituciones del Organismo Ejecutivo responsables de otorgar la protección a las personas a quienes se otorgan medidas cautelares, provisionales y de seguridad de mecanismos regionales e internacionales de derechos humanos. La Representante Especial también ha sido informada de la creación, durante la reforma policial en consecuencia a los Acuerdos de Paz, del Servicio de Protección y Seguridad (SEPROSE) que tendría por misión brindar las medidas cautelares solicitadas a defensores. Por otra parte, el Ministerio Público ha creado dentro de la Fiscalía de Derechos Humanos una Unidad de Defensores, Operadores de Justicia y Sindicatos y Periodistas. La Representante Especial ha sido asimismo informada de la propuesta de creación de una Comisión de Investigación sobre Cuerpos Ilegales y Aparatos Clandestinos de Seguridad (CICIACS). Non obstante el avance positivo que suponen estas medidas, cabe señalar que muchos defensores han preferido rechazar las medidas de protección policiales por que muchas veces los agentes de policía están vinculados a aquellos que les amenazan o porque las medidas cautelares se brindan con demasiado irregularidad y no evitan futuras agresiones o allanamientos.

671. El Gobierno también ha presentado avances en la formación en derechos humanos de funcionarios públicos, tanto a través de la COPREDEH como del Instituto Nacional de Administración Pública. También el Ministerio de la Defensa Nacional ha impulsado iniciativas para la formación de su personal.

672. La Representante Especial celebra el reconocimiento y la valoración que el Gobierno hace de los defensores de los derechos humanos en su respuesta al cuestionario. Asimismo, se valora muy positivamente el comunicado emitido y publicado por varios medios de comunicación el 17 de julio de 2005 en el que el Gobierno reconoció y valoró públicamente el trabajo de las ONG y defensores de los derechos humanos.

673. La Representante Especial toma nota del establecimiento de una Oficina en Guatemala de la Alta Comisionada para los Derechos Humanos, tras la firma de un acuerdo entre la Oficina y el Gobierno guatemalteco. La Representante Especial espera que el establecimiento de esta Oficina cree condiciones favorables para fortalecer el trabajo en la defensa de los derechos humanos.

674. Órganos de Naciones Unidas, como la MINUGUA y la Oficina de la Alta Comisionada para los Derechos Humanos han contribuido a la difusión de la Declaración sobre los Defensores de los Derechos Humanos en Guatemala. Por otro lado, miembros de la sociedad civil lamentan que otros programas de las Naciones Unidas, como el PNUD, no habrían mostrado un conocimiento suficiente del contenido de la misma.

Motivos de preocupación y Comunicaciones Enviadas por la Representante Especial

675. En su informe, la Representante Especial se refiere a las violaciones de los derechos fundamentales perpetradas contra defensores de los derechos humanos en Guatemala (ibid., párrafos 37 a 59), a otros factores que tienen un impacto directo sobre los defensores de los derechos humanos (ibid., párrafos 60 a 69) y a las principales fuentes de violencia contra los defensores de los derechos humanos 70 a 91).

676. De acuerdo con las informaciones que han sido llevadas a la atención de la Representante Especial a lo largo de estos últimos años y para la preparación del presente informe, los motivos expresados por la experta en 2002 siguen vigentes. Desde el inicio de su mandato y hasta el 1 de diciembre de 2005, la Representante Especial ha transmitido 79 comunicaciones al Gobierno, relativas a 143 defensores de los derechos humanos y miembros de al menos 25 ONG de derechos humanos, sindicatos, comunidades u organizaciones sociales. Aproximadamente una tercera parte de los casos incluidos en las comunicaciones de la Representante Especial se refieren a mujeres defensoras de los derechos humanos o a actividades para la promoción y la protección de los derechos de las mujeres.

677. La Representante Especial ha intervenido sobretodo en casos de violaciones o amenazas contra miembros de ONG de derechos humanos, defensores de los derechos de los pueblos indígenas, periodistas, dirigentes campesinos, sindicalistas, defensores de los derechos de gays, lesbianas y transexuales. La Representante Especial agradece al Gobierno su respuesta a la mayor parte de las comunicaciones y su voluntad de cooperar con el mandato y le invita a contestar las comunicaciones que siguen sin respuesta.

678. La Representante Especial quisiera referirse a los informes presentados por titulares de varios mandatos de la Comisión de Derechos Humanos que han visitado el país en los últimos años y a su propio informe a la Comisión de Derechos Humanos en 2005 (EC/CN.4/2005/101). La Representante Especial también quisiera referirse al Comunicado de Prensa no. 28/05 de la Comisión Interamericana de Derechos Humanos emitido por la Vicepresidenta de la CIDH tras su visita a Guatemala en julio de 2005. La Vice Presidenta reiteró las preocupaciones de la Representante Especial que las defensoras y defensores de derechos humanos atraviesan por una crítica situación de seguridad. La Representante Especial también quisiera referirse al informe anual de 2004 de la Comisión Interamericana de Derechos Humanos (CIDH), el cual incluye un apartado sobre la situación de los defensores de los derechos humanos y los operadores de justicia en Guatemala.

679. Según se ha informado por fuentes no gubernamentales en el año 2005 se habría registrado 224 ataques en contra defensores. Según la información recibida, este número represente casi doble el número de ataques contra los defensores en 2004.

680. La falta de investigación efectiva por parte de las autoridades responsables puede fomentar un clima de impunidad y empeorarles gravemente la situación de los defensores. De acuerdo con la información recibida por las fuentes no gubernamentales por las respuestas a las comunicaciones enviadas por la Representante Especial, esta situación de impunidad se habría agravado desde la visita de la Representante Especial.

681. Con relación a la Comisión de Investigación sobre Cuerpos Ilegales y Aparatos Clandestinos de Seguridad (CICIACS), la Representante Especial quisiera manifestar su preocupación que el futuro de esta Comisión no está confirmada y todavía está bajo discusión en el Congreso. La Representante Especial quisiera retirar sus preocupaciones ya expresadas en su comunicación enviada al Gobierno el 25 de mayo de 2004. En esta comunicación la Representante Especial expresó sus preocupaciones en relación con la situación de impase de la CICIACS y señaló la necesidad de combatir la manifestación de los cuerpos ilegales y aparatos clandestinos de seguridad para que los derechos humanos sean respetados y debidamente protegidos y garantizados en Guatemala. La Representante Especial toma nota que el Gobierno ha tomado algunas medidas mientras la CICIACS está bajo discusión. Según se ha informado el Gobierno, ha sido creada una Fiscalía Especial para el combate al crimen organizado y los cuerpos ilegales y aparatos clandestinos de seguridad, con la colaboración de expertos internacionales. El Gobierno ha promovido legislación vinculada con el sector justicia y ha creado la Comisión de Alto Nivel integrada por el Organismo Ejecutivo.

Guinea Bissau

682. La Représentante spéciale remercie le bureau du Coordonnateur résident du système des Nations Unies en Guinée Bissau pour avoir répondu, avec la collaboration de plusieurs agences des Nations Unies et le Bureau d'appui des Nations Unies pour la consolidation de la paix en Guinée Bissau, au questionnaire distribué pour la préparation de ce rapport.

683. La Représentante spéciale regrette l'absence de réponse du Gouvernement à son questionnaire avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme en Guinée Bissau

684. Selon les informations reçues, les défenseurs des droits de l'homme en Guinée Bissau traitent un large éventail de sujets, parmi lesquels les droits civils et politiques, la réforme pénale, les droits des enfants, la violence contre les femmes, le droit à la santé, notamment en relation avec le virus du SIDA, le désarmement et le déminage. Les groupes de jeunes seraient très actifs dans la dénonciation du chômage et de la pauvreté. Les défenseurs comprennent des membres d'organisations non gouvernementales mais également des avocats et des journalistes. Certaines ONG de droits de l'homme ont établi de solides réseaux à travers le pays. Par ailleurs, certains réseaux régionaux africains ont ouvert des bureaux en Guinée Bissau et récemment, plusieurs ONG se sont organisées pour travailler conjointement.

Cadre juridique

685. La Guinée Bissau a accédé ou ratifié à seulement trois des principaux traités internationaux en matière de droits de l'homme : le Pacte international relatif aux droits économiques, sociaux et culturels, la Convention sur l'élimination de toutes les formes de discrimination contre les femmes, et la Convention sur les droits de l'enfant. L'Etat a signé mais n'a pas ratifié le Pacte international relatif aux droits civils et politiques. La Représentante spéciale rappelle que celui-ci représente un instrument essentiel pour son mandat puisqu'il garantit plusieurs des droits et libertés indispensables dans le travail de promotion et de protection des droits de l'homme, notamment les droits à la liberté d'opinion et d'expression,

d'accès à l'information, de réunion, de manifestation et d'association, ainsi que le droit à la liberté de circulation. Dans le contexte régional, la Guinée Bissau a ratifié la Charte africaine sur les droits de l'homme et des peuples.

686. La Constitution nationale de la Guinée Bissau garantit la liberté d'expression et d'information, la liberté d'association et l'égalité devant la loi. Cependant, toute la législation nationale n'a pas encore été révisée afin de la rendre compatible avec les normes internationales en matière de droits de l'homme, y compris les standards et principes énoncés dans la Déclaration des défenseurs des droits de l'homme.

687. La Représentante spéciale regrette ne pas avoir de plus amples renseignements à sa disposition pour être en mesure de présenter une analyse plus élaborée de la législation nationale portant sur les droits énoncés dans la Déclaration sur les défenseurs des droits de l'homme et l'impact de son application sur le travail des défenseurs des droits de l'homme dans le pays.

Mesures prises dans le pays pour la mise en œuvre de la Déclaration

688. La Représentante spéciale a été informée du soutien du Gouvernement à la création d'un conseil interministériel ayant pour but de conseiller le Gouvernement sur des thèmes relatifs aux droits de l'homme. La création de cette institution permettrait aux défenseurs des droits de l'homme de faire parvenir leurs préoccupations au gouvernement.

689. La Représentante spéciale a également été informée du projet de création d'un Ombudsman. Elle souhaiterait néanmoins recevoir des informations supplémentaires sur l'état de ce projet.

690. Le bureau des Nations Unies dans le pays a indiqué que divers organes de l'organisation contribuent au travail des défenseurs des droits de l'homme en leur fournissant de l'assistance technique et financière, et en développant des partenariats de longue durée.

691. Le bureau des Nations Unies dans le pays a également souligné que la liberté de la presse en Guinée Bissau avait eu un impact favorable sur le travail des défenseurs des droits de l'homme qui ont pu utiliser les médias afin de rendre publiques leurs préoccupations, ce qui a contribué à créer une culture des droits de l'homme dans le pays. En particulier, une certaine radio nationale indépendante diffuserait en partenariat avec des organisations non gouvernementales des programmes hebdomadaires sur les droits de l'homme.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

692. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé deux communications au Gouvernement concernant un défenseur des droits de l'homme détenu et menacé. La Représentante spéciale se félicite de la libération de ce défenseur mais regrette l'absence de réponse du Gouvernement à ses communications.

693. La Représentante spéciale note les difficultés soulevées par le taux élevé d'analphabétisme qui rend difficile l'éducation dans le domaine des droits de l'homme. Cette éducation est encore plus difficile à l'intérieur du pays, où il y a peu de défenseurs des droits de l'homme qui peuvent assurer des campagnes de sensibilisation.

694. Le bureau des Nations Unies en Guinée Bissau rapporte que les défenseurs et organisations de droits de l'homme souffrent d'une absence de ressources matérielles ce qui affecte négativement leur capacité à mener à bien leurs activités.

695. La Représentante spéciale note qu'elle ne dispose pas de suffisamment d'informations afin d'évaluer de façon approfondie la situation des défenseurs des droits de l'homme en Guinée Bissau.

Haïti

696. La Représentante spéciale regrette que le Gouvernement ne lui ait pas fait parvenir des renseignements en réponse au questionnaire qu'elle lui avait adressé avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme en Haïti

697. Selon les informations à sa disposition, la Représentante spéciale note que les défenseurs des droits de l'homme en Haïti continuent de travailler dans un contexte difficile et tendu. Le Conseil de sécurité des Nations unies a qualifié la situation dans le pays de menace pour la paix et la sécurité internationale dans la région et la Mission des Nations unies pour la stabilisation en Haïti (MINUSTAH) a été instaurée en février 2004. Son mandat a été prorogé jusqu'en février 2006. La MINUSTAH dispose d'une section des droits de l'homme.

698. En 1995, la Commission des droits de l'homme a sollicité la nomination d'un expert indépendant par le Secrétaire général des Nations Unies afin d'assister le Gouvernement haïtien dans le domaine des droits de l'homme, d'étudier l'évolution de leur situation et de vérifier que l'Etat met en œuvre ses obligations internationales relatives à ce sujet. La Représentante spéciale se réfère aux rapports à la Commission soumis par les deux experts ayant été chargés de ce mandat. (E/CN.4/2006/115 et E/CN.4/2005/123)

699. En dépit de leurs difficultés matérielles et humaines et des dangers qu'implique leur travail, les défenseurs des droits de l'homme en Haïti semblent jouer un rôle fondamental dans la dénonciation des violations des droits de l'homme et dans la préparation de dossiers juridiques présentés à la justice. Certaines organisations de défense des droits de l'homme se sont organisées autour de la Commission citoyenne pour l'application de la justice qui vise à relancer le processus judiciaire.

700. La Représentante spéciale regrette de ne pas disposer de plus amples informations pour pouvoir donner une description plus détaillée de la communauté des défenseurs dans le pays.

Cadre juridique

701. Haïti a ratifié certains des instruments internationaux de protection des droits de l'homme, notamment le Pacte international relatif aux droits civils et politiques, la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes et la Convention sur les droits de l'enfant, dont il a signé les deux protocoles. Dans le contexte régional, Haïti a ratifié la Convention américaine relative aux droits de l'homme. L'article 276.2 de la

Constitution établit que « Les traités ou accords internationaux, une fois sanctionnés et ratifiés dans les formes prévues par la Constitution, font partie de la législation du pays et abrogent toutes les lois qui leur sont contraires. »

702. La Représentante spéciale regrette ne pas avoir de plus amples renseignements à sa disposition pour être en mesure de présenter une analyse plus élaborée de la législation nationale portant sur les droits énoncés dans la Déclaration sur les défenseurs des droits de l'homme et l'impact de son application sur le travail des défenseurs des droits de l'homme.

Mesures prises dans le pays pour la mise en œuvre de la Déclaration

703. La Représentante spéciale regrette ne pas disposer de renseignements plus précis pour compléter cette section de manière détaillée. Elle note cependant que la Constitution prévoit un certain nombre d'institutions indépendantes, comme par exemple le Conseil électoral provisoire, la Commission de conciliation, ou encore l'Office de la protection du citoyen. L'Office de la protection du citoyen, dirigé par le Protecteur du citoyen, est chargé de protéger tout individu contre toutes les formes d'abus de l'administration publique.

704. D'après l'Expert indépendant sur la situation des droits de l'homme en Haïti, « le Protecteur du citoyen, qui est peu connu, aurait dû jouer un rôle déterminant mais souffre d'un manque de crédibilité, d'une part parce qu'il n'est pas intervenu activement dans la plupart des affaires de violations graves des droits de l'homme, d'autre part en raison des conditions discutables de sa nomination. En effet, l'arrêté qui l'a nommé ne vise pas l'accord exprès des présidents de chacune des deux assemblées alors que, selon l'article 207.1 de la Constitution, il doit être choisi par consensus entre ces derniers et le Président de la République (...). Pour renforcer l'efficacité de l'Office de la protection du citoyen, il devient urgent de pourvoir le poste de Protecteur adjoint, dont la création ne relève que du fonctionnement au sens de l'article 207.3 de la Constitution, le poste ayant été créé à l'origine pour épauler le Protecteur. Ce poste étant actuellement vacant, il conviendrait d'y nommer dès que possible une personne dont l'autorité morale dans le domaine des droits de l'homme est reconnue. Il aurait la responsabilité de la formation et du secteur des enquêtes, tandis que le Protecteur aurait en charge les relations avec les autorités et la représentation de l'Office dans les manifestations internationales. » (E/CN.4/2005/123, paras. 82-83)

705. La Représentante spéciale tient à remercier le Gouvernement d'Haïti pour avoir répondu favorablement à sa demande d'invitation pour visiter le pays. Elle regrette ne pas avoir eu l'opportunité d'effectuer cette visite avant la fin de son mandat.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

706. Depuis le début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé huit communications au Gouvernement portant sur 15 défenseurs des droits de l'homme, dont quatre femmes et les membres de deux organisations de défense des droits de l'homme. Ces personnes auraient été agressées, blessées, sérieusement menacées ou arrêtées. Un garde du corps aurait été tué lors d'un attentat contre le défenseur des droits de l'homme qu'il protégeait.

La Représentante spéciale est également intervenue dans le cas de défenseurs des droits de l'homme forcés de vivre dans la clandestinité à cause des menaces qui pèsent sur eux. La Représentante spéciale remercie le Gouvernement pour ses réponses à certaines de ces communications mais déplore l'absence de réponse à certaines autres.

707. D'après les renseignements recueillis, les défenseurs des droits de l'homme en Haïti ne seraient plus soumis aux persécutions qu'ils auraient connues par le passé. La Représentante spéciale reste néanmoins très préoccupée par la sécurité des défenseurs des droits de l'homme en Haïti au vu de rapports lui parvenant qui font état d'un accroissement des cas de menaces et d'agressions à leur encontre, en particulier lorsqu'ils luttent contre l'impunité, dans un contexte de violence persistante et de multiplication des acteurs armés.

708. La Représentante exprime également son inquiétude face aux menaces et aux agressions contre les défenseurs émanant des membres de la police ou de l'administration impliqués dans des violations des droits de l'homme.

Holy See

709. As the Holy See is not a Member State of the United Nations, the Special Representative did not ask it to contribute information specifically for this report. The report is therefore based on United Nations sources and the communication between the Special Representative and the Holy See.

710. The Holy See has observer-status to the United Nations.

Legal framework

711. The Holy See has ratified or acceded to five of the core international human rights instruments. It has not yet signed several of these instruments, including the International Covenant on Civil and Political Rights. The latter is a key instrument for the implementation of the Declaration on Human Rights Defenders as it guarantees rights such as freedom of opinion and expression, freedom of assembly and freedom of association.

Measures taken at national level for the implementation of the Declaration

712. The Special Representative regrets that does not have sufficient information to analyse the policies and programs adopted by the relevant authorities to ensure an effective implementation of the Declaration.

Communications and concerns

713. From the establishment of her mandate to 1 December 2005, the Special Representative has sent one communication to the Holy See in December 2002 that concerned a priest Don Vitaliano Della Sala, who was serving in the parish of San Giacomo. The priest was allegedly removed from his function in part because of his participation in a "gay pride" march in defense of the human rights of homosexual persons. The Holy See responded to the communication in July 2003 and stated that the measures taken against Don Vitaliano Della Sala were not related to his participation in a "gay pride" march. The response stated that the actions against the priest had been preceded by two admonitions, as prescribed in the Code of canon law of the Catholic

Church and that measures such as those taken were an expression of the self-organizing capacity proper to every religious community and recognized by the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

714. The Special Representative would welcome further information from the relevant authorities in the Holy See concerning the situation for human rights defenders and the implementation of the Declaration so that this profile can be updated in the future.

Honduras

715. La Representante Especial lamenta que en el momento de finalizar este informe, el Gobierno no le haya remitido información en respuesta al cuestionario distribuido para la preparación del presente informe. La Representante Especial insta al Gobierno que transmita la información relativa para que este informe pueda ser actualizada.

La comunidad de defensores de los derechos humanos en Honduras

716. La Representante Especial lamenta que no haber podido recoger suficiente información para llevar a cabo una evaluación en profundidad de la comunidad de defensores en Honduras.

Marco legal

717. Honduras es parte de los siete tratados internacionales sobre derechos humanos más relevantes, incluido el Pacto internacional de derechos civiles y políticos, pero todavía no ratificado el segundo Protocolo facultativo del Pacto internacional de derechos civiles y políticos, el Protocolo facultativo de la Convención contra la tortura y otros tratos o penas crueles, inhumanos o degradantes y el Protocolo facultativo de la Convención para la eliminación de todas las formas de discriminación contra la mujer. A nivel regional, Honduras también ha ratificado varios tratados de derechos humanos, entre los que destaca la Convención Americana de Derechos Humanos. De acuerdo con los artículos 16, 17 y 18, de la Constitución, los tratados internacionales, una vez que entran en vigor, forman parte del derecho interno y sus disposiciones pueden ser invocadas por personas naturales o jurídicas en cualquier tribunal o autoridad de la República; y en caso de conflicto entre el tratado y la norma constitucional, esta misma ya establece el procedimiento, cuando el conflicto se da entre el tratado o convención y la ley, prevalecerá el tratado.

Libertad de expresión

718. Cabe mencionar el artículo 73 de la Constitución así como el Decreto N° 6 que contiene la Ley de Emisión del Pensamiento, publicada en el *Diario Oficial La Gaceta* N° 16565, de 26 de agosto de 1958, regula todo lo relacionado con: la libertad de expresión, imprentas y radiodifusoras, las publicaciones, la ética periodística, y las responsabilidades de estos últimos. La Ley de la Libertad de Expresión en su Artículo 7 establece: “Los periodistas y escritores tienen libertad para hacer las versiones que consideren oportunas con motivo de las declaraciones hechas por cualquier autoridad, funcionario o empleado público, representante de corporación o persona jurídica o individual”. Por otra parte son punibles según el artículo 8 de la Ley de Libertad de Expresión: “La sumisión de periódicos e intereses afines contrarios a la defensa de la soberanía nacional, integridad territorial, y a las instituciones democráticas de la

República, la difamación y el insulto en todas sus expresiones; la inserción de anuncios comerciales a sabiendas de que se trata de engañar al público; el ataque antojadizo sin pruebas, contra empresas comerciales industriales nacionales o extranjeras, por el solo prurito de vengar agravios o desacreditar a personas e instituciones; el chantaje publicitario en todas sus manifestaciones; y las fotografías, dibujos, cuentos y chistes obscenos, así como el género caricaturesco pornográfico”. Además, en virtud de esta misma ley, “No es permitida la circulación de publicaciones que prediquen o divulguen doctrinas disolventes que socaven los fundamentos del Estado o de la familia y las que provoquen, aconsejen o estimulen la comisión de delitos contra las personas y la propiedad”.

Libertad de asociación y reunión

719. Según el artículo 78 de la Constitución, “se garantizan las libertades de asociación y de reunión siempre que no sean contrarias al orden público y a las buenas costumbres”. El Artículo 79 establece que “Toda persona tiene derecho de reunirse con otras, pacíficamente y sin armas, en manifestación pública o en asamblea transitoria, en relación con sus intereses comunes de cualquier índole, sin necesidad de aviso o permiso especial, las reuniones al aire libre y las de carácter político podrán ser sujetas a un régimen de permiso especial con el único fin de garantizar el orden público”.

720. Por su parte la Ley de Policía y Convivencia Social establece algunas disposiciones para regular que el ejercicio de este derecho se haga respetando el orden público y las buenas costumbres mencionadas en la norma constitucional. Así, su artículo 60 dispone que “En el ejercicio del derecho constitucional de reunión y manifestación pública, toda persona puede reunirse con otra a desfilar en sitios públicos, con el fin de exponer ideas e intereses de carácter político, religioso, económico, social o cualquier otro que sea lícito sin necesidad de aviso o permiso especial. Sin embargo, deberán prohibirse cuando se considere que afectarán la libre circulación y derecho de los demás”.

721. Cabe asimismo mencionar la Ley Electoral y de las Organizaciones Políticas, en particular sus artículos 61 a 63 y 75 a 77. Según expone el Gobierno en el precitado informe inicial “No es necesario obtener permiso o aprobación previa de autoridades para desarrollar reuniones en asamblea, manifestarse o debatir en público opiniones, o expresarlas, cualquiera que estas sean, salvo que se trate de concentraciones, desfiles, manifestaciones o reuniones al aire libre que efectúen las organizaciones políticas o si las mismas puedan afectar la libre circulación de otras personas” (párr. 199).

Medidas tomadas a nivel nacional para la implementación de la Declaración

722. En 1992 el Congreso creó el cargo de Comisionado de Protección de los Derechos Humanos. El Comisionado es elegido por el Congreso por un período de seis años. Entre sus funciones destaca el velar por la concordancia de las leyes con las obligaciones internacionales adquiridas por Honduras en materia de derechos humanos; tomar denuncia a particulares por la violación de los derechos humanos por agentes del Estado; y elaborar programas para promover estos derechos.

723. La Representante Especial no dispone de más información para completar esta sección con los debidos detalles.

Motivos de preocupación y Comunicaciones transmitidas por la Representante Especial

724. La Representante Especial ve con honda preocupación las violaciones al derecho a la vida, a la seguridad y a la integridad física y psíquica de los defensores de los derechos humanos en Honduras, en particular los activistas en la defensa del medio ambiente y los líderes indígenas que defienden los derechos de sus comunidades. Miembros de las fuerzas de seguridad del Estado también habrían estado directa o indirectamente implicados en atentados contra los derechos de activistas de los derechos humanos. La estigmatización, en ciertos medios de comunicación, de los defensores como defensores de delincuentes, fomentaría un ambiente hostil a sus actividades de promoción y protección de los derechos humanos.

725. Una parte importante de las 18 comunicaciones, que la Representante Especial ha transmitido al Gobierno desde el inicio de su mandato y hasta el 1 de diciembre de 2005 se refieren a líderes indígenas y defensores del medio ambiente que habrían sido amenazados, incluso amenazados de muerte, intimidados y agredidos físicamente. Algunas de estas amenazas fueron cometidas por parte de agentes del Estado. La Representante Especial lamenta el asesinato de al menos tres de estas personas. La Representante Especial también ha intervenido en el caso de una organización que fue víctima de un allanamiento. La Representante Especial ha intervenido en casos en los que personas han sido objeto de amenazas y hostigamiento después de haber denunciado supuestas violaciones de los derechos humanos o prácticas estatales que podrían conducir a abusos.

726. La Representante Especial toma nota de las observaciones de la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias tras su visita a Honduras en agosto de 2001. En este informe, la Relatora Especial dedicó todo un apartado a los presuntos casos de ejecuciones extrajudiciales y de amenazas de muerte de las que habrían sido víctimas miembros de comunidades indígenas, ecologistas y defensores de los derechos humanos (E/CN.4/2003/3/Add.2, párr. 63 a 67).

727. Son igualmente preocupantes las agresiones, incluso asesinatos, de las personas que defienden los derechos de lesbianas, gays, bisexuales y personas transgénero. La Representante ha intervenido en el caso de una persona transexual testigo de un asesinato a la que le habrían retirado la protección oficial pese a que el peligro todavía no habría desaparecido. La Representante Especial también ha llevado a la atención del Gobierno alegaciones según las cuales se habría denegado una solicitud de registro a una asociación que promueve los derechos de lesbianas, gays, bisexuales y personas transgénero. La Representante Especial agradece al Gobierno su respuesta a la mayor parte de las comunicaciones y le invita a contestar a las demás.

728. La Representante Especial toma nota de las observaciones de la Relatora Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias tras su visita a Honduras en agosto de 2001. Según la Relatora Especial, “(e)n general, el Gobierno de Honduras alienta a las organizaciones no gubernamentales que funcionan en el país a cumplir sus mandatos con libertad, pero, al igual que muchos otros Gobiernos, sigue siendo sensible a la imagen que se tiene de su país en el extranjero. Las organizaciones de derechos humanos son a menudo censuradas si señalan a la atención internacional incidentes o situaciones embarazosos de violación de los derechos humanos. Durante la visita de la Relatora Especial muchos funcionarios expresaron su disgusto por las organizaciones que planteaban la cuestión de las ejecuciones extrajudiciales de niños. (E/CN.4/2003/3/Add.2, párr. 23).

Hungary

The human rights defenders community

729. The Special Representative regrets that she has not sufficient information at her disposal to offer a description of the human rights defenders community in Hungary.

Legal framework

730. Hungary is a State party to most of the core international human rights instruments. It has signed the two Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict.

731. It has not yet signed the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

732. Non-governmental sources have informed the Special Representative that articles 5, 6, 7, 8, 9 (3) (b), 9 (3) (c), 9 (4), 12, 13, 14, 15, 16 and 17 of the Declaration on Human Rights Defenders are firmly established in Hungary.

Freedom of association

733. Under Act II of 1989 on the Right of Association, an NGO may be established for any activity that is in harmony with the Constitution and is not against the law. In order to establish an NGO, at least ten members shall announce the foundation of the NGO, establish the NGO's statute and elect its central organ and representative(s). After the NGO is founded, its representative(s) shall request its registration by the competent Court. Under the law, the Court may not deny the registration of the NGO if the NGO meets the above requirements. Foundations may be established pursuant to the provisions of the Civil Code. The prosecutor's office has legal supervisory powers over the functioning of civil society organizations and foundations. According to information given to the Special Representative, it is relatively easy to register as a civil society organization in Hungary. According to information provided to the Special Representative, Hungarian law does not fully guarantee the right of associations, organizations or other legal entities with a legitimate interest to engage, to participate, either on behalf or in support of victims of human rights abuse, in judicial or administrative procedures. Therefore, NGOs offering legal aid services will reportedly frequently work with lawyers who are willing to take human rights cases.

734. In relation to the legal framework in Hungary, the Special Representative refers to paragraph 4 of the European Union Profile.

Measures taken at national level for the implementation of the Declaration

735. Significant progress has reportedly been achieved in the field of human rights monitoring of closed detention facilities and preventing ill-treatment by law enforcement agencies. The Hungarian Helsinki Committee (HHC) runs a human rights monitoring program in all Hungarian police jails (since 1977) as well as prisons (since 2000). The HHC has concluded cooperation agreements with the National Police Headquarters and the National Prison Service that allow the

NGO to send teams of independent human rights monitors into any police jail or prison in Hungary, where teams monitor detention conditions and treatment of detainees. Furthermore, based on an agreement of cooperation with the National Border Guard Headquarters, the HHC carries out human rights monitoring in immigration detention facilities. This is a positive step towards fulfilling article 6 (a) of the Declaration which states that everyone has the right 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”.

Communications and concerns

736. No communications have been sent to the Government of Hungary during the two mandate periods.

737. The Special Representative has been informed that Article 9 (1 and 2), concerning the State’s obligation to provide an effective remedy for persons who claim to have been victims of a human rights violation, has so far not been fully implemented. In certain cases there is no effective remedy available to victims of human rights violations (e.g. with regard to complaints concerning detention conditions and treatment in detention, in the majority of cases the law does not provide an opportunity for the complaint against the penitentiary authority to be examined by an independent tribunal). Complaints/legal actions are reportedly often dealt with in protracted procedures, particularly in case of court procedures. Several rulings of the European Court of Human Rights against Hungary have found a violation of the right to a fair trial due to lengthy procedures.

India

738. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

739. Human rights defenders in India are active on a wide range of civil and political, economic, social and cultural rights such as caste discrimination, child rights, environmental issues, globalization and human rights, housing rights, indigenous rights, LGBT rights, women’s rights and trafficking.

Legal framework

740. India is a State party to six of the core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). India has not yet acceded to the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (signatory), the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the ICCPR, the

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

741. Article 19 of the Constitution of India guarantees the rights to freedom of expression, peaceful assembly, freedom of movement and freedom of association.

742. After coming to power following elections in May 2004, the new Government has repealed the controversial Prevention of Terrorism Act (POTA). This act, amongst other provisions, empowered security forces to hold individuals for up to 180 days without filing charges.

Measures taken at national level for the implementation of the Declaration

743. The Indian National Human Rights Commission was established in 1993. According to its website the Chairperson and Members of the Commission are appointed by the President on the basis of recommendations of a Committee comprising the Prime Minister as the Chairperson, the Speaker of Lok Sabha, the Home Minister, the leaders of the opposition in the Lok Sabha and Rajya Sabha and the Deputy Chairman of the Rajya Sabha.

744. The Special Representative regrets that she has not received further information on the policies and programs adopted by relevant Indian authorities to ensure an effective implementation of the declaration.

Communications and concerns

745. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 21 communications to the Government, concerning 42 defenders in addition to the situation of a human rights organization several of whose members were targeted. The Special Representative acknowledges the responses from the Government to four of her communications, but regrets that the Government has not responded to the other 17 communications. She would appreciate receiving responses to these remaining communications from the Government.

746. The Special Representative is gravely concerned about reports of defenders being killed as a result of their work to promote and protect human rights. A number of the communications sent from the establishment of the mandate to 1 December 2005 concerned members of human rights organizations and groups working to defend land rights that had been threatened, attacked or killed. The Special Representative has sent three communications concerning defenders who were killed, and has asked the Government to investigate the killings.

747. The Special Representative is concerned about what she sees as a pattern of impunity for violations committed against human rights defenders. She is also concerned about the fact that in 12 of the cases that she sent communications on, the Authorities were allegedly the perpetrators of the violations. The Special Representative would appreciate receiving information from the Government on measures taken to ensure that violations against human rights defenders are investigated. She would like to remind the Government that according to

article 9 (5) of the Declaration “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”.

748. The Special Representative would like to reiterate her concern about allegations of ill-treatment and torture of defenders by various members of the police force. Three of the communications sent by the Special Representative were sent jointly with the Special Rapporteur on Torture and other Cruel Inhuman or Degrading Treatment or Punishment.

749. Communications were also sent during the two mandate periods concerning defenders working on LGBT rights, human rights and health, and child labor who were attacked, threatened or arrested.

750. The Special Representative regrets that, despite several requests, the Government of India has not extended an invitation for her to visit the country on an official mission.

751. The Special Representative would appreciate receiving information from the Government and the civil society on the situation of human rights defenders and the implementation of the Declaration.

Indonesia

752. The Special Representative thanks the Office of the United Nations Resident Coordinator in Indonesia and NGOs for providing her with a response to the questionnaire transmitted for the preparation of this report. She regrets that the Government has not provided her with information till the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights community in Indonesia

753. As explained by the UNCT in its response, after the downfall of the Soeharto regime in 1998, human rights defenders' organizations and civil society were encouraged to reveal the gross human rights violations that took place during the authoritarian regime. Among these efforts were: the establishment of an ad hoc human rights court for East Timorese cases, as well as for Tanjung Priok (killing of a large number of people in Tanjung Priok, Jakarta, in 1984 when security forces opened fire on demonstrators); the promotion of the establishment of Truth Commission and Reconciliation; the establishment of independent inquiry team for the Trisakti and Semanggi (security forces opened fire on demonstrating students) cases in 1999.

754. Indonesia's civil society plays a critical role in enhancing the awareness of human rights throughout the country as well as in developing national legislation relating to human rights. Civil society organizations actively monitor and disclose human rights violations and have successfully mobilized public opinion to prompt and demand Government accountability.

755. In the response to the Special Representative's questionnaire, UNCT named some individual human rights defenders and described the human rights activities of the NGOs operating in the country. The Special Representative has addressed communications to the Government on the situation of activists belonging to these NGOs, whose security was at imminent risk or whose rights had been violated.

756. Non-governmental sources have reported that more than 40 NGO activists, including leading human rights defenders were missing or dead after the tsunami. Journalists, teachers, religious leaders and other community leaders were also among the victims. Several prominent human rights organizations reportedly lost their offices and their records.

Legal framework

757. Indonesia has ratified a number of the core international human rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Indonesia is not yet a State party to the Optional Protocol to the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the ICCPR, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (signatory), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (signatory) or the two Optional Protocols to the Convention on the Rights of the Child (signatory).

758. In 1998, the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*), issued a decree on Human Rights including a Human Rights Charter. In order to transform this Human Rights Charter into legal norms, in September 1999 Act No.39 was promulgated by the Indonesian government.

759. The Special Representative regrets that she has not received detailed information on the Indonesian legal framework with regard to rights and freedoms relevant to her mandate, which would help her to assess the legal framework for the promotion and protection of human rights. She welcomes the information from the Government that reform in the area of the judiciary, notably in the field of the enhancement of justice and law enforcement, is the "topmost priority of the Government's agenda".

Measures taken at national level for the implementation of the Declaration

760. The Special Representative has been informed by the UNCT in Indonesia of the following measures.

761. In 2004, the new Government launched the second national action plan on human rights to improve the country's record in the field. Under the action plan, stipulated in Presidential Decree No. 40/2004, regional administrations are to set up human rights committees that will disseminate information and educate bureaucrats and professional groups on human rights. The national action plan for the next five years is expected to improve people's awareness and protection of human rights across the country.

762. President Susilo Bambang Yudhoyono and Vice-President Jusuf Kalla have recently presented in a white paper entitled "The Vision, Mission and Programs", their programme for justice, law, human rights and democracy. According to the document, the judiciary and implementing policies to guarantee law enforcement and legal certainty was imperative. Their programme includes plans to: intensify efforts to eradicate corruption, collusion, nepotism and cronyism; enhance the professionalism and quality of the judiciary; simplify the judiciary and ensure that the law is applied fairly by upholding truth; enhance the capacity and quality of

security, defense and public order institutions; enrich the legal system and legislation by respecting and strengthening traditional and customary laws; respect the principle of equality before the law; increase international cooperation to create a perspective that is secure, peaceful, fair and conducive to the promotion of welfare.

763. The National Human Rights Commission (*Komisi Nasional Hak Asasi Manusia*- Komnas HAM) was established under Presidential Decree No. 50/1993. It was renewed as an independent institution upon the adoption of Act No. 39 in 1999. Its goal is to promote the implementation and protection of human rights mechanisms based on the constitution and the Universal Declaration of Human Rights. Komnas HAM has branch offices in Aceh, Papua, Maluku, West-Kalimantan and West-Sumatra. Komnas HAM is mandated to bring cases of human rights abuse to the Government but has no legal enforcement power of its own. In order to deal with gross violations of human rights, Act No. 26 on Human Rights Courts was promulgated in November 2000. Under this act Komnas HAM is conferred with a mandate as *pro justitia* inquirer. Since 2000, it has carried out its inquiry function in nine cases of alleged gross violations of human rights. Three have been or are being examined by a Human Rights Court. The six other cases, where inquiries have been completed, are at present still with the Attorney-General.

764. The Special Representative has also been informed of the creation of the National Commission on Violence against Women (*Komisi Nasional Anti Kekerasan Terhadap Perempuan* - Komnas Perempuan), an institution established under Presidential Decree No. 181/1998. Its first task was to investigate the sexual violence (mainly suffered by ethnic Chinese women) during the 1998 riots. It is partly funded by the Government and partly by national and international organizations. Today, Komnas Perempuan focuses on the protection of women suffering domestic violence, women migrant workers, women victims of sexual violence undertaking court proceedings, women in armed conflict areas, and women head of families living in poverty in rural areas. It conducts annual reporting and monitoring of gender based human rights violations and advocates for the enactment of legislation and government policies that support the prevention of violence against women. Komnas Perempuan was one of the key stakeholders behind Law No 23/2004 regarding the Abolition of Domestic Violence and the Draft Law for the Protection of Witnesses. In addition, the organization provides support to nine women's crisis centers throughout Indonesia.

Communications and concerns

765. Since the establishment of her mandate to 1 December 2005, the Special Representative has sent 32 communications to the Government on 89 individual defenders and several other activists of human rights and humanitarian non-governmental organizations. Fifteen cases relate to the situation of women human rights defenders or activities related to the promotion and protection of women human rights. With the exception of a few cases on human rights violations in Papua, virtually all the communications transmitted by the Special Representative relate to alleged killing, disappearance, attacks, arrest, detention (often incommunicado), intimidation and harassment of defenders in Aceh. In many cases, the police or the military were

reportedly involved or failed to protect defenders from attacks by non-state entities. The Special Representative has also sent jointly with other mandate holders communications on general allegations related to massive human rights violations in Aceh. While acknowledging the response of the Government to a few communications, the Special Representative regrets the absence of replies to most of the communications.

766. In the light of the allegations received during her mandate, the Special Representative is deeply concerned by killings, attacks, death threats, arrests, detention, including incommunicado detention, harassment unsubstantiated accusations of links with armed groups and intimidations by the police and the military against human rights defenders, in particular in Aceh and Papua. She hopes that recently signed Memorandum between GAM and the Government will eventually contribute to a decrease in the number of human rights violations and to a better environment in Nanggroe Aceh Darussalam (NAD), where human rights organizations have been among those publicly accused by the security forces of links with the Free Aceh Movement (GAM). GAM rebels also carried out grave abuses against civilians including murder, kidnapping and extortion.

767. The Special Representative is also seriously concerned about reports of attacks against human rights defenders and the premises of their respective NGOs by organized mobs. The reported poisoning of a prominent human rights defender, in 2004 and the assassination of three humanitarian aid volunteers in 2001 are two of the most dreadful examples of the violence faced by human rights defenders in the country. The Special Representative acknowledges the Government's assurances to her that all the requisite judicial procedures are being implemented in order to address the concerns over the protection of human rights defenders. Concerns about the security of human rights defenders in Indonesia have already been addressed by other international human rights bodies, such as the Committee against Torture (A/57/44, para. 42 (d)).

768. While welcoming the establishment of the National Human Rights Commission, the Special Representative wishes to echo concern expressed by other international human rights mechanisms about the insufficient levels of its impartiality and independence. In this regard, she would like to refer to the concluding observations of the Committee on the Rights of the Child (CRC/C/15/Add.223, para. 20) and the Committee against Torture (A/57/44, para. 43 (c)).

769. The Special Representative wishes also to draw attention to the observations and recommendations made by other international human rights mechanisms about the need to reform the judiciary in order to guarantee its independence, provide better protection to victims, and end impunity. In this connection she refers to the report of the former Special Rapporteur on the Independence of Judges and Lawyers on his visit to Indonesia in July 2002. (E/CN.4/2003/65/Add.2). In his report, the Special Rapporteur stated that harassment and intimidation of judges, prosecutors and lawyers, particularly those handling human rights-related cases, was a matter of grave concern. According to him, the governmental authorities appeared to have failed in their duty to protect these judges, prosecutors and lawyers in areas of conflict. (*ibid.*, para. 103).

770. Finally, the Special Representative recalls that she has repeatedly requested an invitation to visit Indonesia. She regrets that the Government has not given her a positive response yet.

Iran (Islamic Republic of)

771. The Special Representative acknowledges the response from the national human rights institution the Islamic Human Rights Commission (IHRC), on request from the Iranian Ministry of Foreign Affairs, to the questionnaire transmitted for the preparation of this report. She also acknowledges responses from the United Nations resident coordinator in Iran, and non governmental sources, to the questionnaire.

The human rights defenders community

772. According to information received, the notion of a human rights defenders community has emerged only in the recent years in Iran. The Special Representative has been informed that around 100 organizations are working to ensure and protect human rights throughout Iran. Defenders in Iran reportedly come from many backgrounds and include journalists, critical Islamic scholars, writers, “cultural personalities”, cultural institutions and lawyers. Defenders are reported to be working on issues including prisoners’ rights, women’s rights, rights of children and youth, environmental issues, legislation and legal issues, general advocacy of human rights including dissemination of the Declaration in Persian, and training in human rights issues.

773. The organizations reportedly have limited funding. Many of these organizations work within their own political tenets, which reportedly makes coordination of work difficult. Nevertheless, generally, human rights organizations in Iran are reported to have established a large network for human rights which is used for information sharing and advocacy. Some of these organizations and networks issue regular reports on the human rights situation in Iran. Despite information she has received, including that received from the national human rights institution and the United Nations resident coordinator, the Special Representative believes that she would be able to make a more comprehensive assessment with detailed information from the civil society and the defenders’ community itself.

Legal framework

774. Iran has ratified four of the core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). It is still not a State party to the following Conventions and Protocols: the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the ICCPR, the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the two Optional Protocols to the Convention on the Rights of the Child.

775. Article 4 of the Iranian Constitution is an overarching provision stating that all civil, penal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. It further states that this principle applies

absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and that the Guardian Council has the authority to interpret and define the application of these principles.

776. Article 3 states that the Government is required to “direct all its resources...to ensuring political and social freedoms within the context of the law”. Article 20 states that “all members of the nation, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social and cultural rights, in conformity with Islamic criteria.

Freedom of expression and access to information

777. While the Constitution guarantees that publications and the press have freedom of expression, with limits on any statements detrimental to the fundamental principles of Islam or the rights of the public. Article 175 of the Constitution further states that the freedom of expression and dissemination of thoughts in the Radio and Television of the Islamic Republic of Iran must be in keeping with Islamic criteria and the best interests of the country.

778. Freedom of expression is also subject to article 513 of the Penal Code which provides for punishment by death or by a prison term of between one and five years for “insult” against Islam. Article 609 provides for punishment with a fine, 74 lashes or a prison sentence of between three and six months for criticism of a number of State officials in connection with carrying out their duties. Article 698 provides for punishment by flogging and/or imprisonment for the intentional creation of “anxiety and unease in the public’s mind”, “confusing people’s minds”, spreading “false rumors” or publications of falsehoods.

Freedom of assembly and freedom of movement

779. Freedom of assembly is also subject to limitations, as article 27 of the Constitution states that Public gatherings and marches may be freely held, provided arms are not carried and that they are not detrimental to the fundamental principles of Islam.

780. Reportedly, individuals or groups wishing to assemble or hold a demonstration or rally, must inform the Ministry of Interior of the location, time and reason for the gathering. The Ministry reportedly reserves the right to prohibit the public gathering.

Freedom of association

781. Article 26 of the Constitution states that the formation of parties, societies, political or professional associations, as well as religious societies, whether Islamic or pertaining to one of the recognized religious minorities, is permitted provided they do not violate the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic republic.

782. Articles 498 and 499 of the Penal Code provide for prison sentences ranging from two to ten years for anyone “forming or joining a group or association outside or inside the country which seeks to disturb the security of the country”. Article 500 provides for prison sentences for “anyone who undertakes any form of propaganda against the State”.

Measures taken at national level for the implementation of the Declaration

783. The Islamic Human Rights Commission (IHRC) was established in 1999. The work of the IHRC includes dissemination of the Declaration and training in human rights issues. A system also exists where individuals are able to file complaints when human rights have been violated, and this system was reportedly established with the assistance of the IHRC. The IHRC reportedly has a cooperation agreement with the Danish Centre for Human Rights. The Special Representative would like to receive more information regarding the IHRC's compliance with the Paris Principles.

784. The Special Representative commends the work of the IHRC in translating the Declaration into Persian in 1999, and its reported work to disseminate the translated Declaration to individual human rights defenders, organizations working in the field of human rights, and to government officials on national and local level. The Special Representative has also been informed of the policy of the IHRC of establishing a provincial branch whenever the number of defenders in a particular province is considered to be more than 1,000 persons. The Special Representative would like to receive more information regarding the IHRC's compliance with the Paris Principles.

785. Measures taken by organizations to educate and inform defenders and other about human rights are noted by the Special Representative. She has also been informed that university courses on human rights are being offered up to a Masters Degree level, and that there are plans to establish PhD programs in human rights.

Communications and concerns

786. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 24 communications to the Government of Iran (Islamic Republic of), concerning 27 defenders and in one case three family members of a defender. In 2005, Iran was one of 12 countries given special attention in the report of the Special Representative to the Commission on Human Rights because of the high number of communications sent to the Government during 2004.

787. The Special Representative acknowledges the seven responses received from the Government mostly in 2004, but regrets the absence of replies in other years. She notes nevertheless that in many of its responses, the Government denied or failed to comment upon the alleged violations. She is also concerned about the fact that three of the defenders have been the subject of repeated urgent appeals throughout these years which suggests a lack of prompt measures on the part of the Government to put an end to on-going violations against defenders.

788. From reports she has received, the Special representative is concerned that the legal framework does not ensure the exercise of freedoms essential for effective defense of human rights. The environment for human rights defenders is particularly affected by the wide scope of official discretion that can be arbitrarily exercised to limit the scope of activities for the defense of human rights. It has also been reported that human rights defenders fear reprisals for criticizing action or policies of the Government. She is concerned by reports that both defenders and journalists reporting on human rights issues are imposing self-censorship because of this fear. The Special Representative recalls the comments of the Special Rapporteur on the right to

Freedom of Opinion and Expression after his visit to Iran, that the Press Law passed in April 2000 contains provisions which restrict freedom of expression (E/CN.4/2004/62/Add.2, para. 26). Reportedly, the Government has increasingly been imposing strict filtering of Internet material and has allegedly blocked sites with independent analysis and news reporting.

789. The Special Representative notes that the human rights discourse is now increasingly used in Iran and she appreciates that the Government has shown a willingness to cooperate with the United Nations by issuing a standing invitation for Special Procedures to visit the country. Nevertheless, she remains concerned about reported restrictions on human rights defenders by the Government, and in particular concerning cases of arrest and alleged torture and ill-treatment of defenders in custody and during detention. The majority of communications were sent jointly with the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and/or with the Working Group on Arbitrary Detention. Most of the allegations of severe ill-treatment and torture came from prisoners who were or had been kept at the Evin prison.

790. The Special Representative remains concerned about reports that lawyers working on cases of violations of human rights often face harassment and persecution when involved in high profile cases. The Special Representative recalls the report of the Special Rapporteur on the right to Freedom of Opinion and Expression after his visit to Iran, wherein he has expressed concerns regarding the impartiality and independence of courts to whom cases of press and opinion-related offences are assigned (E/CN.4/2004/62/Add.2, para. 32).

791. The insecurity of the defenders and their lack of confidence in the Government reported to her by some sources are of concern to the Special Representative. In connection with this she would like to note that in 21 of her communications, the alleged perpetrators of violations against human rights defenders were the authorities in the form of the police, the security forces, local authorities or the judiciary. The Special reminds the Government of the prime responsibility of the state, under the Declaration, to promote and implement human rights. For this purpose, the Declaration obliges the state to adopt measures for creating all conditions in the social, economic, political and other fields, as well as the legal guarantees to ensure that all persons under its jurisdiction are able to enjoy all those rights and freedoms in practice.

Ireland

The human rights defenders community

792. The Government has informed the Special Representative that there are a large number of individuals and organizations involved in the promotion and protection of human rights in Ireland, but that it is difficult to determine their exact number. The defenders community is comprised of people of different professional and otherwise backgrounds and includes lawyers, academics, trade union members, journalists and others. Organizations and individuals also work on minority issues such as the rights of travelers, refugees and asylum-seekers .

793. The human rights defenders community in Ireland is reportedly well aware of the provisions of the Declaration. The Government has informed the Special Representative that awareness of the Declaration is low amongst local State officials.

The legal framework in Ireland

794. Ireland is a State party to most of the core international human rights instruments. It has not yet signed the Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Ireland has signed but not ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography.

795. The rights to freedom of expression and access to information, freedom of assembly and freedom of association are protected by the Irish Constitution.

796. In relation to the legal framework in Ireland, the Special Representative refers to paragraph xxx of the European Union Profile

Measures taken at national level for the implementation of the Declaration

797. The Irish Human Rights Commission was provided for in December 1998 and it was established de facto in 2001. One of the functions of the Commission is “to promote understanding and awareness of the importance of human rights in the State and, for those purposes, to undertake, sponsor or commission, or provide financial or other assistance for, research and educational activities”.

798. The Garda Síochána (Irish Police Force) Act of 2005 provides for the establishment of the Garda Síochána Ombudsman Commission which will be empowered to directly and independently investigate complaints against members of the Garda Síochána.

799. During Ireland’s recent Presidency of the European Union, the Government prioritized the protection of human rights defenders which was instrumental in the formulation of the EU guidelines on Human Rights Defenders. The Government has also been a supporter of initiatives at the Commission on Human Rights and the Third Committee of the General Assembly regarding Human Rights Defenders.

800. The Special Representative has been informed about the existence of a Department of Foreign Affairs/NGO Standing Committee on Human Rights that meet four times a year to exchange views on human rights issues of interest to the Irish NGO community. The 2004 Annual NGO Forum on Human Rights hosted by the Human Rights Unit of the Department of Foreign Affairs also dealt, inter alia, with the issue of women human rights defenders.

Communications and concerns

801. No communications have been sent to Ireland during the two mandate periods.

Israel

802. The Special Representative acknowledges the response from the Government of Israel to the questionnaire transmitted for the preparation of this report.

803. The Special Representative visited Israel and the Occupied Palestinian Territories (OPT) from 5 to 11 October 2005 and reported on this fact-finding mission to the Commission on Human Rights in the document (E/CN.4/2005/095/Add.3).

The human rights defenders community

804. The situation for many human rights defenders in Israel is inseparable from the conflict between Israel and the Palestinians. After years of peace-talks and a relatively low intensity conflict, the conflict between Israel and the Palestinians intensified in 2000 with the start of the second Palestinian *Intifada*, or uprising.

805. Civil society in Israel and the OPT is characterized by activism and diversity. Human rights defenders in Israel work on a variety of issues including those related to the situation of Palestinians in the OPT. There are organizations that monitor and report on prisoners' rights, torture, administrative detention, and the right to due process. There is an active peace movement and organizations that carry out programs on Arab-Jewish partnership and coexistence. Several groups advocate for the rights of minorities in Israel and for the elimination of racism and discrimination. Strong networks on women's rights are actively engaged with issues such as violence against women and the legal status of women under personal laws of the different religious communities. Defenders are engaged with child rights, housing rights and campaigning against house demolitions, labour rights, the rights of migrant workers, the right to education, health and of persons with disabilities, LGBT rights, land-rights and environmental protection. There are religious groups and organizations that advocate the need for religious pluralism plus individual Israeli human rights defenders who do not belong as such to any particular organization such as lawyers, journalists, pacifists and conscientious objectors who refuse to serve the Israeli Occupation. Reports published and conferences arranged by human rights organizations are generally widely covered in the media and organizations are reported to be significantly involved in legislative lobbying.

806. The human rights defenders community in the Occupied Palestinian Territory, if one uses a fairly narrow definition of what constitutes a human rights organization, counts around 30 NGOs, in addition to hundreds of defenders who do not belong to a particular organization. Palestinian human rights defenders in general have two main focuses; human rights violations by Israeli authorities and occupying forces, and human rights abuses by the Palestinian Authority. Defenders in the Occupied Palestinian Territory are to a large extent dependent on the policies of the Israeli Government towards their human rights activities, and towards the general population of the Occupied Palestinian Territory, in terms of whether they are able to carry out their work or not.

Legal framework

807. Israel has acceded to a number of international human rights instruments, including to the International Covenant on Civil and Political Rights (ICCPR). Israel is not yet a party to the two Optional Protocols to the ICCPR, the Optional Protocol to the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the International

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In addition, the Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography has been signed but not yet ratified by the Government of Israel.

808. Israel is taking steps towards having a formal constitution, but currently has a set of basic laws (Basic Law on Human Dignity and Liberty) that are adopted by the Knesset (the Israeli Parliament), in the same manner as other legislation. The Government has informed the Special Representative that the provisions of the Declaration have not been made a part of internal Israeli law by a specific enactment of the Knesset, but that the Government considers the provisions in accordance with Israeli practice.

Freedom of Association

809. According to the Government, the freedom to associate with other persons or groups in order to pursue any lawful aim has long been recognized in Israel as a fundamental civil right. The freedom of association, as is the case with the freedom of expression and the freedom of assembly, is not absolute, and must be reconciled in appropriate circumstances with other legitimate fundamental interests of the society, such as the maintenance of social order, public scrutiny, or the very existence of the State.

810. Since 1997 Israeli organizations are required to register with the Registrar of Non-Profit Organizations at the Ministry of Interior.

811. The right of workers and employers to organize in trade unions for the promotion of their interests is not yet expressly articulated in Israeli legislation. The Government has informed the Special Representative that although this is the case, this right is firmly entrenched in the case law and is an underlying presumption of existing collective bargaining legislation.

812. The Special Representative recalls that the Economic and Social Council in its concluding observations on the second periodic report of Israel to the Council in May 2003 reiterated its concern that “the excessive emphasis upon the State as a ‘Jewish State’ encourages discrimination and accords a second-class status to its non-Jewish citizens” (E/C.12/1Add.27, para.10). In this regard the Economic and Social Council mentioned in particular the restricted access to and participation in trade unions for Israeli Arabs/Palestinians.

Freedom of expression and access to information

813. According to the Government the right to freedom of opinion and expression is not explicitly protected in Israel by constitutional legislation. The Government nevertheless has informed the Special Representative that the right to free speech has long been recognized as a supreme, constitutional norm, and that any limitations on its exercise for reasons related to public order or the rights and reputation of others must meet strict standards of scrutiny regarding their justification and scope. The Government maintains that while the Basic Law does not directly articulate the right to freedom of expression and opinion, it has been suggested that these rights fall within the ambit of the general right to human dignity protected by the Basic Law. The Government has relayed that, “with several exceptions, freedom of expression may be restricted by official action only if, in the specific circumstances of the case, the speech in

question gives rise at least to a “near certainty” that the public peace, broadly construed, will be endangered, and only if no other means to lessen the severity of the likelihood of such a violation of public peace are of no avail”. The Denial of the Holocaust Prohibition Law prescribes a maximum punishment of imprisonment for five years for publications which deny or minimize the extent of the crimes against the Jewish people or crimes against humanity committed during the Nazi regime in Germany, with the intent of defending perpetrators of such crimes or of praising or identifying with them.

814. The Government has informed the Special Representative that all Israel press and broadcast media as well as films, dramatic and artistic programmes, are subject to military censorship in security-related matters. Foreign broadcast media are reportedly not subject to military censorship.

815. Israeli law authorizes the Government to censor any material reported from the country or the occupied territories that it regards as sensitive on national security grounds. Within Israel this is reportedly based on an agreement between the Government and representatives of the media. Palestinian newspapers published in East Jerusalem are still subject to scrutiny by the Israeli Military Censor, in the way that Palestinian publications in the West Bank and Gaza were until the establishment of the Palestinian Authority.

Freedom of assembly

816. The Special Representative regrets that she has not received specific information on the right to freedom of assembly in Israel. The Government mentions in its response that there have been instances of human rights defenders “entering closed zones of conflict” and acting in violation of Israeli law. The Special Representative would appreciate receiving further information in regards to this from the Government.

Measures taken at national level for the implementation of the Declaration

817. During her visit to Israel and the OPT in October 2005, the Special Representative was informed by representatives of the Israeli Government that an NGO committee has been formed in the Knesset, but that no concrete initiatives have yet been taken by the committee. The Special Representative has expressed hope that this initiative, once developed further, can become a mechanism that can be used by human rights defenders to promote and protect human rights in Israel.

818. During her visit, the Special Representative was informed that the Government of Israel has recently constituted an inter-ministerial committee to deal with the issue of impunity to non-state actors for attacks against human rights defenders. The Special representative has not yet been informed about concrete action taken by this committee to deter these acts of violence through enforcement of appropriate policy or punitive measures.

819. The Government has informed the Special Representative that several initiatives have taken place between the Government and civil society, in the context of a campaign against trafficking in persons and promoting the rights of people with disabilities.

Communications and concerns

820. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 26 communications to the Government concerning 47 defenders and two NGOs. Notably, none of the communications dealt with Israeli citizens, all of the human rights defenders concerned in the communications were Palestinian. The Special Representative acknowledges the Government's responses to seven of her communications, and requests replies from the Government to the remaining 19 allegations.

821. Regarding registration of NGOs, the Special Representative was informed that the process has become longer and more complex, and there are more instances of administrative delays forcing NGOs to spend more time and resources in responding to the Registrar's demands for details. So far there have been no known instances of human rights NGOs being barred or closed by the Registrar however, the Special Representative was informed of some instances in which registration was refused because of their names. NGOs for the rights of Palestinians in Israel find it almost impossible to register.

822. There was a notable increase in cases brought to the Special Representative's attention in 2003, and she noted what seemed to constitute a policy of obstructing Israelis, Palestinians and internationals from witnessing and protesting against human rights abuses, and the ability of emergency personnel to provide medical treatment.

823. The Special Representative wishes to express her deep concern about the many allegations of violations committed against defenders by Israeli authorities, notably the killings of peace activists, in the Occupied Palestinian Territory. At least five of her communications dealt with defenders who had been killed by the Israeli army. The Special Representative reminds the Government of Israel that the "duty to protect" does not override the principle enunciated in the Declaration that the "absence of peace and security does not excuse non-compliance with international human rights norms and international humanitarian law".

824. Two of the communications sent concerned raids by the Israeli army on the offices of three Palestinian NGOs. The Special Representative was deeply concerned by one communication which referred to a statement by the Israeli Minister for Foreign Affairs in May 2003 accusing "most Human Rights Offices in the West Bank and Gaza Strip of providing shelter to terrorists". The Special Representative finds such general statements against human rights organizations to be contrary to the spirit of the Declaration on human rights defenders. She also registered her concern that such public accusations, without presenting any evidence to that effect, can be prejudicial to the safety of all defenders in the context of the conflict and tensions in the region. She is still awaiting a response to this communication from the Government.

825. The Special Representative is concerned about the vagueness of certain provisions in Israel law and is mindful of the concerns expressed by the Human Rights Committee about "the vagueness of definitions in Israeli counter-terrorism legislation and regulations which, although their application is subject to judicial review, appear to run counter to the principle of legality in several aspects owing to the ambiguous wording of the provisions and the use of several evidentiary presumptions to the detriment of the defendant" (CCPR/CO/78/ISR, para. 14).

826. The Special Representative notes with concern the use of administrative detention. She has sent several communications regarding human rights defenders placed under administrative detention and many more cases were reported to her whilst conducting her official mission. She notes that nine of her communications were sent jointly with the Working Group on Arbitrary Detention. Numerous communications dealt with Palestinian human rights defenders allegedly being denied travel permits to travel to human rights conferences and trainings abroad, or defenders being detained on their way into or out of the country. The Special Representative would like to remind about concerns expressed by the Human Rights Committee that “the Committee is concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territory, entailing restrictions on access to counsel and to the disclose of full reasons of the detention. These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively than what in the Committee’s view is permissible pursuant to article 4” (CCPR/CO/78/ISR, para. 12).

827. The Special Representative is deeply concerned about allegations of torture of defenders in the detention of Israeli authorities. She notes that ten of her communications were sent jointly with the Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment.

828. The Special Representative is concerned by reports of how checkpoints and other physical obstacles endanger and delay human rights defenders’ work. These restrictions place additional constraints on the time and resources of defenders and become impediments to their access to information, to victims and to sites of violation, restraining their freedom to monitor and document human rights situations. The Israeli military internal closure policy implemented within the OPT results in little or no access of defenders located in different areas to each other and effectively limits the cooperation with Israeli human rights defenders. These limits on movement also affect the work of international agencies, whose field workers face similar difficulties in carrying out their responsibilities. The Special Representative has particularly noted the difficulties faced by international human rights observers, monitors and activists to the OPT, and especially Gaza. She is concerned that in the wake of the ‘disengagement’, human rights defenders in Gaza are becoming more vulnerable because of their isolation, imposed by continuing restrictions that obstruct their movement and communication with their networks in the rest of the Palestinian territory as well as to the outside world. The Special Representative reminds the Government about the concerns of the Human Rights Committee concerning the right to freedom of movement, where it stated that “(w)hile again acknowledging the seriousness of the State party’s security concerns that have prompted recent restrictions on the right to freedom of movement, for example through imposition of curfews or establishment of an inordinate number of roadblocks, the Committee is concerned that the construction of the “Seam Zone”, by means of a fence and, in part, of a wall, beyond the Green Line, imposes additional and unjustifiably severe restrictions on the right to freedom of movement of, in particular, Palestinians within the Occupied Territory. The “Seam Zone” has adverse repercussions on nearly all walks of Palestinian life; in particular, the wide-ranging restrictions on freedom of movement disrupt access to health care, including emergency medical services, and access to water. The Committee considers that these restrictions are incompatible with article 12 of the Covenant” (CCPR/CO/78/ISR, para. 19).

829. The Special Representative is concerned by reports that Palestinian defenders freedom to communicate human rights related information is restrained when they are prevented by Israeli Authorities from traveling to meetings, press conferences, both within Israel, the OPT and abroad. The Special Representative has on several occasions sent communications to the Government concerning Palestinian defenders who were reportedly denied travel permits that they needed for traveling abroad to conferences on human rights issues. She has also received information of several instances where printed material and also electronic material (including hard-drives of computers) have been confiscated from human rights defenders either at Israeli military checkpoints, or in army-raids against NGOs based in the OPT.

830. The Special Representative is concerned by reports of harassment of local and foreign journalists who cover or report on human rights violations committed by the Israeli military. Many Palestinian journalists have been refused renewal of press cards since 2002, which has effectively barred them from covering many human rights related events.

831. The Special Representative is gravely concerned by reports that the Government of Israel shows a lack of respect for the freedom of assembly and freedom of expression in the OPT. She notes that ten of her communications were sent jointly with the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. She is gravely concerned by reports of repression of peaceful protests by violent means, such as teargas, rubber-coated metal bullets and stun-grenades. The Special Representative has received several reports of arbitrary arrests and detentions, and unjustified or disproportionate use of force on several occasions of peaceful assembly, by the Israeli Defense Forces in the OPT.

832. The Special Representative notes that Israeli defenders in general are able to carry out peaceful demonstrations within Israel without hindrance. Nevertheless, there have been several cases of violent protest against peaceful demonstrations organized to promote and protect the rights of LGBT people, in particular in Jerusalem. Furthermore, Israeli and foreign defenders are sometimes reported to be prohibited from traveling to Palestinian areas to participate in peaceful assembly there and subject to detention.

833. The Special Representative is deeply concerned about information received concerning attacks against Israeli and international human rights defenders by Israeli settlers in the OPT. She looks forward to receiving more information from the Government about concrete action taken by a recently constituted inter-ministerial committee to deter these acts of violence through enforcement of appropriate policy or punitive measures.

834. The Special Representative notes the many women defenders who are active in Israel and the OPT and would also like to refer to the report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel in 1967, where he states that the occupation and the Wall unevenly violate women's rights (A/60/271 para. 43).

835. The Special Representative is concerned by reports that on 25 July 2005 the Israeli Knesset approved an amendment to the *Civil Wrongs (Liability of the State) Law*, which prevents Palestinians from seeking remedy retroactively for human rights violations committed by Israeli Authorities in the Occupied Palestinian Territories, since the *Intifada* in 2000. The Special Representative reminds the Government that this is contrary to article 9 of the

Declaration. As Palestinian courts have no jurisdiction in cases of human rights violations carried out by Israeli Authorities in their area of jurisdiction, no effective remedy or the possibility to seek remedy is available.

836. The Government has also emphasized that human rights defenders in Israel have played a crucial role in the development of human rights law in the country by filing petitions and by acting as legal counsel in a great number of landmark Supreme Court cases related to human rights. The Special Representative notes however that defenders have reservations on the question of impartiality and fairness of the Court.

Jamaica

837. The Special Representative regrets that she has not received a response from the Government of Jamaica to the questionnaire transmitted for the preparation of the present report.

The human rights defenders community

838. Jamaica has been ruled by democratic institutions since 1962. In recent years the crime rate has increased considerably and violence has marked life in the “inner cities”, mainly in Kingston. As a response to these developments, the Crime Management Unit (CMU) was created as a special unit within the law-enforcement forces. It operates in the entire country and is intended to address the most violent crimes. The CMU is heavily armed and has often been accused of committing extrajudicial executions. Recently, the high crime rate, as well as the relative high number of persons killed by the police, prompted both the Government and the opposition to establish a National Committee on Crime and Violence. It was tasked with looking into the circumstances leading to the high rate of crime and violence in the country and making recommendations to improve the situation.

839. Though the information received does not allow the Special Representative to draw a conclusive picture of the human rights community in Jamaica, she notes that, in her report on her visit to Jamaica in February 2003, the Special Rapporteur on extrajudicial, summary and arbitrary executions assessed that there is: “A very vibrant public debate and free media prevails in Jamaica, but civil society is still relatively weak. However, a number of sound human rights non-governmental organizations do exist and have been very vocal in recent years. The relationship between Government and these NGOs still has to mature” (E/CN.4/2004/7/Add.2, para. 21).

Legal framework

840. Jamaica is party to five core international human rights instruments, including the International Covenant on Civil and Political Rights, but has not yet ratified the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment and its Protocol, the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, the Second Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of Discrimination against Women, the Optional Protocol to the Convention on the

Rights of the Child on the sale of children, child prostitution and child pornography. In 1998, Jamaica withdrew from the first Optional Protocol to the International Covenant on Civil and Political Rights. At a regional level, Jamaica is party to the American Convention on Human Rights.

841. The Special Representative regrets that she has not received sufficient information to give an overview of domestic legislation relevant to her mandate or to assess whether the legal framework in Jamaica is contributing to creating an enabling environment for defenders.

Measures taken at national level to ensure the implementation of the Declaration

842. The Special Representative regrets that she has not received sufficient information on the policies and programs adopted by the relevant Jamaican authorities to ensure an effective implementation of the Declaration, to enable her to assess the situation.

Communications and concerns

843. From the establishment of her mandate to 1 December 2005, the Special Representative has sent two communications to the Government regarding the case of a journalist reporting on human rights that was subjected to death threats and the case of a witness of an alleged extrajudicial execution who received death threats from the police. The Special Representative regrets that the Government has not responded to her communications.

844. The Special Representative has received information from non-governmental sources stating that human rights defenders continue to face hostility from the authorities and that the Police Federation in 2004 called for human rights groups to cease their “illegal interference”. The attacks are reported to be in particular directed at defenders working with Lesbian Gay Bisexual and Transsexual rights. Police violence is also reported to be a major problem in Jamaica and impunity for human rights violations, including extrajudicial killings is reportedly prevalent.

845. The Special Representative regrets that she has not received sufficient information to be able to make further assessment of the situation for human rights defenders in Jamaica. She would greatly appreciate receiving information from the Government and civil society on the situation for human rights defenders and the implementation of the Declaration in Jamaica.

Jordan

846. The Special Representative regrets that she has not received a response from the Jordanian Government to the questionnaire transmitted for the preparation of this report.

The human rights defenders community

847. Since 1999, Jordan has been ruled by King Abdullah. According to reports the number of politically motivated arrests and those related to “security concerns”, have increased in Jordan over the past years. Jordan’s reputation as one of the safest countries in the region was shaken in late 2005 as suicide bombers attacked several hotels in downtown Amman.

848. The Special Representative regrets that she has not received sufficient information to be able to give a proper assessment of the human rights defenders community in Jordan.

Legal framework

849. Jordan has ratified a number of the international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). Nevertheless, Jordan is still not a State party to the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the ICCPR, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Jordan is a signatory to the two Optional Protocols to the Convention on the Rights of the Child.

850. Article 16 of the constitution guarantees the right to organize demonstrations and to hold public meetings. Under the provisions of the Public Assembly Law, permission must be requested for any public meeting, rally, demonstration, or other form of public assembly.

851. In 2005, a new draft law on professional associations was proposed (the “Professional Associations draft law”), which has drawn some criticism from non-governmental organizations for being a setback to previous commitments to guaranteeing the rights of Jordanian activists and civil society to assemble and to express their views freely. Currently, under Jordanian law, all professionals are obliged to be members of professional organizations. The new draft legislation would restrict the scope of their discussion to “professional matters”, and require them to submit any discussion of “non-professional matters” to the Ministry of Interior for permission. The new draft law also gives the Government increased control over election procedures for associations and suggests creating a disciplinary structure controlled by the Government that will have authority to suspend members from the practice of their profession for a variety of reasons, often vague, which may allow for arbitrary decisions. The Special Representative would appreciate further information on this issue.

852. The Special Representative regrets that she has not received sufficient information on the legal framework in Jordan to be able to make a proper assessment of whether it creates an enabling environment for human rights defenders’ activities.

Measures taken at national level for the implementation of the Declaration

853. The National Centre for Human Rights (NCHR) in Jordan was established at the end of the year 2002 by temporary law No. 75 for the year 2002. The Special Representative would appreciate receiving further information about the guidelines and the areas of work of the NCHR.

854. In its concluding remarks on the second periodic report on Jordan, the Committee on Economic, Social and Cultural Rights welcomed Jordan’s development of a national plan of action on human rights (E/C.12/1/Add.46, para. 4). The Special Representative would appreciate further information on the content and implementation of this plan.

Communications and concerns

855. From the establishment of her mandate to 1 December 2005, the Special Representative has sent one communication to the Government. The Special Representative regrets that no response has been received from the Government in relation to this communication. Subsequently, and considering that no response was received to the questionnaire sent to the Government for the preparation of this report, the Special Representative regrets that she is unable to make a complete assessment of the situation for human rights defenders in Jordan. She would appreciate receiving information on the situation for defenders from the Government and civil society.

856. The information available, however, suggests that defenders face difficulties in several areas. In particular, the Special Representative is concerned about the reported shortcomings of the afore-mentioned proposed "Professional Associations draft law. She reminds the Government of article 7 of the Declaration which states that "everyone has the right [...] to develop and discuss new ideas and principles and advocate their acceptance".

857. The Special Representative is told that the media has traditionally been under tight state control in Jordan. There are several independent daily newspapers, international non-governmental sources, however, report that the Government, at times, gives directions on the content of newspapers. She has already expressed her concern on the issue in her communication regarding the case of one defender who was allegedly imprisoned for writing an article denouncing the detention conditions at the Jweidah prison. It was also reported that the particular edition of the magazine in which the article was published was banned.

858. In this respect the Special Representative welcomes information from the Government that the Higher Council of Information is now revising the whole entity of the Information Code, the Code of the State Security Court, the Confidentiality Code and others in order to harmonize existing legislation with a new vision for a better information and press freedom.

859. The Special Representative notes that in 2003, the Government repealed legislation that provided for jail sentences for harming the reputation of the King, for inciting strikes and for "illegal gatherings". She is nevertheless concerned about reports that the Government has used the afore-mentioned Public Assembly Law to restrict the holding of demonstrations and rallies. In this regard, the Special Representative would like to draw attention to article 5 of the Declaration which gives everyone the right to "meet or assemble peacefully" for "the purpose of promoting and protecting human rights and fundamental freedoms". She would also like to remind the Government about the concern expressed by the Committee on Economic, Social and Cultural Rights in their concluding remarks on the second periodical report on Jordan over the fact that article 100 of the Labor Code pre-empts the right of workers to strike (E/C.12/1/Add.46., para. 21).

Kazakhstan

860. The Special Representative acknowledges the response from the Government of Kazakhstan to the questionnaire transmitted for the preparation of this report. She also acknowledges the response received to the questionnaire from non-governmental sources.

The human rights defenders community

861. The Special Representative has been informed by the Government that there are between 500 and 750 non-governmental organizations working in the field of human rights in Kazakhstan. There are also defenders who work individually to promote and protect human rights, and the Government has informed the Special Representative that there are journalists who through their profession act as human rights defenders.

862. The range of activities carried out by defenders in Kazakhstan include promotion and protection of the rights of children, youth, consumers, women, the elderly, prisoners, the disabled, ethnic minorities, refugees, migrants and others. Defenders work on promotion and protection of civil, political, economic, social and cultural rights and the right to development, including the right to a healthy environment. Defenders also work on raising public awareness of human rights through training, advocacy campaigns and publications, and they are involved in the development of human rights legislation, provision of legal assistance and research and human rights monitoring. According to the Government, NGOs are active in networking both nationally and internationally. Defenders work on advocating Kazakhstan's accession to international human rights covenants, call for improvements in judicial and extrajudicial mechanisms for the protection of human rights, play an active role in public for a in the country, uphold the rights of vulnerable individuals and groups, boost public awareness of human rights and fundamental freedoms, and report to the international community and the Kazakh public on human rights violations.

863. The Government has informed the Special Representative that defenders participate in task forces and groups formed by the authorities to devise strategies and draft legislation on human rights, that they sit on advisory bodies and that they make use of various mechanisms inside and outside parliament to promote and protect human rights. Defenders are further involved in the lawmaking process according to the Government, where they discuss bills at the drafting and review stages in parliamentary working groups and press for additions and amendments to legislation.

864. Human rights defenders have links with organizations and agencies in the United Nations system, the OSCE and international human rights NGOs. Despite these positive trends, the Special Representative regrets that she has had relatively limited contact with the defenders community in Kazakhstan during her mandate.

865. Human rights defenders have contributed to a moratorium on the death penalty, the creation of an ombudsman and greater transparency with regard to penitentiary institutions through statutory civil oversight arrangements.

Legal framework

866. Kazakhstan is a State party to seven of the main international human rights instruments. Kazakhstan has signed, but not ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights. The ICCPR is a key instrument for the implementation of the Declaration on Human Rights Defenders as it guarantees rights such as freedom of opinion and expression, freedom of assembly and freedom of association. The Government has informed the Special Representative that both Covenants

are due to be ratified shortly. Despite improvements over the past few years, the legal framework of Kazakhstan is still relatively restrictive in terms of the laws and provisions relevant for the activities of human rights defenders. Kazakhstan has not yet signed the Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the ICCPR or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

867. The Kazakh Constitution guarantees protection of human rights and fundamental freedoms, but there are additional acts which regulate these rights.

Freedom of expression and access to information

868. According to the Civil Code of Kazakhstan, “slander” can lead to a maximum sentence of imprisonment.

Freedom of assembly

869. The organization of peaceful meetings and assemblies is regulated by the Peaceful Meetings, Rallies, Marches, Pickets and Demonstrations (Organization and Conduct) Act of 17 March 1995. This act states that the organizers of meetings and assemblies must advise the local authorities of their intention to hold such an event.

Freedom of association

870. The formation of non-governmental organizations and associations is regulated by the Non-profit Organizations Act of 16 January 2001 which requires NGOs to be registered as corporations. The law does not require the registration of what the Government terms “initiative groups, councils, or other citizens’ associations that do not have a corporate character”.

Measures taken at national level for the implementation of the Declaration

871. The Government has informed the Special Representative about two national human rights institutions, namely the Commissioner for human rights and the Commission on human rights. The Commission reports to the President of the Republic of Kazakhstan.

872. According to the Government, the Commissioner for Human Rights is an important instrument for ensuring the extrajudicial protection of human rights. The Government further describes that this reportedly independent State institution supervises respect for human rights, reviews complaints about the actions of public bodies and officials resulting in human rights violations, promotes the development of national legislation in strict compliance with international human rights standards, and encourages the development of human rights education. On this last point, the Government has informed the Special Representative that there are several initiatives to incorporate human rights into the curricula of law schools and faculties and in courses given to law enforcement officers, military personnel and public officials. The Special Representative would appreciate receiving further information on these initiatives.

Communications and concerns

873. From the establishment of her mandate to 1 December 2005, the Special Representative has sent four communications to the Government concerning the cases of two defenders and one NGO working in the field of human rights. The Special Representative thanks the Government for its reply to two of the communication and would appreciate receiving responses to the remaining two.

874. The Special Representative is concerned about reports that the Government restricts the rights to freedom of expression and freedom of assembly. In particular it has been reported that lawsuits have been brought against media-workers to silence independent media, also on reporting on human rights issues. One of her communications concerned the editor of the news bulletin "Human rights in Kazakhstan and in the world", who was arrested and charged with rape. It was alleged that the accusations were arbitrary and aimed at dissuading him from undertaking his activities in defence of human rights. Allegedly, he had also previously been attacked by unknown assailants and summoned to the Almaty office of the National Security Committee, where he was told that a criminal case had been brought against him for "infringing the honour and dignity of the President". The defender was reportedly later sentenced to three and a half years of prison for the first charges mentioned. Another communications was sent concerning an Uzbek member of a human rights NGO who was charged with, inter alia, premeditated aggravated murder, reportedly after and in connection with him monitoring and reporting on protests in Andijan.

875. The Special Representative is pleased that laws that would have restricted NGOs further were not adopted in 2005. However, the Government is reported to have intensified pressure on NGOs and civil society. The Special Representative is concerned by reports that NGOs have been harassed by administrative requirements including tax audits of tens of international organizations operating in the country which is may represent attempts to intimidate these organizations. The Special Representative sent one communication to the Government concerning Kazakhstan's leading human rights organization, the Kazakh International Bureau of Human Rights and the Rule of Law (KIBHR) whose offices were allegedly broken into and their computer equipment was stolen. Prior to the break-in and burglary, the ombudsman in Kazakhstan had brought accusations to the President that the organization was publishing biased information and distorting the situation in the country in its reports on developments in the field of human rights.

876. The Special Representative notes concerns expressed by some sources that the NGO sector in Kazakhstan is to a large degree under state-control. She notes that the EU in a statement made in July 2005, emphasised the need for increased efforts on the part of the authorities to "comply fully with international norms and standards...in particular as regards elections, freedom of media, the ability of political parties to operate freely and the registration of NGOs with the public authorities".

877. The Special Representative notes with concern that there reportedly have been cases of discrimination when defenders and family members of defenders have sought employment in the state-sector.

Kenya

878. The Special Representative acknowledges the response from a non-governmental organization to the questionnaire transmitted for the preparation of this report. She regrets that she has not received a response from the Government of Kenya to the questionnaire.

The human rights defenders community

879. President Daniel Arap Moi's 24 year rule ended in 2002, with the National Rainbow Coalition Party (NARC) coming into power after winning the elections.

880. Despite many positive changes that have taken place with regards to human rights in Kenya, it is reported that the institutional framework dating back to the period of Kanu-rule is still in place.

881. The Special Representative regrets that she has not received sufficient information to be able to make a proper assessment of the human rights defenders community in Kenya. She would appreciate receiving further information both from the Government and from civil society actors.

Legal framework

882. Kenya has acceded to most core international human rights instruments, including the International Covenant on Civil and Political Rights. Kenya is not yet a State party to the following Conventions and Protocols; the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the two Optional Protocols to the Convention on the Rights of the Child (although it is a signatory to the Second Optional Protocol). Kenya has ratified the African Charter on Human and Peoples' Rights.

883. The Kenyan constitutional framework guarantees many of the fundamental freedoms with article 79 of the Constitution protecting the right to freedom of expression and the right to freedom of information and article 80 protecting the right to freedom of assembly and association. Nevertheless, section 5 of the Public Order Act requires public meetings or demonstrations to be notified at least three days in advance.

884. The Special Representative regrets that she has not received sufficient information to be able to give a full assessment of the legal framework and its benefits or limitations in relation to the work of human rights defenders.

885. The Special Representative would like to recall the concluding remarks of the Human Rights Committee in relation to the legal framework of Kenya, in which it "welcomes the fact that the State party's new draft constitution includes a proposed Bill of Rights that is inspired by international human rights standards and seeks to remedy present deficiencies in the protection of fundamental rights, including gender disparities" (CCPR/CO/83/KEN, para. 3).

Measures taken at national level for the implementation of the Declaration

886. In 2003, the Kenya Human Rights Commission was established. The Special Representative wishes to point to the concluding remarks of the Human Rights Committee where it welcomed the establishment of the “independent Kenya Human Rights Commission” and expressed the hope that the Commission would be endowed with sufficient resources to enable it effectively to discharge all of its mandated activities and to operate in accordance with the Paris Principles (CCPR/CO/83/KEN, para. 4).

887. The Special Representative regrets that she has not received further information on the policies and programs adopted by relevant Kenyan authorities to ensure an effective implementation of the Declaration. The Special Representative would appreciate receiving such information from the Government.

Communications and concerns

888. From the establishment of her mandate to 1 December 2005, the Special Representative has sent five communications to the Government concerning 93 defenders arrested, the cases of two NGOs that reportedly had their offices searched, equipment confiscated and staff arrested. The Special Representative regrets that she has not received any replies from the Government to her communications.

889. The Special Representative is concerned that all of her communications to the Government dealt with incidents where the police or the security forces were alleged to be the perpetrators of violations against defenders. Most of the communications sent dealt with defenders who had been arrested by the police or security forces when they were participating in demonstrations, and they were allegedly charged with “taking part in an illegal demonstration” or with “causing disturbance”.

890. The Special Representative notes with concern that all save one of the communications were sent jointly with the Special Rapporteur on torture, and concerned either alleged torture of defenders or cases where doctors who concluded after post-mortem that torture had been the cause of death of persons in police custody.

891. The Special Representative would appreciate receiving information from the Government and from civil society actors on the situation for human rights defenders and the implementation of the Declaration in Kenya. She also regrets that she has not received a response from the Government to her request for an invitation to visit Kenya for an official mission.

Korea (Republic of)

892. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

893. The Special Representative regrets that she has not received sufficient information to complete this section with regards to the Republic of Korea. Lack of information is a concern because a comprehensive assessment cannot be made, and may indicate that human rights defenders have difficulty or lack of capacity to communicate.

Legal framework

894. The Republic of Korea is a State party to several of the core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). The Republic of Korea has not yet ratified the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the Second Optional Protocol to ICCPR, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Freedom of expression and access to information

895. In its third periodic report submitted under article 40 of the ICCPR, the Republic of Korea informed that “freedom of expression and freedom of the press are fully guaranteed by the Constitution, but, as stipulated in the Covenant, can be restricted in certain circumstances: practices of the media and the press shall not infringe the dignity or rights of others, nor on public morals or social ethics, and in the case that such an infringement occurs, the victim can seek appropriate compensation for damages” (CCPR/C/KOR/2005/3, para. 280).

Freedom of assembly and freedom of movement

896. The Constitution guarantees freedom of assembly. The Government has stated that the Act on Assembly and Demonstration was revised in January 2004 “so as to more effectively guarantee freedom of assembly and demonstration”. The Government also stated that it “continues to make efforts to change the culture of violent assemblies and demonstrations into peaceful and sound ones” (CCPR/C/KOR/2005/3, para. 314).

Measures taken at national level for the implementation of the Declaration

897. The Special Representative regrets that she has not received information on the policies and programmes adopted by relevant authorities in the Republic of Korea to ensure an effective implementation of the Declaration.

Communications and concerns

898. From the establishment of her mandate to 1 December 2005, the Special Representative has sent four communications to the Government concerning nine named defenders and an organization. The Special Representative thanks the Government for its responses to all of her communications.

899. The Special Representative is deeply concerned by the allegations in all the four complaints she received that the main perpetrators of violations against defenders were the state authorities, mostly the police. She would like to remind the Government that according to the Declaration “the prime responsibility to promote and protect human rights and fundamental freedoms lie with the State” and also that (according to article 15) “the State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programmes”.

900. The Special Representative is concerned by reports that defenders have been beaten, arrested and reportedly also ill-treated in jail, in relation to their participation in peaceful protest. Two of her communications were sent jointly with the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and one was sent jointly with the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. She would like to remind the Government about article 5 (a) of the Declaration which states that “for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right [...] at the national and international levels to meet or assemble peacefully [...]”.

Kuwait

901. The Special Representative regrets that the Government of Kuwait has not responded to the questionnaire transmitted for the preparation of this report.

The human rights defenders community

902. Kuwait was the first Arab Gulf country to have an elected parliament. Women did not have full political rights in Kuwait before 2005.

903. In August 2004, the Kuwait Human Rights Society was the first human rights NGO to be given official status in Kuwait, when the Ministry of Social Affairs and Labour granted it a license, ten years after it was established. The Special Representative sees the granting of a license to the Kuwait Human Rights Society as a positive development. Nevertheless, she is concerned that she has not received information about the existence of any other human rights organizations in the country. She regrets that she has not received further information on the human rights defenders community in Kuwait and would appreciate receiving updated information from the Government and from civil society actors.

904. Kuwaiti newspapers are known to be the most outspoken in the Arab world. Restraints, reportedly, remain with regards to any matters relating to the Emir and members of the royal family.

Legal framework

905. Kuwait is State party to most major international human rights instruments, including the International Covenant on Civil and Political Rights. Nevertheless, Kuwait has not yet ratified the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the International Covenant on Civil and

Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

906. In its initial report to the Committee on Economic, Social and Cultural Rights, Kuwait informed that rights and freedoms such as individual liberty (art. 30), freedom of faith (art. 35), freedom of expression and scientific research (art. 36), freedom of the press, printing and publication (art. 37), freedom of private life and housing (art. 38), freedom of correspondence by mail, telegram and telephone (art. 39), the right to organize and freedom of association (art. 43) and the right to congregate (art. 44) are protected by the Constitution. Special Representative, however, does not have sufficient information at her disposal to be able to make a proper assessment of whether the legal framework is effectively implemented to create an enabling environment for human rights defenders.

907. In a communication transmitted to the Special Representative, dated 23 November 2000, the State of Kuwait stated that it has attached great importance to human rights law in its legislation, internal regulation and its Constitution, which prohibits various violations of human rights and establishes the principle that there is no crime or punishment except as defined by law. Under the Constitution, any individual has the right to petition the public authorities and everyone has a guaranteed right to legal redress. This applies equally to individuals and groups defending human rights seeking protection from acts of violations to which they were subjected while discharging their functions, or redress and amends for any damage suffered (E/CN.4/2001/94, para. 56).

Measures taken at national level for the implementation of the Declaration

908. In the above-mentioned communication transmitted to the Special Representative, dated 23 November 2000, the Government of Kuwait expressed its support for the mandate, since “the defence of human rights is a praiseworthy act that deserves commendation”. However, they noted that such acts should be undertaken through authorized channels and within the limits of the law and national sovereignty by State-recognized national bodies (E/CN.4/2001/94, para. 56).

909. According to information received, the Chair of the National Assembly’s Human Rights Committee, announced in 2004 that a committee would be formed to prepare an annual report on human rights in Kuwait. The Special Representative regrets that she has not received information on developments in relation to this announced initiative and would appreciate receiving such information.

Communications and issues of concerns

910. From the establishment of her mandate to 1 December 2005, the Special Representative has sent one communication to the Government. The communication concerned a lawyer and member of the Al-Karama Association for Defending Human Rights (KADHR) who was

arrested at Kuwait Airport after returning from a meeting with Egyptian defenders in Cairo. The Special Representative acknowledges the response from the Government in relation to this communication. Nevertheless, she is concerned that the Government has relayed to her that the defender in question has been charged with “membership of a proscribed organization which seeks to destroy the basic apparatus of the State by unlawful means”.

911. The Special Representative regrets that she has had very limited contact with both the Government and the human rights defenders community in Kuwait. She would appreciate receiving information on the situation for human rights defenders and the implementation of the Declaration in the country.

912. The Special Representative is concerned with allegations of restrictions on freedom of expression in Kuwait. There are reports that the ministry censors books, films, periodicals and imported publications deemed morally offensive, and reports that arrests and trials have taken place in violation of the right to freedom of expression. Although the Special Representative has sent no communications to the Government regarding this issue, she is concerned that restrictions such as these might also impact on the right to freedom of expression of human rights defenders.

913. The Special Representative has not received any information from the Government on steps taken for the implementation of the Declaration in Kuwait. In relation to this she would also like to recall the concern expressed by the Committee on Economic, Social and Cultural Rights in its concluding remarks on the initial report of Kuwait to the Committee concerning the absence of a comprehensive national plan of action on human rights in accordance with paragraph 71 of the Vienna Declaration and Programme of Action, adopted in June 1993 (E/C.12/1/Add.98, para. 10). The Special Representative also notes the concern expressed by the Committee on Economic, Social and Cultural Rights about the lack of an independent national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex) (E/C.12/1/Add.98, para. 11).

Kyrgyzstan

914. The Special Representative acknowledges non-governmental sources for providing her with information in response to the questionnaire distributed for the preparation of this report. She regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

915. The Special Representative conducted a fact-finding visit to the country from 30 July to 4 August 2001. In addition to the present account on the implementation of the Declaration on Human Rights Defenders in Kyrgyzstan, she wishes to refer to her report on this visit (E/CN.4/2002/106/Add.1), which contained more detailed information.

The human rights defenders community

916. Following reports of a serious deterioration in the human rights situation in Kyrgyzstan at the end of the 1990s, the Special Representative requested an invitation to visit the country in 2001. This was the first country mission she carried out following the establishment of the mandate.

917. As she reflected in her report, the relationship between the Government and civil society became particularly strained because of the pro-democracy activities of human rights defenders, and their strong criticism of the oppressive tendencies of the Government towards any voices of opposition to its policies.

918. According to information received from non-governmental sources, the role and space for human rights defenders have increased with the election of a new government in July 2005. The new Government, under Prime Minister Kurmanbek Bakiyev, has reportedly expressed its will to strengthen its relationship with civil society and increase mutual cooperation. Some human rights defenders are reported to be working with the Government in the drafting of a new Constitution. Other NGOs work on the case of Uzbek asylum-seekers and refugees in Kyrgyzstan.

Legal framework

919. Kyrgyzstan is party to the main international human rights treaties, including the International Civil and Political Rights, but has not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment. In the report on her visit to the country, the Special Representative overviewed the domestic legislation with impact on human rights activity. She regrets that she has not received further information to update her analysis.

Measures taken at national level to ensure the implementation of the Declaration

920. The Special Representative wishes to refer to the report on her visit to the country. She regrets that she has not received further information on the measures taken for the implementation of the Declaration since then.

Communications and concerns

921. During the six years of her mandate, the Special Representative has regularly received disturbing information on cases of repression and harassment against human rights defenders. Such persecution has reportedly included severe attacks against members of their families. The Special Representative has also received reports according to which human rights defenders have been arrested and ill-treated during their detention or interrogation.

922. From the establishment of her mandate to 1 December 2005, the Special Representative has sent ten communications to the Government on 12 individual defenders, including two women, as well as a number of human rights non-governmental organizations. Some of these communications concerned acts of harassment and repression against human rights defenders and their families, whilst others concerned alleged use of excessive force by law-enforcement

officials during demonstrations. One of these communications concerned the criminal prosecution of members of a human rights organisation and the imposition of a long-term imprisonment sentence on one of the human rights defenders. The Special Representative acknowledges the response of the Government to three of her communications but she regrets that no reply has been received for the other seven.

923. The Special Representative has also been informed that the former Government created NGOs with the aim of undermining the work and legitimacy of independent NGOs and to shield the Government from criticism. In this respect, in an urgent appeal transmitted in January 2001, the Special Representative referred to allegations according to which the then State Secretary of the Kyrgyz Republic created the Coalition of Non-Commercial Organizations in order to discredit independent journalists, opposition-related observers and independent NGOs. The Special Representative regrets that the Government has not replied yet to this communication and encourages it to provide her with further information on the current status in this matter.

Lebanon

924. La Représentante spéciale regrette que le Gouvernement ne lui ait pas fait parvenir des renseignements en réponse au questionnaire qu'elle lui avait adressé avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme

925. La Représentante spéciale regrette de ne pas disposer de suffisamment d'informations pour pouvoir donner une description détaillée de la communauté des défenseurs dans le pays.

Cadre juridique

926. Le Liban est partie à six des sept instruments principaux internationaux relatifs aux droits de l'homme, y compris le Pacte international relatif aux droits civils et politiques, mais n'a pas encore ratifié tous les protocoles facultatifs à ces instruments ni la Convention internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille. Dès le dépôt des instruments de ratification ou d'adhésion, ces instruments font partie du droit interne.

927. La Représentante spéciale regrette ne pas avoir suffisamment d'informations à sa disposition pour être en mesure de présenter un analyse approfondie de la législation nationale portant sur les droits énoncés dans la Déclaration sur les défenseurs des droits de l'homme et l'impact de son application sur le travail des défenseurs des droits de l'homme.

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

928. La Représentante spéciale regrette ne pas avoir reçu de renseignements sur les politiques et les programmes adoptés par les autorités libanaises compétentes pour assurer la mise en œuvre de la Déclaration.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

929. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé cinq communications au Gouvernement portant sur deux défenseurs, dont un avocat et dont une femme membre d'une organisation de défense des droits de l'homme travaillant sur les droits de réfugiés. Ces personnes auraient fait l'objet de poursuites disciplinaires et judiciaires en réponse à leurs activités de défense des droits de l'homme en particulier en relation avec leur exercice de la liberté d'expression pour avoir dénoncé certaines questions affectant la protection des droits de l'homme. La Représentante spéciale remercie le Gouvernement pour ses réponses à deux des communications.

930. La Représentante spéciale exprime sa préoccupation devant la restriction apparente de l'espace de liberté d'expression pour les défenseurs des droits de l'homme. Elle exprime sa plus vive inquiétude devant l'utilisation de la loi pour criminaliser le discours et les publications de certains défenseurs.

Liberia

931. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information in the future with a view to update this profile.

The human rights defenders community

932. After considering the human rights situation in Liberia under its confidential 1503 procedure, the Commission on Human Rights appointed an independent expert pursuant to resolution 2003/82. The Special Representative wishes to refer to the reports of the independent expert for a clearer understanding of the national context in the field of human rights (E/CN.4/2005/119 and E/CN.4/2004/5).

933. The Comprehensive Peace Agreement, which ended the almost continuous internal conflict in Liberia between 1990 and 2003, was signed on 18 August 2003 by the then government; the two main armed opposition groups, the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL); and by all political parties. The armed conflict has had devastating effects. It resulted in massive denial of the right to life, torture, enforced and involuntary disappearances, violence against women, forced recruitment of child soldiers, displacement and denial of humanitarian access. Although the deployment of the United Nations Mission in Liberia (UNMIL), with its human rights monitoring, capacity building, technical cooperation and advocacy mandate and the disarmament process are contributing to improve security and human rights in the country, the human rights situation in Liberia remains alarming, especially in South-eastern districts. Lack of resources hampers the post-conflict reconstruction, including establishing or rebuilding institutions for the protection of human rights. The first presidential elections were held in 2005, after 14 years of civil war.

934. The Special Representative regrets that she has had very little contact with human rights defenders in Liberia during her two mandate periods and that she has not received sufficient information to make a proper assessment of the human rights defenders community in the country. She notes however, that according to the independent expert on the human rights situation in Liberia, “there is a wide array of local civil society groups and human rights NGOs operating in Liberia. Most of these groups depend on external sources for funding and indeed do not have the capacity to be effective in their chosen areas of operations. There is an urgent need to bring some sanity into the proliferation of NGOs in the country. The organizations should be supported through capacity-building initiatives and indeed some regulation is imperative.” (E/CN.4/2005/119, para. 62). The Special Representative would support all initiatives for strengthening of civil society and improving the capacity of defenders to become more effective in the defense of human rights. However, any regulatory regime must be constructed with in full consultation with civil society, with full respect for the independence of human rights defenders and in compliance with the principles set forth in the Declaration.

Legal framework

935. Liberia is party to six of the main international human rights instruments, including the International Covenant on Civil and Political Rights, and most of their respective Optional Protocols. It has signed but not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the First Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Eliminations of All Forms of Discrimination against Women. At regional level, it has ratified the African Charter on Human and People’s Rights. Many of the fundamental human rights included in these international instruments are provided for in the Liberian Constitution.

936. Article 15 of the Constitution recognizes freedom of expression, but adds that individuals are “fully responsible for the abuse thereof”. Article 17 recognizes the right to freedom of assembly. The Special Representative would appreciate receiving further information on the constitutional protection of basic freedoms in Liberia in order for her to make a full assessment of the legal framework of Liberia in relation to the work of human rights defenders.

Measures taken at national level to implement the Declaration

937. The Special Representative regrets that she has not received information on policies and programs adopted by relevant Liberian authorities to ensure an effective implementation of the Declaration.

Communications and concerns

938. From the establishment of her mandate to 1 December 2005, the Special Representative has sent four communications to the Government on six human rights defenders. The Special Representative regrets that the Government has not responded to her communications.

939. In view of the information received, the Special Representative is concerned with reports of arrests and detentions of human rights defenders in Liberia. All communications sent to the Government concerned defenders who were reportedly arrested without formal charges, accused of belonging to armed opposition groups, charged with treason, denied medical treatment during detention, held incommunicado for prolonged periods, or subjected to unfair trials.

940. The Special Representative is deeply concerned with reports of ill-treatment of defenders in police custody. She notes that three of her communications to the Government were sent jointly with the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment. The communications concerned allegations that defenders were severely beaten while in police custody.

941. The Special Representative is also concerned about the reported level of impunity for violations against human rights defenders. She would like to remind the Government about article 9 of the Declaration which states that “[...] everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain and to have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law [...]”.

Libyan Arab Jamahiriya

942. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information with a view to update this profile.

The human rights defenders community

943. The Special Representative regrets that she has not received sufficient information to complete this section with regard to Libya. She also regrets that she has not had the opportunity establish regular contact with individual defenders or defenders’ organizations from the Libyan Arab Jamahiriya throughout her two mandate-periods. Lack of information is a concern because a comprehensive assessment cannot be made, and may indicate that human rights defenders have difficulty or lack of capacity to communicate.

Legal framework

944. Libya has acceded to nearly all core human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). Libya is not yet a State party to the Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment, or the Second Optional Protocol to the ICCPR. Libya has ratified the African Charter on Human and Peoples’ Rights. The Libyan Supreme Court established a principle which acquired the binding force of law pursuant to Act No. 6 of 1982: as soon as the Libyan Arab Jamahiriya ratifies an international instrument, that instrument becomes legally binding and takes precedence over domestic law.

945. Article 1 of the Constitution stipulates that: “Libya is a free and democratic Arab republic in which sovereignty is exercised by the people. It forms part of the Arab nation and its aim is the achievement of full Arab unity. Its territory is part of Africa and it is known as the Libyan Arab Republic”. Article 2 of the Constitution stipulates that the Holy Qur’an is the social code in the Socialist People’s Libyan Arab Jamahiriya. Article 3 stipulates that the direct authority of the people is the basis of the political system in the Socialist People’s Libyan Arab Jamahiriya, since authority belongs solely to the people, by whom it is exercised through people’s congresses, people’s committees, trade unions, federations and professional associations (the General People’s Congress).

946. The Constitution guarantees, amongst other rights, the right to freedom of opinion and association and the right to seek legal remedy from the courts. The Special Representative regrets that she has not received further information on the domestic legislation on freedoms of expression, association and assembly in order to enable her to assess the conduciveness of the legal environment of the work of human rights defenders.

Measures taken at national level for the implementation of the Declaration

947. The Special Representative regrets that she has not received sufficient information on the policies and programs adopted by relevant authorities to ensure an effective implementation of the Declaration, to enable her to make an assessment.

Communications and concerns

948. From the establishment of her mandate to 1 December 2005, the Special Representative has sent two communications to the Government on the case of one defender, and several members of Human Rights Watch. The Special Representative regrets the lack of Government reply in both cases.

949. The Special Representative notes that one of her communications concerned several members of a delegation from Human Rights Watch who had their visas withheld by the authorities. She would appreciate receiving information from the Government and civil society on laws and practices relating to freedom of movement in the country.

950. The Special Representative regrets that she does not have sufficient information at her disposal to make a proper assessment of the situation for human rights defenders in the Libyan Arab Jamahiriya. She would appreciate receiving information from the Libyan Arab Jamahiriya on the policies and programs adopted by the Government for the implementation of the Declaration. She would also appreciate establishing contacts with the Government and civil society on issues affecting the work of human rights defenders in the country.

Macedonia (The former Yugoslav Republic of)

951. The Special Representative acknowledges the response from the non-governmental sources and the United Nations partners in the country, including the office of the OHCHR, to the questionnaire transmitted for the preparation of this report. The Special Representative welcomes indications from the Government that it will transmit to her a response to the questionnaire sent in 2005 in the near future.

952. The Special Representative visited The former Yugoslav Republic of Macedonia from 27 to 30 January 2003. She wishes to refer to the report on this visit for a more complete account of the situation of human rights defenders in the country (see document E/CN.4/2004/94/Add.2). From the information received since the submission of this report, there are no indications that there have been major changes in the country, as far as the situation of human rights defenders and the implementation of the Declaration are concerned.

The human rights defenders community

953. The former Yugoslav Republic of Macedonia has experienced profound political changes since it proclaimed its independence from the former Socialist Federative Republic of Yugoslavia in September 1991. Instability and armed conflicts in the Balkans have had strong impact in the country. Not only have they contributed to the emergence of internal conflict in the country in the spring of 2001 but they have also limited economic growth and development within The former Yugoslav Republic of Macedonia. It is considered that the Framework Agreement, which was signed in Ohrid in August 2001 and facilitated the resolution of the internal armed conflict, provided positive momentum for the establishment and strengthening of democratic institutions and processes essential for the work and protection of human rights defenders.

954. In her report on the visit to The former Yugoslav Republic of Macedonia, the Special Representative identified human rights defenders and the activities they are engaged in, described their capacity and implications for the future and focused on the gaps in their work. Defenders come from various backgrounds such as lawyers, teachers, union leaders, academics, leaders of community development programs, and journalists. Most of the human rights defenders are based in the capital Skopje and their work at local level is quite limited, particularly in terms of monitoring. Defenders work on issues such as minority rights e.g., Roma issues, citizens participation and democracy, human rights education and training, campaigning against the use of torture, disarmament and peace-activism, trafficking in women and children, and labour rights.

955. Women defenders are numerous and especially active at the community level, and mainly focus on awareness-raising, education and lobbying more than on protection activities.

956. As the Special Representative mentioned in her account on her visit to the country, “the economic context is influencing the role and situation of human rights defenders in several ways - for example, employment and labor rights are increasing human rights concerns, while the poor economic situation also limits the capacity of defenders to obtain funding for their work from domestic sources, to name but two factors” (ibid. para. 9). The role and situation of human rights defenders is also highly influenced by the presence of international and regional actors.

Legal framework

957. The former Yugoslav Republic of Macedonia is party to six of the core international human rights instruments, including the International Covenant on Civil and Political Rights. It has not yet ratified the Optional Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

958. As indicated in her report from the country-visit, respect for the right to freedom of expression is considered to be good, there is general freedom of assembly and freedom to form associations. According to information provided by the Government, the Parliament has adopted the Law on the Access to Information since the Special Representative's visit to the country. This law will give citizens the right, as of 1 September, to seek access to previously classified Government information.

959. The Special Representative has received information according to which amendments to the penal legislation made in 2004 have included imprisonment sentences for acts of defamation. Apart from this, she has not received information indicating changes in the domestic legislation affecting the functioning of human rights defenders since her visit in January 2003.

Measures taken at national level for the implementation of the Declaration

960. In her report on the visit the Special Representative gave an account on information brought to her attention about the main national institutions with human rights responsibilities. In particular, she referred to the Constitutional Court, the State Electoral Commission, the Parliamentary Human Rights Committee, and the Office of the Ombudsman (*ibid.*, paras. 23 to 25). The Special Representative welcomes indications from the Government that it will provide her with further in depth information on steps taken by the Government to implement the Declaration.

961. She notes with interest that within the OHCHR mid-term technical cooperation project in the country, a study will be conducted on the level of implementation of the Declaration. The Special Representative would appreciate receiving the outcomes of such a study. She has also been informed that in late 2004 a Human Rights Theme Group was established to assist the UNCT in strengthening the support to the national human rights protection systems, including human rights defenders.

Communications and concerns

962. From the establishment of her mandate to 1 December 2005, the Special Representative has sent two communications to the Government on the case of a journalist who was investigating corruptions cases and who was reportedly attacked and injured. He is also reported to be facing a number of defamation suits in connection with his articles. The Special Representative regrets that no response has been received yet to her communications.

963. During her visit to the country, the Special Representative was encouraged by commitments and by legislative, institutional and other measures to address long-standing human rights problems. She also noted the strong potential of human rights defenders in The former Yugoslav Republic of Macedonia. However, she remained concerned about a series of gaps in the full implementation of the Declaration. She raised concern with regard to defenders' dependence on international funding, the relative absence of domestic funding sources, the integrity of some defenders' organizations, the extent to which defenders' activities are coordinated and the strategic, training needs of defenders and significant gaps in their human rights action.

964. The Special Representative also wishes to reiterate her concerns as to the legislative support available to human rights defenders and the serious impact of corruption and politicization on defenders as well as about the conduct of the police, the independence of the judiciary and the security of defenders.

965. During her visit, many defenders reported to the Special Representative that corruption was a major obstacle preventing human rights defenders from conducting their work effectively as it had negative effects on the functioning of State institutions.

Malaysia

966. The Special Representative acknowledges the response from the Office of the United Nations Resident Coordinator in Malaysia to the questionnaire distributed for the preparation of this report. The Special Representative regrets that the Government has not provided her with information at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights community in Malaysia

967. The Special Representative regrets that she has sufficient information available to complete this section.

Legal framework

968. The Special Representative notes that although Malaysia is a State Party to two of the seven core international human rights treaties, namely the Convention on the Elimination of All Forms of Discrimination against Women and to the Convention on the Rights of the Child, it has not ratified the International Covenant on Civil and Political Rights, which is a key instrument for the implementation of the Declaration on Human Rights Defenders as it guarantees rights such as freedom of opinion and expression, freedom of assembly and freedom of association.

969. Human rights guarantees in Malaysia are hindered by the Internal Security Act (ISA). The ISA allows the police to detain incommunicado and without a warrant any person deemed a threat to the national security or economic life of Malaysia for up to 60 days of investigation. Under the ISA, the Minister of Home Affairs may extend the period of detention for an initial period of up to two years without reference to the courts and the Prime Minister can issue a further detention order for up to another two years, again without reference to the courts, and this period is renewable indefinitely. The Special Representative remains disturbed at reports of the use of the ISA against human rights defenders and considers such use to be a potential threat to activities for the promotion, protection and implementation of human rights. The ISA has reportedly been used to suppress their right to expression and demonstration.

970. Other restrictive legislation, such as the Societies Act 1966, the Universities and University Colleges Act 1971 and the Trade Unions Act 1959, the Sedition Act 1948, revised 1949, the Emergency (Public Order and Prevention of Crime) Ordinance 1969, the Official Secrets Act 1972 (OSA), the Printing Presses and Publications Act 1984 (PPPA), the

Broadcasting Act 1988, the Restricted Residence Act 1993, revised 1989, the Election Act 1958, and the Legal Profession Act 1976, are reported to have a strong impact on the work of human rights defenders and the functioning of human rights institutions.

971. The Special Representative has been informed that amendments to the Criminal Procedure Code expected to be adopted by the Parliament in 2005 would provide additional powers to the police for arrest without warrant. It would also provide the interception, by order of the Public Prosecutor's office, of all forms of communications. She would appreciate receiving further and detailed information on these amendments.

Freedom of expression

972. According to the information gathered, the PPPA requires all publications to obtain an annual press license that can be withdrawn without judicial review. The threat of having to close down has reportedly been used by the Government to tightly control the media. It has further been brought to the attention of the Special Representative that under section 7 of the Act, the Government may at its discretion ban the publication, import and circulation of any manuscript or publication deemed prejudicial to "public order, morality, security, the relationship with any foreign country or government, or which is likely to alarm public opinion, or which is (...) otherwise prejudicial to public interest or national interest". Section 8A (1) for a jail term and/or heavy penalties for editors, journalists, publishers and printers if found guilty of "maliciously publishing false news", defined as "not taking reasonable measures to verify the news". This provision has reportedly been used against human rights activists.

Freedom of association

973. The Societies Act every club, organization, society or political party of more than six members to secure a license. In practice this is reported to provide the Executive with the means to block or impede the formation of any organization which it considers undesirable. According to the information received, the Registrar of Societies may refuse registration if it is to be "used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public order, good order or morality in Malaysia". The Special Representative has been informed that in view of the difficulties faced by human rights associations in obtaining registration under the Societies Act has brought many of them to register as businesses under the Business Act 1956 or as companies under the Companies Act 1965. However, this circumvention implies other restrictions. For instance, an NGO registered under the Business Act is prohibited from having members.

Freedom of assembly

974. Article 10 (1) (b) of the Malaysian Federal Constitution guarantees the right to assemble peacefully and without arms, subject to restrictions imposed by laws which Parliament deems necessary or expedient in the interest of national security or public order (art. 10 (2) b). The Police Act 1967 and the *Public Order Preservation Act 1958* further regulate this right. According to the *Police Act*, it is the police's task to regulate assemblies and meetings in public places; it may prohibit such assemblies, and/or prescribe the time at which such meetings should be held. Persons intending to convene an assembly must apply for a license 14 days before any public meeting is held; the license will be granted if the assembly is estimated not likely to be

prejudicial to the interest of the security of Malaysia or to excite a disturbance of the peace. The license issued may be cancelled at any time on the same grounds for which a license may be refused. Section 141 of the Penal Code provides that any grouping of five or more is an illegal assembly if there has not been previous authorization. In 1988 section 27 (2A) was added to impose a requirement that applications for a license must be made by an organization or jointly by three individuals. Section 27 (2D) provides that no license will be issued to an organization that is not registered or recognized under any law in force in Malaysia. In view of the reported restrictions faced by NGOs in the registration process, concern has been expressed that these provisions may prevent human rights defenders from exercising their right to freedom of assembly. According to Section 27 (3), the Police may stop an assembly if no license has been issued for that assembly or if the license was subsequently cancelled, or if the assembly contravenes any of the conditions of the license issued. In stopping the assembly, the Police may order the persons comprising the assembly to disperse.

Measures taken at national level to ensure the implementation of the Declaration

975. The Special Representative has been informed of the establishment of an independent Royal Commission of Inquiry for the investigation of patterns of abuses by police, including excessive use of force and unlawful killings during arrest of criminal suspects; torture and ill-treatment; and deaths in custody. This Commission reportedly had only a one-year mandate. The Commission's chairman called for reform of remand laws and strengthening of police internal disciplinary procedures.

976. The Special Representative regrets that she has not received further information on the policies and programmes adopted by relevant Malaysian authorities to ensure an effective implementation of the Declaration.

Communications and concerns

977. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 13 communications to the Government on 40 individual defenders and a number of participants to peaceful demonstrations. The Special Representative thanks the Government for its response to eleven of the communications she sent and would appreciate receiving responses to the remaining two.

978. Based on the information received for the preparation of this report, significant concerns persist, in particular in relation to reported abuses against refugees, asylum-seekers and migrants, constraints on the independence of the judiciary, limitation on the right to freedom of expression and most of all, the restrictive provisions contained in the Internal Security Act, which jeopardize respect for human rights and may hinder the work of human rights activists.

979. The Special Representative is concerned by the limits on the rights to freedom of expression and assembly and takes note of the report of the former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on the mission he conducted in Malaysia in October 1998 (E/CN.4/1999/64/Add.1). Although the situation in Malaysia has evolved since then, she shares the concerns expressed by the Special Rapporteur, in particular those connected with the extent of the limitations on the right to freedom of opinion and expression in the national legislation of Malaysia.

980. The demonstrations that were the subject of some of the Special Representative's communications were held to protest against misuse of police powers or for the abolition of the Internal Security Act. Another demonstration was held by Burma citizens who protested against the continued detention of the opposition leader Aung San Suu Kyi and for the democratization of Myanmar. Four of the communications related to the situation of a woman human rights defender who has reportedly been convicted to one year imprisonment for "maliciously publishing false news". Criminal charges were brought against her after she denounced the poor situation of migrants in detention camps.

981. The Special Representative has received concerning allegations on limitations to the right to peaceful protest as well as on criminal proceedings against human rights defenders accused of publishing false news. Many human rights defenders and protestors have been arrested or charged to threats to the public order or the internal security of Malaysia. In this respect, the Special Representative wishes to refer again to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, who emphasized in the above-mentioned report that "only in highly exceptional cases can a nation's security be directly threatened by a person capable of and intending to cause actions to be taken to that end, in particular by advocating or inciting to the use of violence. In no instance may the exercise of the right to freedom of expression be punished on the mere ground that it might possibly jeopardize national security. It is for the State to establish what consequences would ensue from a specific action and why it would constitute a direct threat to national security" (ibid, para. 66).

982. In this connection, the Special Representative wishes to reiterate her own concerns about the negative impact of the Internal Security Act on the work and freedoms of human rights defenders.

983. The Special Representative learned with regret that authorities failed to act on recommendations made by the National Human Rights Commission (Suhakam) in 2004 for the repeal of the ISA and its replacement by a comprehensive law balancing national security concerns and respect for human rights.

984. The Special Representative has repeatedly indicated her interest in visiting the country. She regrets that the Government has given no positive response to her request.

Maldives

985. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

986. The Special Representative regrets that she has not received sufficient information to be able to make a full assessment of the human rights defenders community in the Maldives. Lack of information is a concern because a comprehensive assessment cannot be made, and may

indicate that human rights defenders have difficulty or lack of capacity to communicate. She would greatly appreciate receiving information from the Government and civil society on the situation for human rights defenders and the implementation of the Declaration in the Maldives.

987. The Maldives is a one-party State, where the President is elected in a yes-no referendum where only one candidate is presented. In June 2005 the Parliament backed a change to a multi-party system. Increasing awareness of human rights issues in the Maldives appear to be closely linked to a human rights defenders community that calls for democratic values.

Legal framework

988. Maldives has ratified several of the core international human rights instruments, but is not yet a State party to the ICCPR, the ICESR, the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the ICCPR, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Special Representative welcomes indications of the Government's interest in acceding to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICCPR is a key instrument for the implementation of the Declaration on Human Rights Defenders as it guarantees rights such as freedom of opinion and expression, freedom of assembly and freedom of association.

989. The Special Representative regrets that she does not have sufficient information at her disposal to enable her to make an assessment of the legal framework in the Maldives in relation to the work of human rights defenders.

Measures taken at national level for the implementation of the Declaration

990. The Human Rights Commission of the Maldives (HRCM) was established in December 2003. Its website states that "in order to give the Commission the constitutional backing and thus autonomy from the Government of the Republic of Maldives; pluralism, including in membership; a broad mandate based on universal human rights standards; and adequate powers of investigation; necessary legislation is now before the Parliament".

991. The Human Rights Commission Act was ratified in August, but concerns have been raised that the Act does not conform to international standards and the Paris Principles. The Special Representative would appreciate receiving further information on this from the Government.

992. The Special Representative regrets that she has not received further information on the policies and programmes adopted by the relevant authorities in the Maldives to ensure an effective implementation of the Declaration.

Communications and concerns

993. From the establishment of her mandate to 1 December 2005, the Special Representative has sent five communications to the Government concerning the case of 12 defenders. Four of

the communications were sent during 2005. The Special Representative acknowledges the swift reply of the Government to four of the communications and is hoping to receive a response to the last communication.

994. The Special Representative is gravely concerned by the limitations on the right to freedom of expression in the Maldives, and notes that all her communications were sent jointly with the Special Rapporteur on the promotion and protection on the right to freedom of opinion and expression. She is also concerned about allegations of slander-campaigns against defenders in the Maldives and reports that NGOs face difficulties in the process of registration.

995. The Special Representative is still concerned by the possible effects on the safety of defenders by a statement from the Supreme Council of Islamic Affairs, although she welcomes the response from the Government that the statement was not supported by the Government and that it had no legal effect. The statement said: “As no Maldivian wishes to practice another religion but Islam we have banned people from possessing the Declaration that is being distributed by the Commission”. It is reported that following this statement, the National Human Rights Commission (NHCR) was banned from distributing the Universal Declaration of Human Rights 1948.

996. The Special Representative reiterates her concerns about alleged arrests (including house-arrest), incommunicado detention, harassment of and serious threats against defenders. Communications sent to the Government concerned arrests of defenders, alleged mass-arrests of peaceful protesters and harassment and threats towards journalists.

997. The Special Representative is deeply concerned by the allegations in four of the five complaints she received that the main perpetrators of violations against defenders were the authorities. She would like to remind the Government that according to the Declaration “the prime responsibility to promote and protect human rights and fundamental freedoms lie with the State” and also that (according to article 15) “the State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme”. One communication concerned a defender who reportedly had been blindfolded and kicked in the back several times by police officers while being held in detention. The Special Representative notes the Government’s previous commitment expressed to her that it would investigate the case and take appropriate legal action against any possible guilty parties, and she would appreciate receiving updated information on the process of investigation.

998. The Special Representative is gravely concerned by reports that the police have used batons and tear gas to break up peaceful demonstrations. She would like to remind about article 5 (a) of the Declaration which states that “for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right [...] at the national and international levels to meet or assemble peacefully”.

999. The Special Representative is deeply concerned about allegations that the authorities were the perpetrators of most of the violations for which she sent communications to the Government. She would like to remind the Government about the Declaration which states that “the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State.

1000. The Special Representative is further concerned about indications that there are weaknesses in the judicial system of the Maldives and a lack of separation of powers. In addition the Special Representative is concerned by reports that indicate that certain policies of the authorities seem to run contrary to the constitutional reform currently underway.

Mali

1001. La Représentante spéciale remercie le bureau du Représentant Résident des Nations Unies au Mali pour sa réponse au questionnaire distribué pour la préparation de ce rapport. Elle regrette que le Gouvernement ne lui ait pas fait parvenir des renseignements en réponse à ce questionnaire avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu’elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l’homme au Mali

1002. Lors de l’examen du deuxième rapport périodique du Mali, en 2003, le Comité des droits de l’homme a salué « la transition démocratique accomplie par le Mali au début des années 90. Il note les efforts déployés par l’État partie pour assurer un meilleur respect des droits de l’homme et en vue d’instaurer un État de droit, à travers la mise en chantier de vastes programmes de réformes législatives, le règlement du conflit au Nord, et la création du poste de médiateur. Le Comité note que ces efforts ont été accomplis malgré les faibles ressources dont dispose l’État partie et les difficultés qu’il rencontre. » (CCPR/CO/77/MLI, par. 4). Malgré ces efforts, le Comité des droits de l’homme a constaté que de nombreux problèmes persistaient, notamment la discrimination et la violence contre les femmes, l’impunité vis-à-vis des cas de torture, la survivance de pratiques esclavagistes et de servitude héréditaire, le trafic d’enfants et la difficile situation dans laquelle se trouveraient quelque 6 000 réfugiés mauritaniens. La pauvreté est également un grave problème auquel le pays fait face, le Mali occupant la 174^{ème} place dans la tableau de développement humain du PNUD.

1003. D’après les renseignements reçus, il existerait aujourd’hui une centaine d’associations de défense de droits de l’homme au Mali. Dans sa réponse, le bureau du Représentant Résident a donné une liste des plus importantes de ces associations et a ajouté que l’ensemble des actions coordonnées et combinées des ONG de défense des droits de l’homme a un réel impact sur la situation des droits de l’homme dans le pays.

Cadre juridique

1004. La Mali est partie à tous les principaux traités internationaux relatifs aux droits de l’homme et leurs respectifs protocoles facultatifs, à l’exception du Deuxième Protocole Facultatif se rapportant au Pacte International relatif aux Droits Civils et Politiques. Dans le contexte régional, le Mali est également partie de la Charte Africaine des Droits de l’Homme et des Peuples. En vertu de la Constitution, les traités ont une autorité supérieure à celle des lois.

1005. Le bureau du Résident Coordinateur a indiqué que le Mali a entrepris d'harmoniser sa législation nationale avec la Déclaration Universelle des Droits de l'Homme et d'autres instruments juridiques internationaux.

1006. Le bureau du Résident Coordinateur a indiqué dans une analyse détaillée que le cadre juridique présent au Mali était en général en conformité avec les normes garanties par la Déclaration. En particulier, l'article 4 de la Constitution du Mali reconnaît et garantit la liberté d'opinion et d'expression. L'article 5 fait de même avec la liberté d'association, de réunion, de cortège et de manifestation. Le Gouvernement aurait adopté une loi très libérale en matière de création d'associations qui aurait favorisé l'émergence de nombreuses organisations de la société civile œuvrant dans la promotion et protection des droits de l'homme.

1007. En ce qui concerne la liberté de réunion, le bureau du Résident Coordinateur a souligné que les activités pacifiques de cortèges et de manifestations étaient reconnues par la Constitution et que des textes législatifs et réglementaires en fixaient les conditions. La Représentante spéciale souhaiterait recevoir d'avantages d'informations sur lesdits textes.

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

1008. La Représentante spéciale a été informée de l'instauration de l'Espace d'Interpellation Démocratique (EID), une initiative qui autorise tous les citoyens à interpeller, le 10 décembre, jour international des droits de l'homme, le Premier Ministre et autres Ministres sur différents aspects de leurs activités qui constitueraient des manquements aux droits de l'homme.

1009. La Représentante spéciale a également reçu des renseignements selon lesquels l'enseignement des Droits de l'homme et de la Culture de la paix a été intégré dans les curricula de l'enseignement de base et de l'enseignement secondaire. Par ailleurs le Projet d'Appui à la Promotion et à la Protection des Droits Humains (APPDH) dont la vocation est le renforcement des capacités de toutes les organisations de la société civile qui se dédient à la défense et à la promotion des droits de l'homme a récemment élaboré des manuels de formation en Droits de l'homme à l'intention des magistrats et auxiliaires de justice, des fonctionnaires de police, des régisseurs de prison et autres professionnels concernés. Le Projet APPDH serait sollicité pour concevoir la même formation pour les forces armées, la Gendarmerie Nationale, la Garde Nationale et la Protection Nationale.

1010. D'après les renseignements reçus, une Commission Nationale Consultative des Droits de l'Homme a été créée en 1996 mais n'aurait pas eu une activité particulièrement intense.

1011. Par ailleurs, la Représentante spéciale se félicite de l'existence du groupe transversal « Droits Humains et Culture de la Paix », qui coordonne l'activité des différentes agences des Nations Unies intervenant dans le domaine des droits de l'homme au Mali.

1012. La Représentante spéciale tient à remercier le Gouvernement de son invitation à effectuer une visite officielle au Mali. Elle regrette de ne pas encore avoir eu la possibilité de réaliser cette visite.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

1013. La Représentante spéciale n'as pas envoyé de communication au Gouvernement au cours de ces six dernières années.

1014. Le Représentante spéciale regrette que la Commission nationale consultative des droits de l'homme ne soit pas encore tout à fait fonctionnelle. Elle prend également note des problèmes financiers et de ressources humaines des ONG maliennes. Elle a également été informée que celles-ci ont des difficultés d'accès aux textes nationaux et internationaux relatifs aux droits de l'homme.

1015. Par ailleurs, la Représentante spéciale a aussi été informée de l'absence d'un document d'orientation de la politique nationale en matière de promotion et de protection des droits de l'homme.

Mauritania

1016. La Représentante spéciale regrette que le Gouvernement ne lui ait pas fait parvenir des renseignements en réponse au questionnaire qu'elle lui avait adressé avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme

1017. La Représentante spéciale regrette de ne pas avoir à sa disposition suffisamment de renseignements pour pouvoir donner une description détaillée de la communauté des défenseurs dans le pays.

Cadre juridique

1018. La Mauritanie a ratifié six des sept principaux instruments internationaux relatifs aux droits de l'homme, y compris le Pacte International relatif aux droits civils et politiques. Elle n'a cependant pas encore ratifié les protocoles facultatifs se rapportant à ces instruments ni la Convention internationale pour la protection des droits de tous les travailleurs migrants et des membres de leur famille. Dans le contexte régional, la Mauritanie a ratifié la Charte africaine des droits de l'homme et des peuples.

1019. La Représentante spéciale regrette ne pas avoir de renseignements suffisants à sa disposition pour être en mesure de présenter un analyse plus élaborée de la législation nationale portant sur les droits énoncés dans la Déclaration sur les défenseurs des droits de l'homme et l'impact de son application sur le travail des défenseurs des droits de l'homme.

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

1020. La Représentante spéciale regrette ne pas avoir reçu des renseignements sur les politiques et les programmes mis en place par les autorités mauritaniennes compétentes pour assurer la mise en œuvre de la Déclaration.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

1021. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé quatre communications au Gouvernement portant sur 16 défenseurs des droits de l'homme, dont 11 femmes. Ces communications incluent des allégations concernant un employé public qui aurait été licencié en raison de son activisme en faveur des droits de l'homme ; un bâtonnier qui aurait été suspendu de ses fonctions ; cinq personnes qui auraient été condamnées à des peines de prison en relation avec leur travail pour l'élimination de l'esclavage ; et neuf femmes membres du Collectif des Familles des Détenus qui auraient été arrêtées et interrogées sur leur participation à la Commission africaine des droits de l'homme et des peuples, détenues au secret et soumises à des mauvais traitements. La Représentante spéciale remercie le Gouvernement pour ses réponses à deux des communications et l'encourage à répondre à celles aux autres.

1022. Outre les préoccupations transmises dans ses communications au Gouvernement, la Représentante spéciale partage également les inquiétudes exprimées par le Comité pour l'élimination de la discrimination raciale. Celui-ci, lors de l'examen des sixième et septième rapports périodiques de la Mauritanie en août 2004, s'est déclaré inquiet « de ce que certaines organisations non gouvernementales de défense des droits de l'homme n'ont pas été officiellement reconnues malgré leur demande » et a recommandé « de lever toute entrave à l'exercice de la liberté d'association et de reconnaître les organisations non gouvernementales de défense des droits de l'homme » (CERD/C/65/CO/5, para. 11).

Mauritius

1023. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information with a view to update this profile.

The human rights defenders community

1024. In its response to the questionnaire, the Government indicated that it considers NGOs as playing an important role in all spheres of life in the Mauritian society. In particular, it informed the Special Representative of the existence of The Mauritius Council of Social Service (MACOSS), which is an umbrella organization of NGOs in Mauritius. The Special Representative regrets that she has not had the opportunity to establish regular contact with defenders or defenders' organizations from Mauritius during her two mandate-periods.

Legal framework

1025. Mauritius has acceded to most of the core international human rights instruments, including the International Covenant on Civil and Political Rights. Mauritius is not yet a State party to the Second Optional Protocol to the International Covenant on Civil and Political Rights or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Mauritius is a signatory to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the

Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography. Mauritius has ratified the African Charter of Human and Peoples' Rights.

Freedom of expression and access to information

1026. The Government has informed the Special Representative that section 3 of the Constitution is a general provision entitled "Fundamental rights and freedoms of the individual". The Government has also stated that the constitution provides for freedom of speech and freedom of the press. Independent radio stations are reportedly operating and the Government has stated that it does not restrict access to the Internet.

Freedom of association, freedom of assembly and freedom of movement

1027. The Government has informed the Special Representative that section 13 of the Constitution is entitled "Protection of freedom of assembly and association" and that the Government generally respects these rights in practice but that police permission is required for demonstrations and mass meetings. According to the Government such permission may in some cases be refused. The Special Representative would appreciate receiving further information from the Government and civil society on what the criteria are for refusing permission to hold demonstrations and mass meetings.

1028. The Special Representative regrets that she had not received sufficient information to give a proper assessment of the adequacy of the domestic legal framework or the practical benefits of existing provisions for human rights defenders in carrying out their activities.

Measures taken at national level for the implementation of the Declaration

1029. The Government has informed the Special Representative about Chapter IX of the Constitution which provides for the existence of the office of Ombudsman. Under section 97 the Ombudsman can investigate any action taken by any public Officer/authority in the exercise of their administrative functions.

1030. According to the Government, in 1998, the Protection of Human Rights Act was enacted to "reinforce the existing safeguards for the protection of human rights in Mauritius" following which the National Human Rights Commission, under the chairmanship of a retired Judge of the Supreme Court, was set up in 2001. The objectives of the Commission is to act as a watchdog in ensuring that there is compliance with the fundamental rights and freedoms to the individual enshrined in Chapter II of the Constitution.

1031. A Complaints Investigation Bureau was set up in 1999 for investigating all complaints against the Police. The Government indicates that the enactment of the *Equal Opportunities Act* will enhance the further development of human rights policies and particularly in combating discrimination in all its forms. Moreover it indicates that the enactment of the *Freedom of Information Act* will contribute largely to the implementation of the Declaration. The Special Representative would greatly appreciate receiving additional information from the Government on this issue.

Communications and issues of concern

1032. No communications have been sent to the Government of Mauritius by the Special Representative. The Special Representative would appreciate receiving further information from the Government and from civil society on the situation for human rights defenders and the implementation of the Declaration in Mauritius.

1033. The Special Representative is concerned about information that permission to hold demonstrations are in some cases refused by the authorities, and reminds the Government about article 5 of the Declaration which declares that “for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right [...] to meet or assemble peacefully”.

Mexico

1034. La Representante Especial agradece al Gobierno Federal y a la Comisión Nacional de los Derechos Humanos la información proporcionada en respuesta al cuestionario transmitido para la preparación del presente informe. Varias ONG mexicanas han sumado sus esfuerzos para proporcionar a la Representante Especial un informe conjunto sobre la aplicación de la Declaración sobre los Derechos Humanos en México. La Representante Especial agradece estos esfuerzos y acoge muy favorablemente este tipo de iniciativas.

La comunidad de defensores de los derechos humanos

1035. En diciembre de 2003, la Oficina del Alto Comisionado de las Naciones Unidas presentó el Diagnóstico sobre la Situación de los Derechos Humanos en México. La Representante Especial se remite a este Diagnóstico para una visión general del contexto social, político y económico en México y de cómo este afecta la situación de los derechos humanos y en particular las condiciones en las que trabajan los defensores de los derechos humanos en el país. (http://www.cinu.org.mx/prensa/especiales/2003/dh_2003/diagnosticoCompleto.pdf)

1036. Primeras ONG de derechos humanos que surgieron en México lo hicieron en los años 1970 en respuesta a la represión existente en aquella época y el gran número de desapariciones forzadas reportadas durante el período conocido como “Guerra sucia”. En los años 1980 las ONG se multiplicaron y diversificaron temáticamente y geográficamente. Según el gobierno, se estima que existen hoy en México entre 600 y 650 organizaciones de derechos humanos.

1037. Este trabajo se hace tanto a través de ONG que trabajan para la promoción y protección de los derechos humanos en general, como de organizaciones especializadas en ámbitos (derecho a la salud, la vivienda, la alimentación, derechos laborales, medio ambiente, paz, etc.) o grupos (derechos de las mujeres, de los niños, de los pueblos indígenas, y otros grupos en situación de vulnerabilidad) específicos. Una parte muy importante del trabajo, aunque quizá la menos visible, la realizan los defensores que trabajan en comunidades locales.

1038. La Representante Especial ha sido informada de la existencia desde hace 15 años de la Red Nacional de Organismos Civiles de Derechos Humanos “Todos los derechos humanos” (Red TDT). La Red agrupa 54 organizaciones de derechos humanos en 19 estados y en el

Distrito Federal. Además las ONG de derechos humanos se han organizado en redes estatales, como por ejemplo, en los Estados de Oaxaca, Guerrero, Chiapas, Sonora, Coahuila, Veracruz y Puebla.

1039. La mayor parte de las organizaciones realizan actividades de capacitación, registro y gestión de casos de violaciones de derechos humanos y denuncia pública. Otras también elaboran informes específicos, documentan y hacen el seguimiento de casos, proporcionan servicios de defensa jurídica, desarrollan estrategias de trabajo internacional (incluyendo litigios ante instituciones internacionales) y presentan análisis y propuestas de reformas legislativas. Las ONG mexicanas trabajan cada vez más con los mecanismos regionales e internacionales de derechos humanos, tales como la Comisión de Derechos Humanos de las Naciones Unidas o la Comisión Interamericana de Derechos Humanos. El trabajo de todas estas organizaciones ha permitido dar más visibilidad a la situación de los derechos humanos en México, resolver algunos casos y ampliar la agenda de derechos humanos en el país.

1040. Según el Gobierno, en general los defensores de los derechos humanos tienen conocimiento de la Declaración y se basan en ella en sus denuncias jurídicas y públicas. Asimismo han iniciado diálogos con las autoridades para que se asegure su aplicación.

1041. En su respuesta al cuestionario, el Gobierno Federal ha expresado que ve a las organizaciones de la sociedad civil “como unas aliadas para impulsar los cambios que el país necesita. Se busca fortalecer a una sociedad civil con la que el Gobierno ha mantenido una relación cercana y constructiva, respetuosa de su autonomía, sus identidades y por supuesto, sus invaluable contribuciones”. Este reconocimiento por parte del Gobierno ha llevado a la creación de espacios de interlocución como la Comisión de Política Gubernamental en Materia de Derechos Humanos. También se ha mencionado la Ley Federal de Fomento a las Actividades Realizadas por las Organizaciones de la Sociedad Civil, que establece los derechos, pero también las obligaciones de las organizaciones de la sociedad civil.

Marco legal

1042. México ha ratificado los principales tratados internacionales de derechos humanos, incluido el Pacto Internacional de Derechos Civiles y Políticos y el Protocolo Facultativo a la Convención contra la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes, pero todavía no es parte del Segundo Protocolo Facultativo al Pacto Internacional de Derechos Civiles y Políticos. México también ha ratificado instrumentos regionales de derechos humanos, entre los cuales la Convención Americana sobre Derechos Humanos. De acuerdo con el artículo 133 de la Constitución y a la luz de los fallos de la Corte Suprema, las disposiciones de los tratados internacionales prevalecerán sobre la legislación nacional de México, e incluso sobre la Constitución nacional, en el caso de disposiciones incompatibles.

1043. Según se ha informado el Gobierno, en la Suprema Corte de Justicia de la Nación emitió la tesis número P. LXXVII/99, que establece que los tratados internacionales se ubican jerárquicamente por encima de las leyes federales y en segundo plano respecto de la Constitución.

1044. Según el Gobierno, durante los últimos años se han publicado varias reformas constitucionales y leyes consideradas favorables al fortalecimiento de los derechos humanos y a

la aplicación de la Declaración. Entre estas reformas el Gobierno informo que el 10 de diciembre de 2005 entro en vigor la reforma constitucional por medio de la cual quedo abolida la pena de muerte en México. Además, cabe mencionar la Ley Federal de fomento a las actividades realizadas por organizaciones de la sociedad civil (texto vigente-Nueva Ley publicada en el Diario Oficial de la Federación el 9 de febrero de 2004); la Ley Federal para prevenir y eliminar la discriminación (texto vigente-Nueva Ley publicada en el Diario Oficial de la Federación el 11 de junio de 2003).

1045. En México, no existe una “ley de defensores” pero los principales derechos y libertades indispensables en el trabajo de los defensores están protegidos en distintas disposiciones legales.

Libertad de Expresión

1046. Los artículos 6 y 7 de la Constitución garantizan respectivamente el derecho a la libertad de expresión. Mientras que el artículo 6 se refiere a la libre expresión de ideas y el derecho a la información garantizado por el Estado, el artículo 7 se refiere al derecho de escribir y publicar escritos sobre cualquier materia. Los límites a estos derechos se establecen en los mismos artículos y son únicamente la manera legal de efectuarse en el caso del artículo 6 y la vida privada, moral y paz pública en el caso del artículo 7.

1047. Leyes reglamentarias complementan las disposiciones constitucionales. La Ley de imprenta, vigente en el país desde 1917, regula de igual forma la libre expresión de ideas, sin embargo esta regulación no abarca los medios electrónicos y no se ha reformado desde la fecha de su publicación, anterior incluso a la entrada en vigor de la Constitución. La Ley Federal de Radio y Televisión regula de forma limitada el acceso y funcionamiento a los medios electrónicos de comunicación, sin embargo tiene fallas, como la necesidad de una gran capacidad económica para acceder a medios masivos de comunicación y la poca regulación que existe en cuanto a los límites de las empresas difusoras en cuanto a su participación comercial en el espectro.

1048. En el estado de Chiapas, se habrían realizado recientemente reformas al Código Penal en la que se agravaría la figura penal de difamación. En virtud de estas reformas, una denuncia pública hecha por defensores o periodistas puede ser susceptible de ser considerada delito y por lo tanto sancionada penalmente para quien suscriba dicha denuncia, restringiéndose considerablemente la libertad de expresión y poniendo en riesgo la labor de los defensores y defensoras de derechos humanos.

Libertad de asociación

1049. El artículo 9 de la Constitución garantiza la libertad de asociación. El artículo 9 limita el propio derecho cuando su objetivo son las actividades políticas, en ese caso la Constitución excluye a los extranjeros. La libertad de asociación también se contempla en el artículo 123 Constitucional el cual contempla el derecho de los trabajadores y empresarios a asociarse en defensa de sus intereses. El título séptimo de la Ley Federal del Trabajo regula la asociación de trabajadores a favor de sus derechos. Según la información proporcionada a la Representante Especial, varios sectores sociales cuestionarían la adecuación de esta ley a los tiempos actuales.

1050. El Gobierno ha proporcionado a la Representante Especial detallada información sobre las figuras jurídicas y las leyes que regulan y promueven la participación de la sociedad civil en diversos ámbitos, ya sean en tanto que instituciones de asistencia privada como asociaciones civiles.

Acceso a la información

1051. Con respecto al derecho al acceso a la información, se han observado avances a partir de la adopción de “Ley Federal de Transparencia y acceso a la Información Pública Gubernamental” (publicada en el DOF el 11 de junio de 2002), y con la creación del Instituto Federal de Acceso a la Información (IFAI). Sin embargo la ley contempla que no podrá invocarse el carácter de información reservada cuando se trate de violaciones graves a derechos humanos o delitos de lesa humanidad, reservas que se aplican con relación a temas como información sobre las fuerzas armadas y negociaciones sobre tratados comerciales. (Capítulo III, Artículos 13 y 14). El Instituto Federal de Acceso a la Información Pública (IFAI) fue creado para contribuir a la consolidación de la transparencia y el acceso a la información.

Ley federal sobre la defensoría pública

1052. La Representante Especial ha sido informada de la existencia de la ley federal sobre la defensoría pública (la cual entró en vigor el 28 de mayo de 1998), que propiamente no es una legislación a favor de los derechos de los defensores, más bien establece las obligaciones, prohibiciones, las posibilidades de capacitación y la organización orgánica de la defensoría pública.

Medidas tomadas a nivel nacional para la implementación de la Declaración

1053. La Representante Especial ha recibido con beneplácito información por el Gobierno según la cual se han presentado avances al abrir el gobierno federal espacios de consulta con organizaciones de la sociedad civil en torno a la discusión de temáticas de derechos humanos. En 1997 se creó la Comisión Intersecretarial para la Atención de los Compromisos Internacionales de México en Materia de Derechos Humanos con la finalidad de coordinar las posiciones de las diferentes dependencias de la Administración Pública, en función de dar cumplimiento, en tiempo y forma, a los compromisos ante el exterior en materia de derechos humanos. Dos de las líneas de actuación de esta Comisión son la solución definitiva de casos de presuntas violaciones de derechos humanos denunciados ante foros internacionales y el establecimiento de un mecanismo para la participación de las ONG de derechos humanos en los trabajos de la Comisión. Como parte de esta Comisión Intersecretarial, en noviembre de 2001, se instaló el Mecanismo de Diálogo entre la Comisión Intersecretarial y las organizaciones de la sociedad civil de derechos humanos.

1054. Ante la necesidad de institucionalizar aún más el espacio de diálogo se diseñó, en 2001 una Comisión Intersecretarial de Política Gubernamental en Materia de Derechos Humanos, sustituida en marzo de 2003 por una nueva Comisión de Política Gubernamental en Materia de Derechos Humanos. La Comisión, organizada en nueve subcomisiones temáticas, es el órgano encargado de la coordinación de las acciones llevadas a cabo a nivel nacional e internacional en la materia así como de la elaboración de la política gubernamental en materia de derechos humanos. La Representante Especial toma nota de que en el Diagnóstico sobre la Situación de

los Derechos Humanos en México elaborado por la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos y cuatro expertos independientes, se constata que esta Comisión “puede contribuir al reforzamiento de las y los defensores de los derechos humanos y constituye un espacio idóneo para escuchar y considerar las propuestas de las organizaciones de la sociedad civil.”

1055. El Gobierno también ha informado la Representante Especial sobre la creación, al interior de la Secretaría de Gobernación, y como parte de la política de atención a organizaciones de la sociedad civil, de una mesa de trabajo en materia de derechos humanos con el propósito de coordinar los esfuerzos de las organizaciones y las dependencias de la administración pública federal involucradas en tema y encontrar soluciones conjuntas a los problemas que se han generado en el campo de los derechos humanos. Al interior de esta mesa se han conformado tres comisiones temáticas de trabajo, entre las que destaca la Comisión sobre Marco Jurídico y Diseño Institucional, para el diseño del marco jurídico sobre las medidas de protección para los defensores y el establecimiento de un mecanismo que haga eficiente la implementación de las medidas de protección hacia ellos.

1056. Como otro ejemplo de la política de cooperación del Gobierno Federal con los defensores de los derechos humanos, el Gobierno informó que también se ha destacado la elaboración del Programa Nacional de Derechos Humanos (PNDH) donde la sociedad civil tuvo la oportunidad de participar de manera activa.

1057. La Representante Especial se felicita de la creación por decreto Presidencial en 1990 de la Comisión Nacional de Derechos Humanos. Ésta fue elevada al rango constitucional en 1992. México se acoge a los principios de París relativos al estatuto y funcionamiento de las instituciones nacionales de protección y promoción de los derechos humanos y la Comisión Nacional de Derechos Humanos cuenta con autonomía de gestión y presupuestaria, personalidad jurídica y patrimonio propios.

1058. La Comisión Nacional de los Derechos Humanos cuenta con un Programa de Atención de Agravios a Periodistas y Defensores Civiles de Derechos Humanos, adscrito a su Quinta Visitaduría General. De acuerdo con la información transmitida por el Gobierno este Programa tiene como objetivo principal la atención de quejas por presuntas violaciones a derechos humanos cometidas en contra de ambos grupos. La Comisión Nacional de los Derechos Humanos esta facultada para solicitar medidas cautelares a las autoridades para salvaguardar la seguridad e integridad física de los agraviados.

1059. La Representante Especial acoge con satisfacción el anuncio de la creación de la Fiscalía Especial para la Atención de Delitos Cometidos contra Periodistas a partir del 15 de febrero de 2006. Será dependiente de la Procuraduría General de la Republica y tendría facultad de atraer los casos de libertad de expresión y agresión a periodistas en el contexto de las violaciones contra las periodistas.

1060. Según el gobierno, otro marco institucional en el que las ONG de derechos humanos han sido invitadas a participar son las reuniones de trabajo en torno al segundo Foro de Diálogo entre las sociedades civiles y los gobiernos de la Unión Europea y México.

1061. La Representante Especial ha sido informada de la creación del “Programa Atalaya”, integrado por un grupo de abogados del Instituto Tecnológico Autónomo de México (ITAM). Desde 2003, el ITAM realiza exámenes anuales de las actividades de la CNDH, con el objeto de contribuir al escrutinio público de la institución nacional mexicana de derechos humanos. Sus objetos de estudio específicos son: el análisis de la atención a las quejas presentadas ante la CND; la valoración de las recomendaciones que emite el propio organismo; y el examen de las propuestas legislativas de la CNDH.

1062. El Gobierno también ha informado la Representante Especial sobre la implementación de cursos y programas de educación en derechos humanos en la Secretaría General de la Defensa Nacional, la Procuraduría General de la República, la Secretaría de Seguridad Pública (a través de su Dirección General de Protección de los Derechos Humanos) y la Secretaría de Marina. Elaboración de un Programa Nacional de Derechos Humanos.

Motivos de Preocupación y Comunicaciones enviadas por la Representante Especial

1063. La Representante Especial felicita el Gobierno mexicano por todas las medidas tomadas para la promoción y protección de los derechos humanos, la apertura de espacios de diálogo con la sociedad civil, y el reconocimiento público del trabajo de los defensores de los derechos humanos. A pesar de estos progresos positivos, la Representante Especial sigue recibiendo información en relación con graves violaciones contra los defensores de derechos humanos.

1064. Desde el inicio de su mandato y hasta el 1 de diciembre de 2005, la Representante Especial ha transmitido 53 comunicaciones al Gobierno, relativas a los casos de 95 defensores de los derechos humanos y a los miembros de al menos tres ONG de derechos humanos o comunidades indígenas. 27 de estos casos se refieren a mujeres defensoras de los derechos humanos o a actividades para la promoción y la protección de los derechos de las mujeres. La mayoría de casos para los cuales la Representante Especial ha intervenido se refieren a actos de amenazas e intimidaciones contra defensores de los derechos humanos, especialmente en contra de aquellos que trabajan en la defensa de los derechos de los pueblos indígenas y de los campesinos y a algunos activistas ecologistas. No sin honda preocupación ha intervenido tras recibir alegaciones según las cuales defensores han sido sometidos a tortura u otros tratos o penas crueles, inhumanas y degradantes, desaparecidas y/o asesinadas en México. Muchas de las alegaciones recibidas por la Representante Especial se refieren a hechos que han tenido supuestamente lugar en los Estados de Guerrero, Oaxaca y Chiapas. Entre los defensores sobre cuyos casos la Representante Especial ha intervenido a lo largo de estos seis últimos años también había representantes de comisiones estatales de derechos humanos. La Representante Especial agradece que el Gobierno haya respondido a todas estas comunicaciones.

1065. En su informe presentado al 61º período de sesiones de la Comisión de Derechos Humanos, la Representante Especial ya expresó su preocupación sobre las amenazas y hostigamientos que confrontan los defensores de derechos humanos en México. Se habría denunciado que los miembros de la policía son los responsables en muchos de los casos transmitidos a la Representante Especial, pero en un número importante de otros casos todavía no se habría identificado a los responsables. La Representante Especial agradeció las respuestas del Gobierno de México y las medidas adoptadas por el Gobierno para investigar la mayoría de casos que dieron fe de su voluntad de cooperar constructivamente con su mandato. Sin embargo, la Representante Especial expresó su preocupación por la falta porque todavía no se ha juzgado a

ninguno de los autores de las violaciones y pidió al Gobierno de México que investigara las denuncias contra miembros de las fuerzas de mantenimiento del orden público y que asegurara que las personas implicadas en las violaciones de los derechos de los defensores responden ante la justicia. (véanse E/CN.4/2005/101, párrafos 100 y 101).

1066. La Representante Especial ha sido informada de amenazas contra la libertad de expresión. Según los fuentes no gubernamentales, a nivel Federal se puede hablar de la postura de varios legisladores afines a los intereses de los más poderosos medios de comunicación del país que han obstaculizado de manera expresa la nueva ley de medios que contaba con el apoyo de la sociedad civil. Según los fuentes no gubernamentales, esta ley de medios se planteó con el objetivo de hacer asequible el acceso a la información a todos los sectores y la población, en el sentido no sólo de recibir información sino también pensando en el derecho de transmitir la misma considerando la enorme importancia que los medios masivos y comunitarios tienen en la sociedad actual. Según se ha informado la Representante Especial, en los últimos años se han seguido registrando homicidios de periodistas en México. El Relator Especial sobre la promoción y protección de la libertad de opinión y expresión se calificó México como un país peligroso para los periodistas (E/CN.4/2005/64, para. 46.). En este contexto, la Representante Especial espera que la Fiscalía Especial para la Atención de Delitos Cometidos contra Periodistas en México cuente con los recursos necesarios y agentes profesionales para garantizar la eficacia plena de este nuevo órgano.

1067. La Representante Especial ha sido informada por fuentes no gubernamentales que, a pesar del reconocimiento expresado en reiteradas ocasiones por el Gobierno Federal y de sus esfuerzos tanto para crear mecanismos de protección de la seguridad individual de los defensores y un ambiente adecuado a sus actividades, persiste la desconfianza entre ciertas autoridades y la sociedad civil que han generado campañas de desprestigio contra los defensores orquestadas por representantes estatales. Asimismo, según la información recibida de las fuentes no gubernamentales, algunos sectores de la sociedad todavía perciben a los defensores de los derechos humanos como defensores de criminales. Ello contribuye a que el clima siga siendo, en muchos ámbitos locales, hostil al desarrollo de la labor de los defensores y ha fomentado ataques en su contra.

1068. Con relación a la participación de las ONGs en el Programa Nacional de Derechos Humanos (PNDH), la Comisión Nacional de Derechos Humanos y los otros organismos del Estado, fuentes no-gubernamentales han mostrado cierto escepticismo y han señalado que la funcionalidad de estos espacios de discusión se pone en duda cuando se excluyen de forma discrecional ciertas cuestiones con impacto directo en los derechos humanos, como la presencia militar en tareas de seguridad pública, la discusión de la reforma indígena o los derechos laborales. En efecto, las ONG que han facilitado información a la Representante Especial lamentan que los mecanismos de participación padecen de las siguientes limitaciones: convocatorias a destiempo, falta de información para una participación informada y oportuna; falta de mecanismos y criterios claros para la toma de decisiones en temas fundamentales que afectan los derechos humanos, lo que hace que los espacios tengan un carácter más consultivo que resolutivo; y dilación para crear e institucionalizar mecanismos de participación efectiva de la sociedad civil.

1069. Con relación a la Comisión Nacional de Derechos Humanos, las ONG que han remitido información a la Representante Especial han expresado la necesidad de ampliar la competencia de la CNDH en asuntos laborales, electorales y administrativos en el ámbito jurisdiccional, promover iniciativas de ley, presentar acciones de inconstitucionalidad, entre otros. El Gobierno informo que en la actualidad se encuentra en estudio del Congreso una iniciativa de reforma al artículo 105 constitucional para que el Presidente de la CNDH pueda presentar acciones de inconstitucionalidad en contra de leyes federales o locales que vulneren los derechos humanos.

Moldova (Republic of)

1070. The Special Representative acknowledges the response from the Centre for Human Rights of Moldova to the questionnaire transmitted for the preparation of the present report. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1071. The Special Representative regrets that she has not received sufficient information to complete this section. She regrets the very limited contact she has had with the human rights defenders community in Moldova during the two mandate periods, and she would appreciate receiving information from defenders and defenders organizations on the situation for defenders in the country. However, the Special Representative has been informed by non-governmental sources of human rights violations in the country, notably in relation to torture and ill-treatment of prisoners and trafficking of women.

Legal framework

1072. The Republic of Moldova is party to six of the core international human rights instruments, including the International Covenant on Civil and Political Rights. It has not yet ratified the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, the two Optional Protocols to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women or the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At the regional level, the Republic of Moldova is party to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

1073. Article 4 of the Constitution provides that the constitutional provisions regarding human rights and freedoms are interpreted and executed according to the Universal Declaration of Human Rights, with covenants and other treaties to which the Republic of Moldova is a party. It also establishes that whenever disagreements appear between covenants and treaties regarding fundamental human rights signed by the Republic of Moldova and its own national laws, priority shall be given to international regulations.

1074. The Constitution guarantees the right to freedom of opinion and expression (art. 32), access to information (art. 34), freedom of assembly (art. 40), and freedom of association (art. 41). However, concern has been expressed about gaps in the legal framework. According to the Centre for Human Rights, legislation requires to be further adjusted to international norms and standards, notably with regards to the right to freedom of assembly, and freedom of the media.

1075. The Special Representative welcomes reports that article 170 on “calumny” of the Criminal Code has been cancelled, thus making defamation a civil not a criminal offence and strengthening the right to freedom of expression.

Measures taken at national level for the implementation of the Declaration

1076. The Special Representative welcomes the establishment in 1998 of the Centre for Human Rights of Moldova, consisting primarily of three ombudspersons empowered to deal with cases of human rights violations. The Centre has created an Advisory Council of NGOs with a view to developing an efficient partnership between the institution and civil society. The main activities of the Centre consist of examining complaints from citizens; verifying information related to widespread and gross human rights violations; bringing to the attention of competent authorities specific observations and recommendations; providing information and legal training on human rights issues; elaborating and disseminating material related to human rights; addressing the Parliament and the Government of the Republic of Moldova with proposals to improve national legislation. The Special Representative has been informed by the Centre for Human Rights of its lack of financial resources and the unwillingness of some State authorities to cooperate with it.

1077. The Special Representative also welcomes the adoption on 24 October 2003 of the National Human Rights Action Plan (for the period 2004-2008), in conformity with the recommendations of the 1993 Vienna Declaration and Programme of Action. Human rights NGOs were reportedly consulted before the adoption of this Plan.

Communications and concerns

1078. The Special Representative has not set communications to the Government of the Republic of Moldova over the past six years. Lack of information is a concern because a comprehensive assessment cannot be made, and may indicate that human rights defenders have difficulty or lack of capacity to communicate.

1079. The Special Representative wishes to refer to the concluding observations issued by the Human Rights Committee in July 2002 upon consideration of the initial report submitted by the Government of the Republic of Moldova (CCPR/CO/75/MDA) where the Committee expressed its concern regarding a legal provision which raised doubts as to the full independence and impartiality of the judiciary, as required by article 14, paragraph 1, of the Covenant. The Committee was particularly concerned by the short initial appointment period for judges, beyond which they must satisfy certain criteria in order to gain an extension of their term. The Special Representative raises the issue of the independence of judiciary in the context of the judicial process being an essential medium for the defense of human rights.

1080. Also in the context of defenders ability to raise human rights awareness and bring issues to public attention, the Special Representative would like to draw attention to the concern raised by the Human Rights Committee regarding the State television and radio broadcasting service (Tele-Radio Moldova). The Committee drew attention to certain directives which Tele-Radio Moldova had been subject to, and found these to be inconsistent with the requirements of impartiality and non-discrimination with respect to political opinion contrary to articles 19 and 26 of the Covenant,

Mongolia

1081. The Special Representative wishes to thank the OHCHR field presence in Mongolia for providing her with information in response to the questionnaire transmitted for the preparation of this report. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

1082. Against a background of transition, it is commonly considered that Mongolia is doing fairly well with regard to the implementation of democratic values and human rights. The Special Representative has nevertheless been informed that the human rights situation in Mongolia still presents a number of serious shortcomings that have a direct negative impact on the environment for human rights defenders.

The human rights defenders community

1083. Although no official statistics exist, it is estimated that some 30 NGOs may be described as working in the field of human rights. The Special Representative has been advised that many NGOs are tied to the political process through political party affiliation or financial dependence on the State.

1084. While many NGOs in Mongolia may be considered generalist in nature, increasingly, specific vulnerable/marginalized groups and specific issues are being targeted by the human rights defenders community, such as women's rights, domestic violence, children's rights, prisoners' rights and workers' rights. Key focus areas include human rights education (for law-enforcement officials, teachers, politicians), specific networking with other NGO's, specific work with international organizations, advocacy/awareness raising with the State and the public opinion, human rights research, human rights publications, legal assistance and advice, and protesting or demonstrating for the promotion and protection of specific human rights.

1085. Human rights defenders are progressively becoming more aware of their rights and how to ensure that these be respected. However, according to Mongolian human rights NGOs, increased training on the Declaration and human rights in general, greater access to information with regard to international human rights standards and domestic laws and improved State protection for human rights defenders including a reduction in threats and harassment received from the police or State officials would facilitate their work. Lack of financial resources is another important obstacle faced by human rights NGOs in Mongolia.

Legal framework

1086. Mongolia has acceded to most of the main international human rights treaties, including the International Covenant on Civil and Political Rights, but has not yet ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

1087. Article 16 of the Mongolian Constitution and the 1998 Law on Freedom of the Media guarantee freedom of the press. In January 2005, the Parliament adopted the Law on Public Radio and TV which is aimed at restructuring state-owned radio and television services as public service broadcasters. It is expected that this new piece of legislation will contribute to decrease the control of political parties over the mass media outlets. According to the information received, since 2001, various NGOs collaborated in a joint campaign to promote and protect the freedom of expression and access to information. As a result, a draft law on the freedom of expression was submitted to Parliament and a parliamentary working group was created to study access to information issues.

1088. The Special Representative has further been informed that the 1997 Law of Mongolia on Non-Governmental Organizations provides certain tax concessions and exemptions for organizations dedicated to the “betterment of civil society”.

Measures taken at national level for the implementation of the Declaration

1089. In 2000 Mongolia passed legislation to set up the National Human Rights Commission of Mongolia (NHRCM). The Commission became fully operational in February 2001. The Special Representative welcomes the establishment of such an institution and encourages the Government to provide it with all resources and support necessary to meet the Principles relating to the status of national institutions (The Paris Principles). She is aware of the technical cooperation project that the OHCHR, in partnership with the UNDP country office in Mongolia, is developing strategies to enhance the capacity of the NHRCM.

1090. In 2003, the NHRCM launched a campaign against torture and other cruel, inhuman or degrading treatment or punishment. In 2005, it launched a public inquiry into torture and issued a report with recommendations for submission to the Mongolian Parliament. Several human rights NGOs gave support to this campaign.

1091. The Special Representative has also been informed of the joint OHCHR-UNDP Human Rights Strengthening-Mongolia project (HURISTMON), which was aimed at assisting the government in developing the National Human Rights Action Programme (NHRAP) and strengthening human rights awareness and capacity building in Mongolia. In connection with the NHRAP, which was adopted in late October 2003, the Special Representative has been informed that to date little effort has been dedicated to programme implementation, despite the fact that this would be a very positive development.

1092. The Special Representative welcomes the efforts made by the State to strengthen respect for human rights in the country. The technical cooperation programmes with OHCHR, the progress made in submitting regular reports to the various human rights treaty-bodies and the standing invitation issued to all special procedures of the Commission on Human Rights are good examples of these efforts.

Communications and concerns

1093. In 2005 the Special Representative sent one communication on a lawyer who was sentenced to 18 months' imprisonment for "disclosure of a state secret", reportedly in connection with his work of defending a client who denounced torture practices. This is the only communication sent to the Government of Mongolia during the two mandate periods.

1094. Based on the information received for the preparation of this report, the Special Representative is concerned about continuous allegations of lawyers and human rights defenders being subjected to harassment and intimidation by law-enforcement and State officials. In some cases, defenders have reportedly been arrested and subjected to judicial prosecution after they filed complaints on human rights violations or attempted to draw public attention to laws and State policies and practices detrimental to human rights. She notes that in the context of his recent visit to the country, the Special Rapporteur on torture interviewed a lawyer who was allegedly sentenced to 18 months' imprisonment after he denounced torture.

1095. The Special Representative is also concerned that human rights defenders in Mongolia reportedly find it difficult to access government information about human rights laws and the State implementation policies. This is particularly difficult for those defenders conducting research into and advocating against the death penalty, as most aspects of the death penalty remain State secrets in Mongolia.

1096. Reported high levels of corruption in Mongolia are said to cause great damage to the overall development of the country, including democratic values and the reform process. For instance, Mongolian NGOs' capacity to participate in government and related decision making processes is undermined by corrupt practices. Corruption within the judicial process is also a matter of concern for defenders.

1097. While appreciating the efforts made by United Nations partners in Mongolia to contribute in the implementation of the Declaration, the Special Representative has also been informed that a number of defenders still feel that civil society remains excluded from the structural dialogue between the United Nations and the Government. Participation for some Mongolian defenders in United Nations hosted meetings is difficult due to the language barrier and the lack of human rights documentation/information, including the availability of the Declaration in Mongol.

Morocco

1098. La Représentante spéciale remercie le Gouvernement de lui avoir fait parvenir des renseignements sur la mise en œuvre de la Déclaration dans le pays en réponse au questionnaire distribué pour la préparation de ce rapport.

La communauté des défenseurs des droits de l'homme

1099. La Représentante spéciale note que comme l'avait constaté le Comité des droits de l'homme, en novembre 2004, il existe au Maroc un réseau développé d'organisations non gouvernementales de défense et de promotion des droits de l'homme (CCPR/CO/82/MAR, para. 7).

1100. Dans sa réponse au questionnaire, le Gouvernement a inclus une liste des principales ONG marocaines spécialisées dans la promotion et défense des droits de l'homme. Le Gouvernement a également indiqué que par le passé les relations entre les autorités et les associations de défense des droits de l'homme avaient été tendues et qu'une méfiance mutuelle avait existé. Il a néanmoins assuré la Représentante spéciale qu'elles se caractérisent à présent par un esprit de coopération, de reconnaissance et de compréhension.

Cadre juridique

1101. Le Maroc est partie aux sept principaux instruments internationaux relatifs aux droits de l'homme, dont le Pacte international relatif aux droits civils et politiques, mais n'a pas encore ratifié tous les protocoles facultatifs se rapportant à ces instruments.

Liberté d'expression

1102. L'article 9 de la Constitution garantit le droit à la liberté d'opinion et expression. Le gouvernement a souligné que les lois régissant la presse et la liberté d'assemblée ont été modifiées récemment afin de mieux garantir ces droits et de répondre ainsi aux attentes des citoyens. La Représentante spéciale souhaiterait recevoir de plus amples renseignements sur ces développements.

1103. Par ailleurs, la loi no. 24 de mars 2003 a mis fin au monopole étatique sur les radios et télévisions, ce qui a favorisé le pluralisme médiatique et contribué à la consolidation des droits à la liberté d'information et liberté d'opinion. Le Gouvernement a informé la Représentante Spéciale, qu'il est au courant des défauts du Code de la Presse. En 2005, des réformes au Code de la Presse ont été initiées, et le Gouvernement a déclaré qu'il envisage que ces réformes garantiront la conformité du Code de la Presse avec les normes internationales.

Liberté d'association

1104. L'article 9 de la Constitution garantit le droit à la liberté d'association, y compris le droit des individus de prendre part aux syndicats et aux organisations civiles et politiques de leur choix. Le Décret no.15 de novembre 1958 protège et régit également ce droit et établit que les associations ont la liberté de sélectionner leurs membres et chacun est libre d'y souscrire ou pas. Pour l'établissement d'une association il est nécessaire d'obtenir une autorisation administrative.

1105. En ce qui concerne les droits et libertés des organisations de droits de l'homme, d'après les renseignements transmis par le gouvernement, des changements juridiques récents auraient simplifié les procédures bureaucratiques. Les peines prévoyant la privation de liberté auraient été réduites ou remplacées par des amendes. La Représentante spéciale souhaiterait recevoir également des renseignements plus détaillés sur ces progrès.

Liberté d'assemblée

1106. En vertu du même Décret no. 15, le droit à la liberté d'assemblée est garanti. Les assemblées ne peuvent cependant pas se tenir dans les 24 heures après qu'un récépissé a été émis par les autorités correspondantes. Si celles-ci n'émettent pas ledit récépissé les personnes concernées peuvent envoyer une notification de l'assemblée par courrier certifié. Dans ces cas, les assemblées ne peuvent pas se tenir dans les 48 heures après que la notification a été envoyée.

Mesures prises au niveau national pour assurer la mise en œuvre de la Déclaration

1107. La Représentante spéciale a été informée de l'élargissement du mandat du Conseil consultatif des droits de l'homme (CCDH) et de l'exclusion des membres du gouvernement de ses structures formelles. Le CCDH maintiendrait un contact régulier avec des organisations marocaines de défense des droits de l'homme et aurait participé à plusieurs réunions avec des ONG internationales de droits de l'homme.

1108. Le Gouvernement a également informé la Représentante spéciale de la création du *Diwan Al Madhalim*, un «médiateur» chargé d'examiner les cas de violations des droits de l'homme qui lui ont été soumises, de présenter aux autorités compétentes les propositions et recommandations qui s'imposent. Les différentes autorités sont obligées de coopérer avec le *Diwan Al Madhalim* et de lui fournir des renseignements sur les mesures prises pour traiter chacune des plaintes.

1109. En 2000, le Maroc, en coopération avec le Haut Commissariat des Nations Unies aux Droits de l'Homme et le Programme des Nations Unies pour le Développement, a établi le Centre de Documentation, d'Information et de Formation en droits de l'Homme, qui constitue entre autres un espace de dialogue et consultation entre les institutions gouvernementales et non gouvernementales.

1110. Le Gouvernement a également rapporté qu'entre 1999 et 2003, des efforts ont été entrepris afin de résoudre les cas de plus de 700 personnes qui avaient par le passé été renvoyées de leur travail et détenues pour des motifs politiques ou pour leur activisme au sein de syndicats ou d'organisations de défense des droits de l'homme. Plus de 60 millions de dirhams (soit six millions d'euros) ont destinés à ce programme. Il a été rapporté que les personnes mentionnées ont pu récupérer leur ancien travail ou reçu une pension et le paiement du salaire qu'ils auraient touché s'ils n'avaient pas été détenus.

1111. La Représentante spéciale note avec satisfaction que les organisations locales indépendantes ont accès aux détenus et prisonniers et bénéficient maintenant également la possibilité d'organiser des séances de formation pour les fonctionnaires.

1112. La Représentante spéciale a également été informée que le Maroc a accueilli de nombreux séminaires régionaux et internationaux sur les droits de l'homme. En 2001, le Maroc a accueilli une Conférence internationale sur la réhabilitation des victimes de la torture. Il convient également de mentionner qu'une chaire en droits de l'homme a été établie au Maroc en coopération avec l'UNESCO et l'Université Mohamed V de Rabat. Une deuxième chaire en culture de la paix a été créée à l'Université Mohammed I de Wajdah.

1113. En 2004, le Directeur Général du PNUD et Représentant résident des Nations Unies au Maroc a organisé deux ateliers portant sur les instruments et mécanismes internationaux de protection des droits de l'homme et deux autres sur l'évolution des droits de l'homme au Maroc. Ces ateliers se sont tenus en réponse à une recommandation émise par les agences des Nations Unies basées dans le pays lors d'une réunion d'évaluation en février 2004.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

1114. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé 11 communications concernant 64 défenseurs des droits de l'homme. 36 d'entre eux auraient été inculpés pour avoir participé sans autorisation à une manifestation en faveur des droits de l'homme. Une de ces onze communications se rapporte à la supposée dispersion violente d'une manifestation tenue en octobre 2005 en faveur du respect des droits de l'homme au Sahara occidental. Au moins 15 autres défenseurs auraient fait l'objet d'une interdiction de sortir du pays, alors qu'ils étaient invités à participer à des rencontres internationales de droits de l'homme, notamment la Commission des droits de l'homme des Nations Unies.

1115. La Représentante spéciale est également intervenue dans le cas d'allégations de torture et mauvais traitement contre des défenseurs de même que pour des défenseurs qui auraient été emprisonnés pour « incitation à des troubles à l'ordre public », ou pour « outrage à des fonctionnaires » suite à des actions de défense des droits de l'homme. Certains des défenseurs arrêtés auraient été tenus au secret.

1116. La plus grande partie des cas qui ont suscité l'intervention de la Représentante spéciale se réfèrent à des personnes ou organisations qui travaillent pour le respect des droits de l'homme dans le contexte du Sahara Occidental. La Représentante spéciale remercie le Gouvernement pour ses réponses à la plupart de ces communications et en apprécie l'esprit de collaboration vis-à-vis de son mandat. Elle espère que le Gouvernement du Maroc répondra à l'intégralité des communications qu'elle a envoyées.

1117. La Représentante souhaite néanmoins exprimer son inquiétude face aux difficultés rencontrées par les défenseurs des droits de l'homme travaillant dans le contexte du Sahara Occidental. En particulier, elle exprime sa plus vive préoccupation quant aux apparentes restrictions relatives à la liberté de réunion auxquelles se heurtent les défenseurs des droits de l'homme et qui résultent souvent en de nombreuses arrestations et inculpations.

1118. A cet égard, elle réitère les préoccupations exprimées par le Comité des droits de l'homme en novembre 2004 concernant le fait que « souvent, la délivrance du récépissé de déclaration préalable de réunion donne lieu à des abus, ce qui revient de fait à limiter le droit de réunion, garanti par l'article 21 du Pacte. » (ibid., para. 23). A cette occasion, le Comité avait également pris note « de divers rapports faisant état de limitations au droit à la liberté d'association. » (voir document CCPR/CO/82/MAR).

1119. Elle exprime également son inquiétude devant les apparentes restrictions à la liberté de mouvement des défenseurs dans ce contexte visant à les empêcher d'exercer leur liberté d'expression au niveau international. Elle souligne à cet égard les conclusions du Comité des droits de l'homme lors de l'examen du cinquième rapport périodique du Maroc qui s'est dit préoccupé « par le fait que quelques représentants d'organisations non gouvernementales se sont

vu saisir leurs passeports, les empêchant ainsi de prendre part à une réunion d'organisations non gouvernementales sur la question du Sahara occidental à l'occasion de la cinquante-neuvième session de la Commission des droits de l'homme à Genève » (ibid. para. 18).

Myanmar

1120. The Special Representative acknowledges the response from the Office of the United Nations Resident Coordinator in Myanmar to the questionnaire transmitted for the preparation of this report. The Special Representative regrets that the Government has not provided her with any information till the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1121. Free and fair elections were held in Myanmar in 1990 when the people voted overwhelmingly for a democratic form of government. The National League for Democracy (NLD) won 392 seats out of a total of 485 seats. The military backed National Unity Party won 10 seats. However to this day, Myanmar is under military rule of the State Peace and Development Council (SPDC). Many of the elected members of the 1990 democratic elections were imprisoned and released subsequently, others have since died in prison, and some has since resigned from politics. Ms. Daw Aung San Suu Kyi, General Secretary of the NLD and Nobel Peace Prize Laureate 1991, is universally acknowledged as a leading human rights defender for her non-violent struggle for democracy and human rights. She remains under house arrest.

1122. According to the information received, neither national nor international independent NGOs working explicitly on human rights issues are permitted by the Government of Myanmar. Despite severe restrictions on the rights to freedoms of expression, association, and assembly, small groups (either indigenous or those who cross the border to work) based in some border areas reportedly manage to monitor and report on human rights abuses.

1123. Against this background, United Nations entities have become the key player in the defense of human rights in the country. Among other initiatives, they have intervened with the Government when persons were arrested for distributing the Universal Declaration of Human Rights; they have prepared an action plan on child soldiers; they helped to establish a National Human Rights Committee; they have investigated complaints about forced labor; and have made efforts to improve awareness on human rights issues including children's rights, women's rights, and trafficking.

Legal framework

1124. Myanmar is a party to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It has not yet ratified most of the core international human rights instrument, including the International Covenant on Civil and Political Rights. The latter is a key instrument for the implementation of the Declaration on Human Rights Defenders as it guarantees rights such as freedom of opinion and expression, freedom of assembly and freedom of association.

1125. Despite promises following the outcome of the 1990 elections, Myanmar still does not have a Constitution. The Government is currently running a National Convention, which is laying down principles on which an eventual Constitution will be based. It has been reported to the Special Representative that the Convention itself operates under conditions unfavorable to human rights defenders. Criticism of the Convention is reportedly punishable by 20 years imprisonment. In this connection, the Special Representative refers to the last report of the United Nations Secretary-General on the situation of human rights in Myanmar in which he believes “that the National Convention, as currently configured, does not adhere to the recommendations made by successive resolutions of the General Assembly and the Commission on Human Rights”. E/CN.4/2005/130, para. 10)

1126. Concerning the rights to freedom of association and assembly, the Special Representative notes with concern that the law prohibits more than five people meeting in a room at one time.

Measures taken at national level for the implementation of the Declaration

1127. The Special Representative regrets that she has not received information on policies and programmes set up by the concerned authorities in Myanmar to ensure an effective implementation of the Declaration.

Communications and concerns

1128. From the establishment of her mandate to 1 December 2005, the Special Representative has sent eight communications to the Government concerning 51 individual defenders. Seven of these communications were transmitted in 2005. Most of the communications sent by the Special Representative since 2000 have been sent jointly with the Working Group on Arbitrary Detention, the Special Rapporteur on the right to freedom of opinion and expression, the Special Rapporteur on torture and the Special Rapporteur on the situation of human rights in Myanmar. The Special Representative regrets that the Government has not responded to any of her communications.

1129. The Special Representative finds it highly regrettable that the Special Rapporteur on the situation on Myanmar has not been permitted to conduct a fact-finding mission to the country since November 2003.

1130. Despite recent changes in the Government and promises for political reform, the human rights situation in Myanmar remains distressing. In addition to the reportedly repressive practices of the State Peace and Development Council (SPDC) military regime, citizens also suffer from the impact of international economic sanctions and decades of poor economic management. The Special Representative refers to Commission on Human Rights resolutions on the situation of human rights in Myanmar (1992-2005) and the various reports of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar for a comprehensive view of the national context. In his last interim report (A/60/221), the Special Rapporteur stated that the situation regarding the exercise of fundamental rights and freedoms had not substantially changed during the reporting period. “There reportedly remain over 1,100 political prisoners in Myanmar. The release of 249 political prisoners on 6 July 2005 was tempered by the continuation of the arrests, detention and harsh sentences meted out to civilians and democracy advocates for (conducting) peaceful political activities. The Special

Rapporteur remains very concerned at the practice of administrative detention". In addition "serious human rights violations continue to be perpetrated against Myanmar's ethnic minority communities. Widespread reports of forced labour, rape and other sexual violence, extortion and expropriation by Government forces continue to be received. Victims of violations rarely have recourse to redress."

1131. The Special Representative notes that Myanmar is not party to the ICCPR which guarantees rights pivotal for the implementation of the Declaration on Human Rights Defenders. Furthermore, Myanmar lacks a domestic legal framework that includes recognition of the most basic human rights. The Special Representative is concerned over the absence of legal guarantees. In her opinion this absence is resulting in serious human rights violations and severely hampering the work of defenders. She would like to remind the Government that according to the Declaration it is the prime responsibility and duty of the state to promote and implement human rights, by adopting measures for creating all conditions 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. States must also "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."

1132. The Special Representative would like to express her concerns about reports according to which citizens in Myanmar, including members of registered political parties and pro-democracy activists are subject to harassment, arrest, and prison for the peaceful exercise of basic civil and political rights and freedoms. Defenders are reportedly susceptible to arbitrary arrest on criminal charges. At least one defender was reportedly arrested after he distributed leaflets with the Universal Declaration on Human Rights. The cases included in the communications to the Government relate to elected Parliament Members, representative of opposition and pro-democracy parties, students and Buddhist nuns and monks. This situation is exacerbated by the fact that the law allows the State to detain without charge or trial, or re-detain, anyone who is believed to constitute a "danger to the State".

1133. Citizens are also reportedly liable to arrest for making accusations of forced labour. It is also reported that political and pro-democracy activists are often arrested and detained without the knowledge or notification of their families. Furthermore, they are often detained for long periods of time, in some cases years, without legal representation. Reportedly, detainees usually have little or no access to legal counsel or the means by which they might prepare their own defense. Authorities have in many instances reportedly blocked access to information and not given adequate indication of trial dates. It is further alleged that legal redress for those who have suffered human rights abuses is severely limited by a judiciary that is seen as weak and lacking independence.

1134. The Special Representative is gravely concerned over reports that many defenders have been subjected to torture and other forms of ill-treatment while in detention. It is also alleged that defenders have been held in poor conditions and have been denied medical treatment. Some have reportedly been kept incommunicado or in solitary confinement for prolonged periods.

1135. The Special Representative has been informed that a National Human Rights Committee was set up in Myanmar with the support of the UNHCR, but she regrets to have learned that this institution is no longer functional. She has also been informed that the Government of Australia offered human rights training for Myanmar Government officials, but that this training programme has been discontinued. The Special Representative would like to remind the Government of article 15 of the Declaration, which states that “the State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme”.

1136. The Special Representative remains deeply concerned about the plight of human defenders who have been forced to flee the country because of the risks they face in operating in Myanmar. She refers to the report of her country visit to Thailand (E/CN.4/2004/94/Add.1) as an example of the complexities of their situation and the serious hazards that they confront in seeking to promote and protect human rights in Myanmar.

1137. The Special Representative would appreciate information from the Government concerning the situation for human rights defenders in Myanmar, and any steps taken towards the implementation of the Declaration in the country.

Namibia

The human rights defenders community

1138. The Special Representative regrets that she has not received sufficient information to make an assessment of the human rights defenders community in Namibia.

Legal framework

1139. Namibia is a State party to nearly all of the core international human rights instruments, including the International Covenant on Civil and Political Rights. Namibia has not yet ratified the Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Namibia has ratified the African Charter on Human and Peoples' Rights. The Namibian Constitution envisages that general rules of international law and international agreements binding on the State party are part of the domestic law.

1140. Article 21 of the Constitution guarantees the right to freedom of speech and expression, including freedom of the press and other media, the freedom to assemble peaceably and without arms, and the freedom of association, including freedom to form and join associations or unions, including trade unions and political parties. The limited information available to the Special Representative suggests that the legal framework is in general fairly liberal in terms of the laws and provisions relevant for the work of human rights defenders. Nevertheless, it is not possible on the basis of such limited information, for the Special Representative to make a proper assessment of the legal environment for the activities of human rights defenders in the country and its practical value to defenders.

Measures taken at national level for the implementation of the Declaration

1141. The Special Representative regrets that she has not received further information on the policies and programmes adopted by relevant Namibian authorities to ensure an effective implementation of the Declaration. The Special Representative would appreciate receiving such information.

Communications and concerns

1142. From the establishment of her mandate to 1 December 2005, the Special Representative has sent two communications to the Government concerning an organization and its executive director who had reportedly been targets of a defamation campaign by the authorities. The executive director had also received death-threats and suffered an attack on his home by soldiers. Ministers were reportedly quoted as having said that the organization was “an agent of Western Imperialism” and that it was “a tool used by the enemy of Africa and of Namibia in particular”. Ministers were also reported to have condemned the “subversive activities” of the organization, which they reportedly said could “no longer be tolerated”. The Special Representative regrets that no replies have been received as of yet from the Government to her communications concerning these serious allegations.

1143. In the context of the measures taken to implement the Declaration, the Special Representative recalls the concluding remarks of the Human Rights Committee in which it welcomed the establishment of the institution of the Ombudsman but noted that the legislation concerning the Ombudsman requires further strengthening (CCPR/CO/8/NAM, para. 7). The Government has informed the Special Representative that the Ombudsman is merely an enabling Act, dealing with those matters that are not in Chapter 10 of the Namibian Constitution, which provides for the independent existence of the Ombudsman, the appointment and tenure of office for the Ombudsman, as well as the powers and functions of the Ombudsman.

1144. The Special Representative regrets that she has had very little contact with the Government and civil society in Namibia. She appreciates the willingness of the Government to provide such information so that this profile can be updated in the future.

Nepal

1145. The Special Representative acknowledges the responses from United Nations agencies and non-governmental sources to the questionnaire circulated for the preparation of this report. The Special Representative regrets that the Government has not provided her with information till the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1146. Nepal has been in a situation of armed conflict between the government and the Communist Party of Nepal (CPN) (Maoist) for more than nine years. The political situation has been volatile since a new constitution based on parliamentary democracy was adopted in 1990. In February 1996, the Maoists rebelled against the constitution and announced a “people’s war” with the aim of establishing a “new democracy”, and since then the civilian population of Nepal

has lived in a state of fear and have suffered attacks from both sides in the conflict. More than 10,000 people are believed to have been killed during almost one decade of armed conflict in Nepal. In February 2005 there was a royal coup in Nepal and a State of Emergency was announced.

1147. NGOs were only legalized in Nepal in the early 1990s. Hence, the human rights and wider NGO community is still a young one. The human rights defenders community in Nepal today is active but weakened in part as a result of the repressive measures it has been subjected to. The royal takeover and the subsequent declaration of a State of Emergency is widely seen as exacerbating the already high risk to defenders and the civilian population in general. The human rights situation, and hence the situation for defenders working in Nepal, has deteriorated in recent years. Subsequently, several defenders have reportedly either gone underground or left the country, in order to continue with their human rights advocacy on Nepal in a more secure environment.

1148. Human rights defenders in Nepal work on a range of issues, and many are involved in monitoring and investigation of human rights violations committed by both sides in the conflict. These activities include monitoring conditions in jails, investigating killings and “disappearances”, investigating reported cases of rape, and cases of intimidation and torture. Defenders also work on trying to pressure the authorities to investigate alleged human rights violations committed by either side in the conflict. Defenders have also taken the role of negotiators in situations of abductions and arrests. In addition defenders advocate and promote human rights nationally and internationally, through educational activities, peaceful demonstrations, legal work and peaceful campaigns for civil disobedience.

1149. In general, most NGOs in Nepal focus on development activities or actions that mitigate the effect of human rights violations, such as rehabilitation for victims. A smaller number focus on the overall human rights situation, and some focus on specific human rights concerns, such as caste discrimination and LGBT rights. Women human rights defenders play an increasingly prominent role as advocates on a wide range of human rights issues in Nepal. A small number of NGOs have a national network throughout Nepal.

Legal framework

1150. Nepal has acceded to the main international human rights treaties, including the International Covenant on Civil and Political Rights. Nevertheless, it is not yet party to the Optional Protocol to the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their families. In addition, Nepal has signed, but not ratified, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Even though constitutional rights are established, the judiciary reportedly does not adequately enforce these rights, including those that correspond with rights defined in the Declaration on Human Rights Defenders.

Freedom of expression and access to information

1151. Article 12.2 (a) of the Constitution of Nepal states that all citizens shall have “freedom of opinion and expression”. However, since October 2005 there has been a ban on FM radios and restrictions on telecommunications, in particular in rural areas. This has further undermined the possibility that defenders have to promote and protect human rights in Nepal. FM radio is the most common means for much of the population to receive information and the prohibition on the broadcast has serious implications for the reporting of human rights violations.

Freedom of assembly and freedom of movement

1152. Article 12.2 (b) of the Constitution states that all citizens shall have “freedom to assemble peacefully and without arms”. Nevertheless, following the declaration of a State of Emergency, the Government has restricted rights to liberty and freedom of movement, including through the provisions of counter-terrorist and security legislation. There have been reports of police violence and mass-arrests in relation to peaceful protest in Nepal.

Freedom of association

1153. Article 12.2 (c) of the Constitution states that all citizens shall have “freedom to form unions and associations”. Despite this, in November 2005 the Government promulgated an NGO Code of Conduct where provisions are in breach of the Declaration on human rights defenders as well as protections of the right to freedom of association as defined in the International Covenant on Civil and Political Rights.

Measures taken at national level for the implementation of the Declaration

1154. The National Human Rights Commission (NHRC), which reportedly is an independent and autonomous statutory body, was established in June 2000 under the Human Rights Commission Act 1997 (2053 BS). It has a separate sphere of responsibilities in the constitutional legal system of the country. These responsibilities complement the responsibilities of the normal machinery of the administration of Justice, the Supreme Court, the Office of the Attorney General, the Commission for the Investigation of Abuse of Authority, and other existing executive, quasi-judicial or judicial bodies performing in the legal system of Nepal. In 2003, in a move strongly criticized by international and national human rights groups, the Government established the National Centre for the Promotion of Human Rights under the Prime Minister’s Office. Following the declaration of the State of Emergency, some NHRC commissioners were prevented from travelling outside Kathmandu to carry out their duties. In May 2005, a new Royal Ordinance changed the statutory appointment procedure for the NHRC and while the Chairman was reappointed for another term, new Commissioners were appointed to fill all four posts, leading to the composition of the NHRC being radically altered. In general the Government has reportedly refused to co-operate with the NHRC and has not implemented its recommendations.

1155. In April 2004, at the United Nations Commission on Human Rights in Geneva, the Government of Nepal signed a consensual Chairman’s statement on human rights assistance to Nepal. This statement supported Nepal’s efforts “and those of the Office of the United Nations High Commissioner for Human Rights aimed at developing technical assistance and advisory

services and to facilitate the necessary external assistance especially to the National Human Rights Commission” (OHCHR/STM/CHR/04/3). This was generally seen as a high-profile event, and a commitment to human rights by the Government of Nepal, but there is a view that the commitment has not been implemented in any practical form.

1156. In 2004 The Government issued a formal statement entitled “His Majesty’s Government’s commitment to the implementation of Human Rights and International Humanitarian Law”, containing 26 proposals on human rights. This came after the NHRC had begun advocating for an agreement on human rights known as the Human Rights Accord, which won widespread support from civil society, media, political parties and the international community. The Government instead chose to issue the afore-mentioned statement, which according to reports, is flawed and gives no serious measures for enforcement or accountability for human rights violations.

1157. In July 2004 the Prime Minister announced the launch of the National Human Rights Action Plan (NHRAP) prepared with the cooperation of the UNDP. Despite this being a positive step, The NHRAP is by many international actors reported to be seriously flawed and deficient in many aspects.

Communications and concerns

1158. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 34 communications to the Government, where 20 of these were sent between 1 December 2004 and 1 December 2005. The communications have concerned 140 named defenders, 100 journalists (the identities of which are known to the Special Representative) and 131 defenders (the identities of which are known to the Special Representative). Three of the defenders were women, one of whom died in custody after the first communication was issued in her case. It is reported that her body was never handed over to her family by the authorities concerned. Two other extremely worrying cases reported to the Special Representative were those of two journalists and human rights defenders allegedly abducted by groups of CPN-Maoists. Reportedly one of the defenders was killed.

1159. The Special Representative reiterates her deep concern over reports of serious violations being committed against human rights defenders by both sides in the conflict. The information on cases of violations increased alarmingly during 2004 and 2005. Cases reported to her frequently involved allegations of arrest and of torture during arrests and detention, in addition to rape by police, both of female and male (transvestite) defenders. One communication concerned 39 unnamed male transvestites, who are campaigning for the rights of sexual minorities.

1160. The Special Representative is gravely concerned over alleged cases of brutal torture, such as cutting wounds into people’s arms and legs and putting salt and chili-powder in the wounds. In relation to this she notes that nine of her communications were sent jointly with the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Other extremely grave reports included allegations of gang-rape of defenders committed both by soldiers and by members of the police forces, and defenders reportedly forced to perform oral sex on police officers after being taken into custody. She would like to draw to attention to the remarks of the Committee against Torture in relation to their review of the report of Nepal in

November 2005. It was mentioned in the committee's report that the Special Rapporteur on Torture had found that torture and ill-treatment were systematically practiced by the Police, the Army Police and the Royal Nepalese Army (CAT/C/SR.669, para. 13).

1161. A number of cases received in 2004 and 2005 involved violations against journalists, peace activists and local leaders in the context of the ongoing conflict between the CPN (M) and the Government. Information received shows that violations have been committed both by government and the CPN (M). In July 2004, eight independent experts of the Commission of Human Rights emphasized their serious concerns regarding the grave human rights situation in Nepal. The experts stated that since the start of 2004 they had transmitted 146 urgent appeals and other communications to the Government regarding reported violations of human rights.

1162. The Special Representative records her grave concerns over killings of human rights defenders in Nepal. The number of "disappearances" and arbitrary detentions in Nepal also disturbs her. She recalls the report of the Working Group on Disappearance after its visit to Nepal in December 2004, wherein it is stated that "human rights defenders are widely reported to be under constant threat for their work on disappearances, in particular in the regions of Nepal outside of Kathmandu" (E/CN.4/2005/65/Add.1, para. 51). Also according to the Working Group on Arbitrary Detention, Nepal has the largest number of enforced disappearances in the world in the time-period between 2002 and 2004. The Special Representative notes that 12 of the communications sent by her were joined by the Working Group on Arbitrary Detention.

1163. The Special Representative recalls the visit of the United Nations High Commissioner for Human Rights in January 2005, to Nepal. In a press statement on the occasion of this visit, the High Commissioner stated: "I would warn the leaders of the insurgency not to misread developments in the wider world, nor to believe that they can operate outside the law". During the same press conference the High Commissioner also expressed the view that "regrettably, there is an alarming, and growing, number of cases in which the fundamental rights of the people of Nepal have been abused by agents of the state and in which victims have been unable to obtain redress. A climate of impunity prevails in this country as a result of which the rule of law, the fundamental glue of any society, is being worryingly eroded".

1164. The Special Representative notes that, reportedly, there has been a worrying trend of acts of repression against lawyers. Lawyers have been detained, arrested, "disappeared", threatened and tortured because of their work. This has reportedly led to lawyers being afraid of and hesitating in challenging illegal detentions, and of representing any clients suspected of or charged with supporting the Maoists.

1165. The Special Representative is also concerned over information pointing to journalists having become one of the groups to be targeted by both sides in the conflict. In the past years she has also sent communications to the Government concerning allegations of serious violations, including one alleged killing, of journalists. In general the right to freedom of expression is very limited, and the Special Representative notes in this relation that 25 of her communications were sent jointly with the Special Rapporteur on the Promotion and Protection of the right to Freedom of Opinion and Expression.

1166. Concerning legislation, the Special Representative is worried about reports regarding some legislative changes. Until October 2004 the Terrorist and Disruptive Activities (Control and Punishment) Act (TADA) of 2002 allowed the security forces to arrest suspects without warrant and detain them without charge. In October 2004 the TADA was replaced by the Terrorist and Disruptive Activities (Control and Punishment) Order (TADO). The TADO increased provision for detention without charge or trial from 90 days to one year. The Public Security Act (PSA) of 1989 allows the authorities to detain a person who allegedly threatens the “sovereignty, integrity or public tranquillity” of Nepal for up to 90 days without charge or trial. The legislation legally provides the State with longstanding impunity by granting prosecution immunity to members of the security forces or “any other person” for “any act or work performed or attempted to be performed by him in good faith under the Act”. It has been reported that some detainees arrested under the PSA later had their status illegally converted to detention under the TADO, hence allowing the authorities to keep them detained for up to one year. The Special Representative is concerned about information that these Acts and Ordinances have reportedly become effectively legal instruments for facilitating “disappearances” in Nepal.

1167. The Special Representative would like to reiterate the concerns expressed in her press release in November 2005 over the new NGO Code of Conduct where provisions are in breach of the Declaration on human rights defenders as well as protections of the right to freedom of association as defined in the International Covenant on Civil and Political Rights. Concern is also expressed over information that there have been reported incidents of NGOs in some areas being pressured to register with the “New government” of the Maoists and to coordinate their activities with them.

1168. There is concern over increasing impunity reported for violations committed both by the authorities and the Maoists. The Maoists, by using extortion and coercion are reportedly managing to impose an authoritarian regime on increasingly large areas of rural Nepal, whereas in Government-controlled areas civilian rule is increasingly substituted by direct power by the Royal Nepalese Army (RNA). In general, human rights defenders working in remote districts and hence away from the scrutiny of the national press and the international community, are reported to be at particular risk.

1169. The Special Representative recalls that she has repeatedly requested an invitation to visit Nepal. She regrets that the Government has not given her a positive response yet.

Nicaragua

1170. La Representante Especial lamenta que en el momento de finalizar este informe, el Gobierno no le haya remitido información en respuesta al cuestionario distribuido para la preparación del presente informe. La Representante Especial insta al Gobierno que transmita la información relativa para que este informe pueda ser actualizado.

La comunidad de defensores de los derechos humanos

1171. La Representante Especial lamenta que no haber podido recoger suficiente información para llevar a cabo una evaluación en profundidad de la comunidad de defensores en Nicaragua.

1172. La información disponible demuestra que Nicaragua cuenta con una variada comunidad de defensores de derechos humanos compuesta por periodistas, abogados, sindicalistas y también ONG. El trabajo de los líderes de las sindicalistas de las maquiladores ha sido prominente debido a los conflictos laborales en el sector maquilero en los últimos años. La Representante Especial nota que la situación política en Nicaragua sigue siendo tensa.

1173. En el contexto de conflictos laborales en el sector maquilero, la Representante Especial nota que el Gobierno creó una Comisión Interinstitucional del Abordaje a la Problemática de la Maquila en la cual los sindicatos y los defensores de los derechos humanos habrían jugado un papel muy importante.

Marco legal

1174. Nicaragua es parte de seis de los siete tratados internacionales principales de derechos humanos, entre ellos el Pacto Internacional de Derechos Civiles y Políticos. No ha ratificado todavía el Segundo Protocolo Facultativo de este Pacto, el Protocolo Facultativo de la Convención sobre la eliminación de todas las formas de discriminación contra la mujer, el Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, y la Convención internacional sobre la protección de los derechos de todos los trabajadores migratorios y de sus familiares. En el contexto regional, Nicaragua ha ratificado la Convención Americana sobre Derechos Humanos.

1175. De acuerdo con la información recibida, la libertad de opinión y expresión, la libertad de reunión y manifestación y la libertad de asociación están garantizadas por la constitución en Nicaragua.

1176. De acuerdo con la información recibida, las personas que quieren establecer un organismo para la defensa y promoción de los derechos humanos deben hacerlo mediante la constitución de una asociación civil de acuerdo a lo establecido en la Ley General sobre Personas Jurídicas Sin Fines de Lucro (Ley 147). Deben realizar solicitud ante la Asamblea Nacional para que se les otorgue personería jurídica. Una vez otorgada ésta, debe ser publicada en el Diario Oficial y registrada en el Departamento de Registro y Control de Asociaciones del Ministerio de Gobernación (MIGOB). Los Estatutos deben presentarse en un plazo de 30 días tras la publicación en el Diario Oficial. En virtud de la Ley 147, las asociaciones, fundaciones, federaciones y confederaciones deben llevar libro de actas, de asociados y de contabilidad, los cuales son sellados y rubricados por el MIGOB. Además, cada año hay que presentar ante esta instancia los balances contables. Se alega que durante el Gobierno del Sr. Arnaldo Alemán, muchas ONG fueron amenazadas con ser cerradas bajo el argumento de no estar al día con la información que debían presentar al MIGOB.

1177. La Representante Especial ha sido informada de que las regulaciones del derecho de reunión y manifestación establecen que es preciso solicitar un permiso previo donde se establece el recorrido, el número de manifestaciones y la duración. También hay que nombrar un fiador en caso de daños. Si durante la manifestación se incumplen cualquiera de los elementos que motivaron el permiso, ésta puede ser declarada ilegal, lo cual permite su disolución y la acusación por alteración del orden público.

Medidas tomadas a nivel nacional para asegurar la implementación de la Declaración

1178. La Representante Especial lamenta no haber recibido información sobre las medidas adoptadas por las autoridades nicaragüenses competentes para asegurar la implementación efectiva de la Declaración.

Motivos de Preocupación y Comunicaciones transmitidas por la Representante Especial

1179. Desde el inicio de su mandato y hasta el 1 de diciembre de 2005, la Representante Especial ha transmitido dos comunicaciones al Gobierno, una era relacionada con una defensora de los derechos humanos que habría sido objeto de amenazas y difamaciones, por parte de las autoridades. La otra era relacionada con las amenazas de muerte supuestamente dirigidas contra miembros de una organización de derechos humanos que trabaja para los derechos de los niños de la calle. La Representante Especial lamenta que el Gobierno no haya contestado a ninguna de sus comunicaciones.

1180. Según fuentes no-gubernamentales, la relación de los defensores de los derechos humanos con las autoridades nicaragüenses es ambigua. Si bien por una parte el Gobierno abre espacios de diálogo y consultas, por otra algunos de sus representantes habrían fomentado discursos de desprecio y difamación contra activistas de los derechos humanos, a los que se les asociaría como defensores de delincuentes. Por su parte, líderes sindicalistas han sido presentados a veces como rebeldes o de terroristas y muchos han sido despedidos. Periodistas que habrían denunciado prácticas ilegales habrían sido amenazados y algunos de ellos asesinados.

1181. Según la información recibida por fuentes no gubernamentales, algunos medios de comunicación habrían sido utilizados para articular y difundir mensajes en contra de defensores de los derechos humanos. El impacto de estos discursos es aún más considerable en la medida en que en algunos medios se observa cierto desconocimiento sobre las funciones de los defensores de los derechos humanos. Por otra parte, otros medios de comunicación más alternativos, principalmente radios y periódicos locales, han colaborado con defensores en la difusión de las agendas de las distintas ONG de derechos humanos. Periodistas que habrían denunciado prácticas ilegales habrían sido amenazados y algunos de ellos asesinados.

Niger

1182. La Représentante spéciale remercie le bureau du PNUD au Niger ainsi que plusieurs ONG pour leur réponse au questionnaire distribué pour la préparation de ce rapport.

1183. Elle regrette que le Gouvernement ne lui ait pas fait parvenir des renseignements en réponse au questionnaire qu'elle lui avait adressé avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme au Niger

1184. Au cours des dernières années, le Niger a connu une stabilité des institutions de la République, liées au bon déroulement des élections municipales, législatives et présidentielles en 1999 et 2004 considérées comme libres, transparentes et équitables et acceptées par les citoyens.

1185. Les ONG et associations nigériennes de droits de l'homme s'organisent autour de plusieurs réseaux ou collectifs. La Représentante spéciale se félicite des initiatives qui poussent les différents acteurs de la société civile à s'organiser en collectifs afin d'être plus efficaces dans leurs efforts pour la protection des droits de l'homme.

1186. Les organisations de défense des droits de l'Homme au Niger conduisent de nombreux d'activités. En particulier, la Représentante spéciale a été informée d'études sur des thèmes particuliers (trafic des personnes, esclavage, pauvreté...), d'efforts de sensibilisation et de formation, de l'élaboration de manuels concernant les droits de l'homme, d'élaboration et de mise en œuvre des politiques publiques et à des conférences internationales en matière des droits de l'homme, ainsi que des missions d'investigation et l'aide apportée aux victimes de violations des droits de l'homme.

1187. Plusieurs collectifs de défenseurs des droits de l'homme n'ont néanmoins pas reçu de reconnaissance officielle par les autorités compétentes, ce qui rendrait difficile leur fonctionnement et les empêcherait de nouer des partenariats, notamment avec des organisations et institutions internationales.

1188. Les organismes des Nations Unies ayant répondu au questionnaire considèrent qu'au vu des leurs circonstances particulièrement difficiles de travail, les défenseurs des droits de l'homme entreprennent un travail considérable. Par ailleurs, la population ferait de plus en plus recours aux organisations de défense des droits de l'homme pour dénoncer des violations. Il a cependant été souligné que la communauté des défenseurs des droits de l'homme a besoin davantage d'appuis financiers pour renforcer ses capacités institutionnelles et opérationnelles.

Cadre juridique

1189. Le Niger a ratifié plusieurs des principaux traités internationaux, dont le Pacte International relatif aux Droits Civils et Politiques. Il n'a pas encore ratifié le Deuxième Protocole facultatif au Pacte International relatif aux Droits Civils et Politiques, le Protocole facultatif à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, le Protocole facultatif à la Convention relative aux droits de l'enfant concernant l'implication d'enfants dans les conflits armés, et à la Convention Internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille. Le Niger a également ratifié des traités régionaux de protection des droits de l'homme tels que la Charte Africaine des Droits de l'Homme et des Peuples.

1190. L'article 24 de la Constitution du 9 août 1999 reconnaît le droit à la liberté d'association, de réunion et de manifestation. La liberté de pensée, d'opinion et d'expression est également constitutionnellement reconnue au Niger.

1191. L'ordonnance no. 84-6 du 1^{er} mars 1984 qui porte sur le régime des associations, et son décret d'application, modifié par la suite, régissent le régime des associations au Niger.

1192. La Représentante spéciale regrette ne pas avoir de plus amples renseignements à sa disposition pour être en mesure de présenter un analyse plus élaborée de la législation nationale portant sur les droits énoncés dans la Déclaration sur les défenseurs des droits de l'homme et l'impact de son application sur le travail des défenseurs des droits de l'homme.

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

1193. La Représentante spéciale accueille favorablement l'établissement d'une Commission Nationale des Droits de l'Homme et des Libertés Fondamentales (CODDHD), en vertu de l'article 33 de la Constitution. Elle partage cependant les inquiétudes exprimées par certaines sources concernant les modalités de désignation des membres de cette institution et l'exclusion d'une grande partie de la société civile, en particulier certains groupes reconnus de défenseurs des droits de l'Homme du processus de consultation. Elle note la décision de la cour suprême d'annuler ladite procédure de nomination et encourage la CODDHD à continuer de se conformer aux principes de Paris régissant les institutions nationales des droits de l'Homme indépendantes.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

1194. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé trois communications au Gouvernement dont concernant trois défenseurs des droits de l'homme et un certains nombres d'associations. La première communication portait sur la détention de défenseurs des droits de l'homme qui avaient dénoncé des pratiques d'esclavage et qui avaient organisé une célébration publique en faveur de la mise en liberté de 7000 esclaves à Atès. La deuxième communication portait sur la tentative d'assassinat d'un défenseur des droits économiques, sociaux et culturels qui avait dénoncé des cas de corruption et impunité. La troisième communication concernait le manque de mesures prises pour répondre aux allégations relatives aux formes modernes et traditionnelles de la traite des personnes et du travail forcé, y compris l'esclavage et les pratiques analogues de l'esclavage. La Représentante spéciale remercie le Gouvernement pour sa réponse à l'une de ses communications et l'invite à répondre aux deux autres.

1195. La Représentante spéciale exprime sa préoccupation devant l'absence de reconnaissance officielle de certains mouvements de défense des droits de l'homme.

1196. Elle exprime également son inquiétude devant le fait que dans certains cas les actions et discours des organisations de défense des droits de l'Homme auraient été présentés négativement et ces derniers dépeints comme des apatrides et des criminels.

Nigeria

1197. The Special Representative acknowledges the response to her questionnaire transmitted by the Government. The Special Representative visited Nigeria from 2 to 11 May 2005, and reported on this fact-finding mission to the Commission on Human Rights in the document (E/CN.4/2006/095/Add.2).

The human rights defenders community

1198. In 1999 decades of military rule in Nigeria ended, and 2003 saw the first transition in the country from one civilian government to another when President Olusegun Obasanjo and the ruling People's Democratic Party (PDP) were elected for a second term. Although the first democratic elections were widely welcomed internationally, many Nigerian and foreign elections observers reported incidents of violence and fraud during the election in April-May 2003.

1199. During the 1990's, the oppressive military rule which presided over Nigeria created an environment in which human rights defenders were systematically targeted. Representatives of NGOs, pro-democracy activists, journalists and lawyers suffered from extrajudicial killings, arbitrary detention, ill-treatment and torture, aimed at suppressing their activities and silencing them.

1200. Significant improvements to the environment for defenders were among the gains of Nigeria's transition to civilian rule in 1999. The Government was not able to give an exact number of organizations or defenders operating in Nigeria today. According to information received from defenders themselves during the Special Representative's mission to the country, many human rights defenders figures left the civil society movement with the transition to a civilian regime in 1999. Some of these defenders decided to join political parties, others went into state administration positions, and others again considered their task done and disengaged from civil society activities.

1201. The lack of records on organizations is according to the Government also due to the fact that some are registered with the Corporate Affairs Commission, whereas others, according to the government, operate without being registered. The Government distinguishes between Non-Governmental Organizations (NGOs), Community Based Organizations (CBOs), and Civil Society Organizations (CSOs). In addition there are Government Agencies such as the National Human Rights Commission and the Legal Aid Council.

1202. According to the government, defenders work on issues such as sensitization, enlightenment campaigns, workshops, seminars and conferences, in addition to advocacy and liaison with the Legislature, the Executive and the Judiciary on enactment of Human Rights Laws. The Government also informed the Special Representative that the human rights defenders in Nigeria work on increasing awareness on the issue of human rights, and on creating greater partnership and more collaboration of activities between government and NGOs. During her mission to Nigeria, the Special Representative met with defenders working on issues such as freedom of expression and information, illegal detention, summary executions, police abuse, social and cultural rights, economic and environmental issues, and women's rights.

1203. Defenders come from varied backgrounds and broadly speaking they include human rights activists, trade unionists, journalists, and writers. Defenders work within associations or organizations, and frequently networks are also set up, especially in order to give momentum to legislative reform initiatives.

1204. During her mission to Nigeria, some defenders relayed to the Special Representative that it has become more difficult to mobilize civil society in Nigeria. The Special Representative

also observed that many NGOs understand their role as being a neutral actor rather than acting as a check on Government policies. The outcome is that very few organizations publish human rights reports that are critical of Government policy (ibid. para. 13).

Legal framework

1205. Nigeria is a State party to most of the core international human rights instruments. It has not yet ratified the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the International Covenant on Civil and Political Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the two Optional Protocols to the Convention on the rights of the Child (signatory). Nigeria has ratified the African Charter on Human and Peoples' Rights.

Freedom of expression and access to information

1206. According to the Government the 1999 Constitution Chapter IV on fundamental Human Rights guarantees the right to Freedom of Expression.

Freedom of assembly and freedom of movement

1207. According to the Government the 1999 Constitution Chapter IV on fundamental Human Rights guarantees the right to Freedom of Assembly. The Public Order Act (POA) which regulates freedom of assembly, requires that organizers apply for a license to conduct "any assembly or meeting or forming any processions on the public roads or place of public resort" 48 hours before the holding of an event. Defenders have reported that organizing protests on human rights issues have repeatedly proven difficult.

Freedom of association

1208. According to the Government the 1999 Constitution Chapter IV on fundamental Human Rights guarantees the right to Freedom of Association. Section 40 of the Constitution guarantees the freedom of association, but this freedom is nevertheless limited by section 222 which states that "no association by whatever name called shall function as a political party" and section 45 which allows restrictions on and derogation from certain fundamental rights by laws reasonably justifiable in the national interest and to protect the rights of others, and by the Code for Public Officers which states that "a public officer shall not be the member of, or belong to or take part in any society the membership of which is incompatible with the function or dignity of his office.

1209. There are no specific laws regulating the operation of NGOs, but human rights organizations fall under the provisions of the 1999 Constitution, the Companies and Allied Matters Act. Defenders have also reported that donors increasingly require organizations to be duly registered in order for them to receive funds. Given a long and bureaucratic path towards registration, defenders approximated to the Special Representative during her mission that registration takes a minimum of six to nine months.

1210. The legislation concerning regulation of trade unions was amended in 2005 by the Trade Union Amendment Act. This act restricts the activities of unions, the freedom to decide how to collectively organize, and the right to picket and strike.

Measures taken at national level for the implementation of the Declaration

1211. As a part of the transition to civilian rule, the Government adopted laws, developed policies and strengthened institutions aiming to address human rights issues. This has reportedly contributed to creating a more constructive environment for defenders to work in.

1212. The National Human Rights Commission (NHRC) was established in 1995 to promote and protect human rights, provide a forum for enlightenment and dialogue and to facilitate the implementation of Nigeria's various international and regional human rights treaty obligations. The functions of the NHRC include monitoring and investigation of alleged cases of abuses, reporting on the respect of human rights within the country, assisting victims in seeking redress, monitoring prisons, engaging in human rights education and helping the Government formulate policies on human rights. Since 1999 the number of complaints received yearly by the NHRC has more than quadrupled, a fact that illustrates its increased visibility amongst civil society. Weaknesses of the NHRC includes a lack of investigatory powers, lack of authority to compel Authorities to respond to their queries, the fact that it is not allowed to make its reports public or to issue statements concerning the human rights situation in Nigeria, and lastly a lack of funding is an obstacle to its ability to discharge its mandate adequately.

1213. The Government has developed a National Plan of Action (NAP) which was presented to the public during the Human Rights Summit in October 2001. While on mission in Nigeria, the Special Representative was given the implementation plan for the NAP, which provides for a number of steps to be taken before 2006, but she has been unable to confirm whether the implementation process has started and how it is being carried out.

1214. In 2003 the Government created the office of the Special Advisor on civil society to act as a bridge between the Government and civil society actors. It is tasked with presenting the concerns and aspirations of the Nigerian civil society to the Government and with informing civil society about the programs and activities of the Government.

1215. The Special Representative has noted that while NGOs welcomed the creation of this position, few reported having developed working relationships with the office and no consensus emerged with regards to its influence (*ibid*, para. 28).

1216. The Special Representative also would like to reiterate the fact that many defenders relayed to her that they welcomed the positive role performed by the Committees of the House of Representatives in addressing human rights concerns. Still, many defenders as well as committee members, underlined the existing gap between the issues raised by the legislative branch and the lack of reaction from the executive branch, often in relation to concerns voiced by civil society (*ibid*, para. 30).

1217. The Special Representative would like to repeat that the work performed by the Human Right Protection Unit (HRPU) and the Office of the Public Defender (OPD) is of particular relevance to her mandate.

1218. The Government has informed the Special Representative that the National Human Rights Commission Act is with the Legislature, awaiting review required to strengthen it and making it more effective.

1219. The Special Representative welcomes the steps that have been taken towards the adoption of a freedom of information bill, although she regrets that the bill, at the time of her visit to Nigeria, was still pending in the Senate after two years of hearing.

Communications and concerns

1220. From the establishment of her mandate to 1 December 2005, the Special Representative has sent four communications to the Government on seven defenders. Three of the defenders were women. The Special Representative acknowledges the replies of the Government to two of her communications, but regrets that the remaining two communications have not yet been answered.

1221. The Special Representative reiterates her concern with regards to the serious lack of response from the Government to the concerns expressed by the defenders community.

1222. The Special Representative is concerned over reports that the Nigerian authorities have failed on many counts to conduct independent investigations into human rights abuses and thereby bringing the responsible persons to justice. She reiterates her concerns with regards to the prevailing climate of violence in the country and the Government having been over-cautious and not having intervened to protect the lives of those who are exposed to risk because of their efforts towards peace. Additionally, the lack of prosecution of perpetrators of human rights violations has contributed to a continuing cycle of inter-communal conflict in Nigeria.

1223. The Special Representative reiterated her concern over the wide and discretionary powers granted to Police Commissioners and officers under section 4 (1), (2) and (3) of the POA in determining the opportunity to ban temporarily any public meeting in a given area. She also reiterates her concern over the lack of judicial oversight on temporary and geographically specific ban on assemblies, and by the absence of judicial process to appeal the denial of a license (*ibid*, para. 53). In general, the Special Representative wishes to reiterate her concerns with regards to the persistent shortcomings in Nigerian laws which do not allow for the emergence of a fully constructive environment for the defence of human rights.

1224. Further, concern is expressed over the fact that women human rights defenders have reported that they face difficulties specific to their work for the promotion and protection of human rights. The Special Representative would like to express specific concern at the challenges women defenders reportedly face when working on traditional practices negatively affecting women, in particular in some of the Northern States which have adopted a version of Sharia law.

1225. During her mission, the Special Representative was informed that the Official Secrets Act (OSA) makes the transmission of “classified” information an offence and that it prohibits access to places designated as “protected”. It was further pointed out to the Special Representative that the provisions in the law remain vague and subject to discretionary interpretation (*ibid*, para. 55).

1226. The Special Representative reiterates her concern with regards to persistent practices of harassment by security forces against defenders. In her report from her mission to Nigeria, the Special Representative noted that the policing of rallies, especially those organized by the National Labour Congress, remains an area of grave concern (*ibid*, para. 76). There have been

reports concerning use of excessive force by police against protestors on several occasions. In particular, the Special Representative is worried about reports of particularly harsh attacks on defenders and the population in general from law enforcement officials in the Niger delta. Oil companies operating in this region are reported to rarely speak out publicly about these abuses.

Norway

1227. The Special Representative acknowledges the response to her questionnaire transmitted by the Government of Norway and by the Norwegian Centre for Human Rights, the country's national human rights institution.

The human rights defenders community

1228. The Government explained to the Special Representative that although there is an active human rights and human rights defenders community in Norway, there is no official record of human rights defenders and it is therefore difficult to determine precisely which organisations should be considered as "human rights defenders organizations". Many of the non-governmental organisations are engaged in human rights work even if this is not their primary purpose. Additionally, many employers, trade unions, lawyers or journalists' organisations reportedly have human rights programs. Judges and doctors many also pursue human rights activities. While some human rights organisations based in Norway have a broad mandate, several focus on the situation of one specific country or issue. Other organisations are reportedly focusing on rights of groups in vulnerable situation such as disabled persons or refugees and asylum-seekers .

1229. The Government noted that while the work of main NGOs with a consolidated structure is of high quality, some smaller organizations have capacity and resource constraints.

1230. It is the view of the Government that there is a constructive dialogue between the authorities and human rights defenders. The Government's assessment is that these organisations have a clear impact on official Norwegian policies. Despite the fact that many Norwegian human rights NGOs rely heavily on public funding, this is not perceived, according to the Government, as restricting their independence or activities.

Legal framework

1231. Norway has acceded to the core human rights instruments, including the International Covenant on Civil and Political Rights. Norway has not yet ratified the Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment and it is not a signatory to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

1232. According to the Norwegian Government, all of the Declaration's provisions are successfully implemented in Norway. For instance, the rights referred to in articles 5, 6 and 9 of the Declaration on Human Rights Defenders are well established in Norwegian law and well respected in practice. Norwegian Constitution protects the freedom of expression (through its article 100), as referred to in article 6 of the Declaration.

1233. The right to association and assembly (art. 5) and the right to legal remedy (art. 9) are implemented inter alia through the incorporation of the European Convention on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in the Norwegian Human Rights Act, which entered into force in 1999. This Act prevails over other national law. Article 8 is another example of a well-implemented provision as both individuals and organizations frequently submit concerns, criticism or proposals for improvement to the authorities.

Measures taken at national level for the implementation of the Declaration

1234. The Government informed the Special Representative that the implementation of article 14 (2) has been improved through the development of new web pages on human rights under the Norwegian Ministry of Foreign Affairs. International documents, including Norwegian periodic reports and official reports from international human rights bodies are made accessible on this site. The implementation of article 14 (3) has been strengthened with the creation of the Norwegian Centre for Human Rights as a national human rights institution. The mandate of the Parliamentary Ombudsman has furthermore been amended in order to specify that the Ombudsman shall contribute to the respect for human rights.

1235. The Government informed the Special Representative that the Ministry of Foreign Affairs and its embassies have knowledge of the Declaration and are working towards its implementation. It admitted however that other parts of central administration may have a limited knowledge of it. In October 2005 the Government announced that it is in the process of making a booklet to its embassies on how to support and protect human rights defenders internationally. The Government has stated that it is committed to a more systematic approach in its work towards human rights defenders.

1236. The Special Representative appreciates that the Norwegian Ministry of Foreign Affairs arranged an international seminar in May 2005 in order to evaluate her mandate. The Government further informed that it supports human rights defenders financially, for instance through the International Commission of Jurists, the International Service for Human Rights, the Human Rights House Foundation and several other NGOs. Norway's embassies also reportedly support human rights defenders in countries where they are harassed and subjected to human rights violations on the basis of their work, inter alia through financial support, by addressing the authorities (informally or through official steps), by observing trials, visiting detained defenders and by engaging in direct dialogue with the human rights defenders.

Communications and concerns

1237. No communications have been sent by the Special Representative to the Government of Norway during the two mandate periods.

1238. The Special Representative recommends that special programmes be conducted within the governmental structures to increase awareness and information on the Declaration amongst officials and local authorities.

Pacific Islands

1239. The Special Representative acknowledges the response received jointly from the UNDP and the Regional Rights Resources Team (RRRT) to the questionnaire transmitted for the preparation of this report.

1240. The countries covered by this section are Fiji Islands, Solomon Islands, Vanuatu, Samoa, Kiribati, Tonga, Tuvalu and the Cook Islands. The Special Representative has in addition included a separate section on Fiji in this addendum, as she received a separate response to the questionnaire on Fiji.

The human rights defenders community

1241. The Special Representative has been informed that although the term “human rights defender” is rarely used in the Pacific Islands, including by defenders themselves, there are several NGOs in each country working to promote and protect human rights in different ways. While NGOs are active in the fields of welfare or charity, doing service delivery of different kinds, many are reportedly hesitant to assume other roles, such as advocacy in relation to human rights concerns and being “watchdogs” of the governments’ policies. Fiji and Solomon Islands are exceptions, where new types of NGOs working with advocacy and demanding accountability of the State arose after the loss of democracy and the overthrow of elected governments in 1997 (Fiji) and 2000 (both countries).

Overview by country

1242. According to the information received, in Fiji there are around 12 NGOs working in the area of human rights. In the Solomon Islands there are around seven small NGOs doing human rights work. Vanuatu has around five smaller NGOs involved in the promotion and protection of human rights. Samoa has a vibrant NGO community where around eight organizations are working on human rights. Tonga has very few organizations that could be termed human rights organizations. However, the past two there have been calls from some organizations for greater reform of the legal system to protect basic rights. In Kiribati there are two organizations that could be said to make up the human rights defenders community. The Cook Islands, with its population of less than 19 000, several NGOs are involved in the promotion and protection of human rights. In Tuvalu, with its population of less than 10 000, there is only one project which employs one person, known to be working with human rights issues.

Women human rights defenders

1243. Campaigns on the rights of women and children are common to all the Pacific Islands. Reportedly, domestic violence is an issue on which human defenders work in most of the countries. In Fiji there are several organizations working on women’s rights. The National Council of Women (NCW) is Fiji’s overall women’s umbrella organization, and has lately stepped into other areas of human rights defence. The Solomon Islands Council of Women is the umbrella women’s NGO in the Solomon Islands. It is at present running a campaign to get more women into Parliament in the upcoming elections in 2006. In Samoa, women defenders have been particularly active and have on several occasions been very vocal in terms of holding the Ministry of Women accountable. In Tonga, the Catholic Women’s League runs a legal rights

project and educates people on human rights issues and international human rights conventions. In Kiribati, the Aia Maea Ainen Kiribati (AMAK) is the country's umbrella women's organization and strives to promote the realisation of women's rights on a national and international level. In the Cook Islands, the rights based Punanga Tauturu Incorporated (PTI - Cook Islands Women's Counselling Centre) develops education materials on the legal rights of women and children, advocates for the improvement of legislation and public policy with regards to women's and children's rights. In Tuvalu, the one defender about whom the Special Representative has any information is a woman who runs a legal rights training project.

Activities of defenders by country

1244. Defenders in the Pacific Islands are involved in the promotion and protection of human rights in numerous ways. In Fiji defenders work on training and education in human rights, capacity building and raising awareness of legal rights and the legal system. They monitor human rights violations on a national level, advocate for constitutional changes and law-reforms in favour of a more human rights oriented approach, publish reports and shadow-reports for committees such as the CRC and the CERD. Defenders in Fiji are also actively defending the rights of sexual minorities, people with disabilities and other vulnerable groups. In the Solomon Islands defenders conduct a range of activities including conducting legal literacy programs, campaigning for an advanced Bill of Rights for the draft constitution, working to improve the status of women, lobbying for better protection of the rights of children, giving legal aid to vulnerable groups, and campaigning for indigenous landowners' rights. In Vanuatu the range of activities carried out by defenders include legal literacy programs, working for women's rights, advocacy work for vulnerable groups and awareness-raising in the form of street theatre. In Samoa, defenders conduct legal literacy programs, campaign for law reforms in the area of domestic violence and present shadow reports for the CEDAW, amongst other activities. In Tonga, the Pacific's only kingdom, the few active organizations promote political and civil rights and democracy, with a specific focus on good governance, transparency and accountability, and carry out advocacy on economic rights such as housing and access to water. In Kiribati, defenders work on educating people on human rights and advocating for the rights of people with disabilities. In the Cook Islands, NGOs are particularly active in the areas of women in development, gender issues, youth issues and environmental protection. In Tuvalu there is a one-person run project which includes radio-programs, debates, community workshops, newsletter publishing and pamphlets in the local language, all to promote and protect human rights.

1245. The RRRT is the only regional human rights organization systematically promoting a broad range of human rights in eight Pacific Islands countries. It has eight regionally-based trainers/advocates in Suva and eight nationally-based legal rights training officers working on a range of rights issues both regionally and nationally. Another regional organization is the Pacific Concerns Resources Centre (PCRC) which serves as the secretariat for the Nuclear Free and Independent Pacific (NFIP) movement which has an affiliation of around 80 grassroots indigenous organizations from most countries in the Pacific and beyond.

Impact of the work of defenders

1246. The work done by defenders in the Pacific Islands has led to several changes in legislation. Their work has also led to positive developments towards a wider respect for human rights and the work of defenders. In Fiji, defenders have contributed to the passing of new legislation including a new democratic Constitution, have initiated gender and human rights national policies, and have contributed to the fact that Fiji now has a national human rights commission. In the Solomon Islands, the work of defenders has contributed to the establishment of a sexual assault unit at the main police station and to preventing the dumping of toxic waste. In Vanuatu, the impact of the work of defenders includes getting protection orders for women and preparing United Nations human rights reports for treaty bodies. There are strong networks and relationships between defenders across the Pacific Islands, and these continue to grow stronger.

Legal framework

1247. The Pacific Islands included in this section are to differing degrees State parties or signatories to the core international human rights instruments. Notably, no Pacific Island has ratified the International Covenant on Civil and Political Rights. This Covenant is a key instrument for the implementation of the Declaration on Human Rights Defenders as it guarantees rights such as freedom of opinion and expression, freedom of assembly and freedom of association. The Special Representative also notes that only Solomon Islands has ratified the International Covenant on Economic, Social and Cultural Rights.

1248. Most Pacific Islands countries have a Bill of Rights in their constitutions. Most of these bills of rights provide adequate guarantees for the protection of human rights and fundamental freedoms. It is reported that Tonga may be an exception and has a relatively restrictive legal framework for protection and promotion of human rights. Most national constitutions contain basic civil and political rights while some are more advanced. Fiji and Tuvalu (in addition to another PIC otherwise not included in this study; Papua New Guinea) have constitutions that contain advanced sections allowing for the application of relevant international human rights law where relevant. However, specific provisions directed at safeguarding activities carried out for the defence of human rights are, generally, not prescribed.

Freedom of expression and access to information

1249. Individuals and organizations are generally free to express views in relation to the promotion and protection of human rights. In those countries where freedom of expression in practice is limited it is reported that reprisals usually come from non-state actors rather than from the State.

Freedom of assembly and freedom of association

1250. The right to freedom of assembly is in general protected by the constitutions of the countries. In Fiji there have been reports about restrictions on the right to freedom of assembly in the form of limitations imposed on demonstrations and rallies.

1251. The right to form associations is generally respected in most Pacific Islands countries.

Measures taken at national levels for the implementation of the Declaration

1252. Of all Pacific Islands countries, only Fiji has a national human rights commission (see the section on Fiji for more on this commission). The Commission is charged with the responsibility of the protection and promotion of human rights. It is not fully independent as its finances are generally controlled by Government and its staff are civil servants, but the two non-official members of the Commission are, generally, appointed from the NGO and legal communities and have been respected rights advocates. The Special Representative notes the existence of a human rights commission in the draft Constitution of the Solomon Islands and would appreciate receiving further information from the Government on this issue. She also notes that considerations are underway in Tuvalu for setting up an extra position within the proposed office of the Ombudsman to deal with human rights. She would appreciate receiving further information on this initiative from the Government of Tuvalu.

1253. The Special Representative has been made aware of the existence of a Pacific Plan of Action, which provides a strategic opportunity to further the promotion of human rights. She would appreciate receiving further information on the contents and implementation of this Plan of Action.

1254. The Special Representative notes that the OHCHR has recently established an office in the Pacific. She also notes the need for training of local United Nations staff in the Declaration and in other human rights instruments and mechanisms.

Communications and concerns

1255. No communications have been sent by the Special Representative to any of the Pacific Island countries included in this section throughout her two mandate periods.

1256. The Special Representative is concerned about information received which indicates that there is a strong tendency in Pacific society to view human rights as being “against Pacific culture and identity”. She also notes that this is seen in connection with human rights being a perceived threat to the traditional systems, headed by chiefs, that are in existence in most parts of the Pacific, and that increasing religious fundamentalism has also contributed to view of human rights being a threat to the power of the churches rather than a positive force in society. She notes that this, in addition to lack of knowledge of human rights, has contributed to “problems and needs” not being viewed with a human rights perspective. She is also concerned by reports that many Pacific Island governments are receiving mixed messages from the global community, particularly from powerful states, that human rights might also be an obstacle to national security. The Special Representative would like to remind the governments that such perceptions could have adverse effects on the human rights community and impede its development and growth. She also recalls the emphasis that the Declaration places on the “the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms”.

1257. The Special Representative is concerned about the lack of proper legal frameworks for building robust non-governmental organizations working to promote and protect human rights. She is concerned by the general alienation and hostility defenders report from society in general. She would like to remind the governments that, according to the Declaration, “the prime

responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State”, and encourages the governments to work towards creating an enabling environment for the work of human rights defenders.

1258. The Special Representative is concerned about the structural and financial obstacles sometimes encountered by NGOs. She notes reports of NGOs facing difficulties in receiving grants without government interference, and reminds the governments about article 13 of the Declaration which states that “everyone has the right [...] to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means [...]”. She also notes that in Fiji there have been reports of defenders facing some problems with registration, and NGOs facing threats of de-registration. She is concerned that this is a result of inadequate legislation for NGOs doing advocacy work, which gives the Government great powers to de-register NGOs at its will.

1259. The Special Representative notes that in the smaller countries, like Kiribati and Tuvalu, the lines between civil society and the State are sometimes blurred, as NGOs are sometimes administered by government departments and have their offices in the government buildings. She also notes concerns that some NGOs are located within government bodies. This raises questions with regard to independence NGOs and their ability to function without Government interference or influence.

1260. The Special Representative notes the lack of national human rights commissions or institutions in all Pacific Islands countries with the exception of Fiji. Existing mechanisms such as Ombudsmen offices reportedly have poor enforcement powers and are inadequately resourced and funded.

1261. The Special Representative notes the shortcomings of the legal system for providing for the right to seek remedy, as the courts are not widely established and there is a problem of access to the courts and to justice for defenders living outside the major urban centres. In relation to this she is concerned about the fact that human rights violations are rarely brought into the court system, even when there are reports of violations that have taken place. Following from this, there seems to be a problem of impunity for human rights violators, which is a concern to the Special Representative.

1262. The Special Representative is concerned about reports that the right to freedom of expression has been violated in Tonga, on several occasions by the imprisoning of reporters and critics of the policies of the Government.

1263. The Special Representative notes that defenders in the Pacific Islands countries generally do not face immediate threats to their physical security. Nevertheless, she is concerned over general reports of abuse of power by the police, armed forces and prison wardens.

Pakistan

1264. The Special Representative acknowledges the response to her questionnaire transmitted for the preparation of this report by the Government of Pakistan. The Special Representative also appreciates the responses from the United Nations Country Team and from NGO sources.

The human rights defenders community

1265. According to reports and information received by the Special Representative the strong hold of military over governance in Pakistan allows little credence to any claims of democracy in the country. It is reported that there is little confidence in any of the institutions functioning in the name of democracy, including the Parliament and the judiciary. Despite Constitutional guarantees, human rights defenders have reported serious constraints in carrying out their activities for the promotion and protection of human rights. In the past six years Pakistan has, reportedly, seen a rise in sectarian violence, legal discrimination and mistreatment of women continues, journalists are routinely harassed and respect for the rule of law and due process has been further eroded through laws, procedures and practices adopted in the counter terrorism measures. The combined effects of these trends have had a negative impact on the general environment for defence of human rights.

1266. The Government advises that around 300 NGOs, in addition to individuals in society, are working for the protection of human rights in the country, in addition to various government agencies designated for this purpose.

1267. Human rights defenders in Pakistan are working on a range of issues, among which can be mentioned democratic rights, preservation of the rule of law, human rights norms and humanitarian law, rights of prisoners, independence of the judiciary, land rights, rights of ethnic and religious minorities, women's rights, the struggle against sectarian strife, and legislative reforms to ensure the elimination of state as well as social practices that violate human rights.

Legal framework

1268. Pakistan has acceded to some international human rights instruments, including the Convention on the Rights of the Child (it is a signatory to its two optional protocols), the Convention on the Elimination of All Forms of Discrimination against Women, and the International Convention on the Elimination of All Forms of Racial Discrimination. Pakistan's ratification of CEDAW and CRC is subject to reservations. Pakistan has yet to sign or ratify a number of conventions and protocols within the international human rights structure, including the International Covenant on Civil and Political Rights. The latter is a key instrument for the implementation of the Declaration, as it guarantees rights such as freedom of opinion and expression, freedom of assembly and freedom of association. The Constitution guarantees many of internationally recognized civil and political rights. However, is deficient in protecting some of the important rights. For instance there is no general prohibition against torture, but it is only prohibited for the purpose of extracting confessions. Several laws that discriminate on the basis of gender and religion have become a target of advocacy by human rights defenders. The courts have the power to entertain petitions for the enforcement of the fundamental rights in the Constitution. Some of the social and economic rights are stated as principles of policy and law making in the Constitution. However, these are not guaranteed and their enforcement against the state is dependent on availability of resources.

Freedom of expression and access to information

1269. According to the Constitution of Pakistan; "every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the Press, subject to any reasonable

restrictions imposed by the law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign states, public order, defence or morality, or in relation to contempt of court, commission of or incitement to an offence". With this, the paragraph on freedom of expression in the constitution of Pakistan seems to fall below international standards, in that it says that restrictions can be 'reasonable', whereas they according to international standards would have to be deemed "necessary".

1270. A Freedom of Information Act was adopted in October 2002. Human rights and civil society organizations have pointed out several shortcomings in the law and complain of the failures of implementation. Nevertheless, the enactment of the law is an important development for establishing the right to access to information in Pakistan.

Freedom of assembly and freedom of movement

1271. Article 16 of the Pakistani Constitution provides that "Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order".

1272. According to information received, in order to justify the obstruction and prevention of gatherings and assemblies, the Pakistani Government has increasingly been invoking a colonial-era law; section 144 of the Criminal Procedures Code which prohibits gatherings of four or more people without police authorization. In addition there is a "Maintenance of Public Order" ordinance from 2002, which has reportedly been used to limit freedom of assembly and expression, in that it prohibits any public speech that is "likely to cause fear or alarm to the public".

Freedom of association

1273. According to the Government, there is no bar on forming professional, civil or social organizations, including those working on the promotion and protection of human rights. Article 17 of the Constitution provides that "Every citizen shall have the right to form associations or unions subject to any reasonable restrictions, imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality". Procedures for registration of NGOs under existing laws are not complicated. However, more recently taxation rules have been introduced to deny important exemptions previously available to voluntary non-profit organizations. Under these rules NGOs need to register with the income tax authorities to retain the exemptions, and need certification of several aspects of their functioning before the status is granted.

Measures taken at national level for the implementation of the Declaration

1274. In Pakistan, a feature of the judicial system is the office of Mohtasib, which has the function of Ombudsman. This function is provided for in the constitution.

1275. The Government has informed the Special Representative that the Ministry of Law, Justice and Human Rights has recently taken an initiative to affiliate NGOs working in the field of human rights with the Ministry, in order to streamline their work and strengthen their efforts.

1276. In an address to the Third Committee of the United Nations General Assembly in November 2005, the Permanent Representative of Pakistan to the United Nations in New York reiterated the Government's support of steps to ensure legal protection to human rights defenders in situations of armed conflict and foreign occupation. The Permanent Representative at the same time stated that "in times of peace, the effectiveness of human rights defenders largely depends on their credibility. Promoting a specific political or social agenda, at the behest of financial sponsors, especially external sponsors, cannot be justified. A code of conduct for the human rights defenders is required to define their role".

1277. The Government has also informed the Special Representative that it is working on establishing the Pakistan National Commission for Human Rights, and that the bill on this is currently under consideration of the National Assembly's Standing Committee on Human Rights.

Communications and concerns

1278. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 14 communications to the Government of Pakistan. The communications concerned 21 named human rights defenders, and in two cases of family members of these defenders. In addition, communications sent included cases of seven unnamed members of a human rights NGO who were all killed, cases of six NGOs that had their offices raided and/or destroyed, in one cases houses of staff were burned, and in some cases staff-members were threatened. One case was reported of arrests and violence by the police during a peaceful demonstration. In one case a communication was sent concerning statements from the Director-General of the rangers where he stated that strict measures would be taken against "illegal and anti-state NGOs [...]". Three of the named defenders whom communications were sent on were women.

1279. In light of information received, there was a considerable worsening in the general situation of defenders in Pakistan after 11 September 2001 and the ensuing attack on Afghanistan, especially in the North-West Frontier Province.

1280. The Special Representative acknowledges the replies from the Government to seven of her communications, but regrets that no answers have been received to the remaining communications, some containing very serious allegations of defenders being killed and threatened.

1281. While the Special Representative supports the creation of independent National Human rights Institutions, she cannot dismiss concerns expressed by a number of Pakistani defenders regarding the lack of potential for an independent institution. The Special Representative is also concerned about reports that the Government increasingly has been "monitoring" the work of NGOs involved in human rights issues, and that this monitoring on occasions have led to campaigns of slander, again putting defenders at a higher risk of attacks from groups opposed to their work. She has also received disturbing accounts regarding government's attempts to undermine and counter the work of independent human rights organizations by the establishment of government sponsored NGOs, especially in the field of human rights.

1282. The Special Representative is also concerned about the attempts by the Government to increase their control over the NGO community, and thereby the defenders community, by

selectively enforcing legislation limiting the right to freedom of assembly and freedom of speech. She is also concerned about new initiatives from the Government to reinforce control over human rights defenders and NGOs in general, by introducing new laws and regulations in terms of taxation and registration of NGOs.

1283. The Special Representative is gravely concerned about reports of growing levels of impunity for non-state actors who intimidate, harass or carry out serious violations against human rights defenders. In several reported cases it was alleged that Police Authorities either took no action against the persons carrying out the violations, and in some cases the Police Authorities themselves colluded in the violations. The impunity for violations by state entities is equally high.

1284. She is concerned that limitations imposed on the freedom of expression by laws such as the Anti-Terrorism Act, the Official Secrets Act, the Security of Pakistan Act, and certain provisions of the Penal Code restrict the exercise of this freedom and has affected ability of defenders to raise human rights concerns without fear of use of these laws as retaliation by Government. Some of these reportedly are used to restrain access to information relevant to the protection of human rights. Several defenders have complained about a general policy government to restrain access of defenders to places and sites of alleged violations, for instance prisons or area of military operations. This seriously hampers the monitoring and reporting functions of defenders, and is in violation of the Declaration.

1285. As in the cases of freedom of expression and freedom of assembly, the provision on “reasonable restrictions” is in danger of being used, and is reportedly being used, to restrain freedom of association. In addition to this, section 188 of the Code of Criminal Procedure is reportedly being used to limit freedom of assembly, as it allows prosecution on the basis of “public disturbance”. In August 2001, amendments to the Anti-Terrorism Act led to law enforcement agencies being able to take legal action against what is termed “anti-government activities” and includes meetings, gatherings and strikes.

1286. Serious concern is expressed about the information received concerning defenders who have been killed because of their work to promote and protect human rights. Concern is also expressed with reports that the Police Authorities have on occasions used violence against defenders participating in peaceful demonstrations, and have detained or arrested participants at such events.

1287. Finally, the Special Representative recalls that she has repeatedly requested an invitation to go on official mission to Pakistan. She regrets that the Government has not given her a positive response as of yet.

Palestine (Occupied Palestinian Territory - OPT)

1288. The Special Representative acknowledges the responses received from non-governmental sources and United Nations partners in the Occupied Palestinian Territory (OPT) to the questionnaire transmitted for the preparation of this report. She regrets that she has not received a response to the questionnaire from the Palestinian Authority (PA) at the time of the finalization of the report. She encourages the PA to transmit this information so that the below profile can be updated in the future.

1289. The Special Representative visited Israel and the OPT from 5 to 11 October 2005 and reported on this fact-finding mission to the Commission on Human Rights in the document (E/CN.4/2005/095/Add.3).

The human rights defenders community

1290. The context that human rights defenders work within in the OPT is one of military occupation and in some areas, a still nascent Palestinian Authority (PA).

1291. According to NGO and United Nations sources, the human rights defenders community in the OPT, if one uses a fairly narrow definition of what constitutes a human rights organization, reportedly counts around 30 NGOs in the West Bank and around six in the Gaza Strip, in addition to some Palestinian organizations working with human rights issues in East Jerusalem. The Palestinian NGO community is large and vibrant, as shown by the fact that the Palestinian NGO Network is comprised of nearly 100 NGOs working in different developmental fields and many of them have components of promotion and protection of human rights within their activities. According to United Nations sources, the number of Palestinians employed by the NGO sector exceeds 25,000, and it is estimated that at least 300 of these work directly with human rights issues, if one applies a rather narrow definition of what constitutes human rights work. In addition to these there are hundreds of Palestinians who are human rights defenders without being employed by or affiliated with an NGO, but rather participate in ad hoc campaigns, or social movements with a human rights focus. Over the past five years there has reportedly been a trend of an increase in defenders who participate in this kind of activity, especially on the issues of property-rights, right to housing, right to freedom of movement etc, in relation to the building of “the separation wall” in the West Bank and on the “green line”.

Legal framework

1292. The PA is not in a position where it is able to ratify international treaties. Palestine has permanent observer status in the United Nations.

Freedom of expression and access to information

1293. Article 2 of law No. 9 of 1995 guarantees the freedom of media and of publication, as well as the freedom of expression for individuals, verbally, in writing or in visual expression, and whether through media or personal expression. Article 27 of the Basic Law of 2003 gives everyone the right to establish media-outlets. Article 19 of the Basic Law of 2003 provides for the freedom of expression and stresses that no one should be negatively affected for expressing his or her opinion.

1294. Reportedly, before the start of the current Intifada, the PA applied a broad definition of the paragraph included in provision ii A 3 of the Wye River Memorandum of 1998 on “incitement to violence and terror”, and reportedly arrested several people in addition to closing down several institutions, on the basis of statements made by them.

1295. With regards to freedom of information, the PA reportedly guarantees transparency in theory, except for in cases where a person is kept in so-called administrative detention.

Freedom of assembly and freedom of movement

1296. Article 26 of the Basic Law of 2003, guarantees the right to all Palestinians to hold public meetings, celebrations and gatherings, within the limit of the law. Article 2 of law No. 12 of 1998 guarantees the right of all residents to hold public meetings, conferences and demonstrations.

Freedom of Association

1297. Palestinian organizations in the West Bank were initially registered under Jordanian law and organizations in Gaza under Egyptian law. After 1967, organizations in the OPT were registered under Israeli law, or under Israeli military orders. According to information received, some organizations, prior to the establishment of the PA, were also registered with the Israeli Ministry of Interior under Ottoman law or under the Ministry of Justice as non-profit companies, and later with the Registrar of Non-Profit Organizations also at the Ministry of Interior.

1298. When the PA was established, NGOs operating in areas under Palestinian authority were supposed to become registered by the PA in accordance with a new NGO law passed in 2000. The PA at this time wanted all NGOs to be considered dissolved and having to re-register. This reportedly lead to extra work and effort having to be put into this by the NGOs, but it is not known that any NGOs were forced to close down because of this new procedure.

Measures taken at national level for the implementation of the Declaration

1299. The Palestinian Independent Commission for Citizens' Rights (PICCR) was established on 30 September 1993, upon a Presidential Decree issued by the late President Yasser Arafat. Article 31 of the Basic Law of 1997 also reiterated the commitment for an independent Commission on Human Rights to be established. PICCR is accredited with reserve by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Communications and concerns

1300. From the establishment of her mandate to 1 December 2005, the Special Representative has sent one communication to the Palestinian Authority. The Special Representative regrets that no reply has been received from the PA to her communication.

1301. For further information on communications sent to Israel and statistics concerning alleged violations against defenders in the OPT by Israeli authorities, the Special Representative would like to refer to the section on Israel. The Special Representative would like to point out that all communications sent to the Government of Israel during the six years concerned Palestinian defenders.

1302. Freedom of assembly is reported to be generally granted automatically, and has allegedly not been an issue for concern in the areas under the legislation of the PA. The Special Representative however, is concerned about reports of occasions where Palestinian security forces have allegedly fired shots at demonstrators.

1303. Freedom of expression is reported to be generally upheld, and organizations and defenders can express views and findings through press conferences, in publications, on websites, and in the media. Nevertheless the Special Representative is concerned by reports of journalists and media-workers having been beaten, threatened or abducted by armed groups.

1304. The Special Representative is concerned by reports that human rights defenders who have exposed corruption, abuses of power, or conditions or treatment of detainees not consistent with international laws and norms by the Palestinian Authority security apparatus have reportedly been threatened, intimidated or have suffered serious harm.

1305. The Special Representative is aware of human rights defenders who have been refused access to places of detention under the jurisdiction of the PA. The Special Representative issued a communication to the PA concerning a statement by a police commander to a defender, where the police commander justified the beating of detainees, and later threatened to detain the defender, in addition to banning the NGO that the defender represented, from visiting prisons, detentions centres and police locations.

1306. The Special Representative is particularly concerned about the culture of impunity that has affected the safety of human rights defenders, especially women human rights defenders. The Special Representative refers to the report of the Special Rapporteur on violence against women, its causes and consequences, that highlights the issues pertaining to women's legal and social rights and the incidence of violence against women in the Occupied Palestinian Territory. The report states that "women have advocated penal code reform and equal rights in the [Palestinian] constitution, and have succeeded to a certain extent. However, since the second *intifada*, there has been a noticeable regression in terms of women's rights and fundamental freedoms" (E/CN.4/2005/72/Add.4).

1307. The Special Representative is concerned about the reported increased lawlessness in the OPT, and in particular she is concerned about the abductions of United Nations personnel and other international relief-workers/human rights defenders both in the West Bank and in the Gaza Strip. Fear of attacks and abductions by Palestinian armed groups is making it more challenging for international agencies to work in these areas, and is impeding the relief-effort and the work in the defence of human rights.

Panama

1308. La Representante especial agradece al Gobierno de Panamá la información proporcionada en respuesta al cuestionario transmitido para la preparación del presente informe.

La comunidad de defensores de los derechos humanos en Panamá

1309. Según se ha informado el Gobierno, existen alrededor de 125 organizaciones no gubernamentales que tratan temas relacionados con los derechos humanos como los derechos de niños, jóvenes, mujeres, discapacidades, adultos mayores, privados de libertad, indígenas y personas con VIH/SIDA.

1310. La Representante Especial lamenta que no haber podido recoger suficiente información para llevar a cabo una evaluación en profundidad de la comunidad de defensores en Panamá.

Marco jurídico

1311. Panamá es parte de seis de los siete tratados internacionales de derechos humanos principales, entre ellos el Pacto Internacional de Derechos Civiles y Políticos. Todavía no ha ratificado el Protocolo Facultativo de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradante ni la Convención internacional sobre la protección de los derechos de todos los trabajadores migratorios y de sus familiares. A nivel regional, Panamá es parte de la Convención Americana sobre Derechos Humanos.

1312. La Representante Especial lamenta que no haber podido recoger suficiente información para llevar a cabo una evaluación en profundidad si el marco jurídico en Panamá propicia las actividades de los defensores de derechos humanos.

1313. Según se ha informado el Gobierno las reformas constitucionales efectuadas en 2004 garantizan el derecho de toda persona a solicitar información pública o de interés colectivo que repose a cargo de servidores públicos o de personas privadas que presten servicios públicos.

Libertad de Asociación

1314. El Decreto Ejecutivo No. 160 del 2 de junio de 2000 ha sido llevado a la atención de la Representante Especial. Su artículo 3 exigiría suministro de información de parte de las organizaciones de derechos humanos acerca de sus actividades, fuentes de financiamiento, miembros y patrimonio. Las sociedades anónimas no estarían sujetas a estos requerimientos. Además, según la información recibida, en el marco de la legislación antiterrorista, el artículo 3 de la Ley no. 50 del 2 de julio de 2003 que las asociaciones sin fines de lucro tienen la obligación de llevar control de los fondos que reciban, generen o transfieran. Para ello deben llevar un registro detallado de las operaciones o transacciones financieras o de las donaciones que justifiquen su origen o naturaleza.

Libertad de Expresión

1315. Por lo que respecta al derecho a la libertad de expresión, la Representante Especial ha sido informada de que el delito de calumnia se ha aplicado en contra de varios periodistas.

1316. El Gobierno informó que a raíz de las reformas constitucionales en 2004 se derogaron las Leyes que restringían la libertad de expresión en Panamá, llamadas “Leyes Mordaza”.

1317. En relación al derecho de reunión y manifestación, la Representante Especial ha sido informada de que no se requiere un permiso para manifestarse.

Medidas tomadas a nivel nacional para asegurar la implementación de la Declaración

1318. Según se ha informado el Gobierno la Defensoría del Pueblo fue creada en 1997 y su principal misión consiste en velar por la protección de los derechos y deberes individuales y colectivos establecidos en la Constitución y los convenios internacionales de Derechos Humanos suscritos por Panamá. Esta función la realiza mediante el control de los hechos, actos u omisiones de los servidores públicos, y de quienes presten servicios públicos.

1319. El Gobierno informo que durante la gestión del actual Defensor se han creado cinco direcciones especiales: Asuntos Ambientales, Relaciones Internacionales, Protección de los Derechos de la Mujer, Acciones y Recursos Judiciales, Orientación al Ciudadano y Protección de los Derechos Humanos.

1320. Según se ha informado el Gobierno durante el mes de agosto de 2005, la Defensoría del Pueblo propuso a las organizaciones de la sociedad civil un proyecto de Monitoreo Social de Políticas Públicas que tiene el objeto de seguimiento de los planes de Gobierno enfocados en los sectores vulnerables del país.

Motivos de preocupación y Comunicaciones transmitidas por la Representante Especial

1321. Desde el inicio de su mandato y hasta el 1 de diciembre de 2005, la Representante Especial ha transmitido una comunicación al Gobierno relativas al supuesto allanamiento de las oficinas de una ONG de derechos humanos en 2002. La Representante Especial agradece al Gobierno su respuesta a dicha comunicación.

1322. La Representante Especial lamenta no haber podido recoger suficiente información para llevar a cabo una evaluación en profundidad de los motivos de preocupación de la comunidad de defensores en Panamá.

Paraguay

1323. La Representante Especial quisiera expresar su agradecimiento a las ONG que le han proporcionado información en respuesta al cuestionario distribuido para la preparación del presente informe. Lamenta que en el momento de finalizar este informe el Gobierno no haya respondido a dicho cuestionario. La Representante Especial insta al Gobierno que transmita la información relativa para que este informe pueda ser actualizada.

La comunidad de defensores de los derechos humanos

1324. De acuerdo con la información recibida, la comunidad de defensores en Paraguay trabaja para la promoción y protección de los derechos humanos en general, como de organizaciones especializadas en ámbitos (derecho a la salud, la vivienda, la alimentación, derechos laborales, medio ambiente, paz, etc.) o grupos (derechos de las mujeres, de los niños, de los pueblos indígenas, y otros grupos en situación de vulnerabilidad) específicos.

Marco jurídico

1325. Paraguay es parte de los principales instrumentos internacionales de derechos humanos, entre ellos el Pacto Internacional de Derechos Civiles y Políticos. Paraguay ha firmado pero todavía no ratificado la Convención Internacional sobre la protección de los derechos de todos los trabajadores migrantes y sus familiares. Paraguay también es parte de la Convención Americana sobre Derechos Humanos. De acuerdo con los artículos 137 y 141 de la Constitución Nacional, los tratados internacionales validamente celebrados, aprobados por la Ley del Congreso y cuyos instrumentos de ratificación fueran canjeados o depositados, forman parte del ordenamiento legal interno y se ubican en segundo lugar en el orden de prelación, después de la Constitución y por encima de las leyes nacionales.

Libertad de expresión

1326. Los artículos 26 a 29 de la Constitución garantizan y regulan los derechos a la libertad de expresión y de prensa y a informarse y ejercer el periodismo. El Código Penal establece algunas restricciones a la libertad de prensa y difusión al disponer, en su artículo 143 que quien, ante una multitud o mediante publicación expusiera la intimidad de otro, entendiéndose como tal la esfera personal íntima de su vida y especialmente su vida familiar o sexual o su estado de salud, será castigado con pena de multa. El mismo artículo en su segundo párrafo establece “que cuando por sus formas o contenido la declaración no exceda los límites de una crítica racional, ella quedará exenta de pena”. Por último el tercer párrafo, de esta norma dice que cuando la declaración sopesando los intereses involucrados y el deber de comprobación, que según las circunstancias incumba al autor, según medio adecuado para la persecución de legítimos intereses públicos o privados quedará exenta de pena. Asimismo, el artículo 150 de este Código establece que “El que en contra de la verdad y a sabiendas, afirmara o divulgara a un tercero o ante éste un hecho referido a otro, capaz de lesionar su honor será castigado con multa. Cuando el hecho se realizara ante una multitud o mediante la difusión de publicaciones o repetidamente durante un tiempo prolongado, la pena podrá ser aumentada a pena privativa de libertad de hasta dos años o con multa”. Según se ha informado el Gobierno estas restricciones simplemente cumplen la necesaria función de reglamentar lo establecido en la misma Constitución Nacional.

Libertad de reunión

1327. El artículo 32 de la Constitución Nacional establece que “las personas tienen derecho a reunirse y a manifestarse pacíficamente, sin armas y con fines lícitos, sin necesidad de permiso, así como el derecho a no ser obligadas a participar de tales actos. La ley sólo podrá reglamentar su ejercicio en lugares de tránsito público, en horarios determinados, preservando derechos de terceros y el orden público establecido en la ley”.

1328. La Ley N° 1066/97 que reglamenta este derecho ha sido, según ha sido informada la Representante Especial, objeto de crítica por parte de organizaciones de derechos humanos por imponer restricciones demasiado estrictas en los tiempos y los lugares en que las personas pueden manifestarse y por conceder a la Policía la potestad de oponerse a que se realicen reuniones. Se habrían presentado varios proyectos de derogación de la referida ley. Según se ha informado el Gobierno, esta ley tiene como fin proteger el orden público, personas y bienes de terceros y es de importancia señalar que los responsables de las reuniones o manifestaciones colaboren con las autoridades locales, evitando ofensas, desordenes y actos que puedan deteriorar el carácter pacífico de la reunión o manifestación.

Libertad de asociación

1329. El derecho a la libertad de asociación está garantizado por el artículo 42 de la Constitución, el cual establece que “Toda persona es libre de asociarse y agremiarse con fines lícitos, así como nadie está obligado a pertenecer a determinada asociación. Están prohibidas las asociaciones secretas y las de carácter paramilitar”. En virtud del artículo 96 de la Constitución, se garantiza a todos los trabajadores públicos y privados a organizarse en sindicatos sin

necesidad de autorización previa. Para el reconocimiento de un sindicato bastará la inscripción del mismo en el órgano administrativo correspondiente. En la elección de las autoridades y en el funcionamiento de los sindicatos se observarán las prácticas democráticas establecidas en la ley, la cual garantizará también la estabilidad del dirigente sindical. El Código Laboral también contiene disposiciones que regulan los derechos sindicales.

Medidas tomadas a nivel nacional para la implementación de la Declaración

1330. La Representante Especial ha recabado información sobre medidas tomadas por el gobierno para promover y garantizar los derechos humanos. Entre las medidas tomadas, destacan el establecimiento de la Defensoría del Pueblo en 1995 y la designación de un Defensor del Pueblo y Defensor del Pueblo Adjunto en 2001; la creación una Unidad de Derechos Humanos en la Corte Suprema de Justicia; la creación por parte de la Fiscalía General del Estado de una procuraduría y unidades especializadas con la función específica de atender todo lo relativo a denuncias de violaciones de los derechos humanos; el establecimiento de la Dirección General de Derechos Humanos del Ministerio de Justicia y Trabajo; de la Dirección de Derechos Humanos e Internacional Humanitario (DIH) del Ministerio de Defensa Nacional funciona; la Dirección de Seguridad y Protección Ciudadana del Ministerio del Interior; la Dirección de Enlace para temas de Derechos Humanos y DIH de las Fuerzas Armadas; y la Dirección de Derechos Humanos del Ministerio de Relaciones Exteriores que coordina el Grupo Interinstitucional de Derechos Humanos del Estado. En el ámbito del Poder Legislativo funcionan las Comisiones de Derechos Humanos, tanto en la Cámara de Senadores como en la Cámara de Diputados.

1331. La Representante Especial también ha sido informada de la creación, en 2003, de la Comisión de la Verdad y la Justicia, para examinar las violaciones de derechos humanos cometidas entre 1954 y 2004.

Motivos de preocupación y Comunicaciones enviadas por la Representante Especial

1332. Desde el inicio de su mandato y hasta el 1 de diciembre de 2005, la Representante Especial ha transmitido dos comunicaciones al Gobierno. La primera es relativa a una defensora de los derechos de las víctimas del Servicio Militar Obligatorio que habría sido objeto de intimidaciones y cuyo hijo habría sido amenazado de muerte. La segunda comunicación se refiere a alegaciones según las cuales un líder comunitario y dos monjas habrían recibido amenazas de muerte. La Representante Especial agradece al Gobierno su respuesta a ambas comunicaciones.

1333. La Representante Especial ha recibido con preocupación información según la cual defensores de los derechos humanos habrían sido objeto de campañas de denigración. Ha recibido con aún más preocupación las alegaciones de intimidaciones y amenazas de muerte contra defensores de los derechos humanos. También ha sido llevada a su atención información inquietante sobre la muerte de líderes de comunidades campesinas durante manifestaciones o enfrentamientos con las fuerzas del orden. En el contexto de conflictos de tierra, la Representante Especial ha sido informada de alegaciones de violaciones contra grupos indígenas por personas trabajando por empresas privadas.

1334. La Representante Especial quisiera referirse a las preocupaciones expresadas por el Comité de Derechos Humanos en octubre de 2005, tras examinar el segundo informe periódico de Paraguay. En efecto, el Comité acogió con satisfacción la mejora de la situación de la libertad de expresión en el Estado Parte, pero le preocupó la existencia de procesos de difamación contra periodistas que podrían ser motivados políticamente. El Comité también observó con inquietud que la ley 1066/1997 limita en la práctica el derecho de manifestación pacífica al establecer condiciones irrazonables de tiempo, lugar y número de manifestantes y al requerir previa autorización policial. (CCPR/C/PRY/CO/2, para. 19 y 20 – versión no editada).

Peru

1335. La Representante Especial lamenta que en el momento de finalizar este informe, el Gobierno no le haya remitido información en respuesta al cuestionario distribuido para la preparación del presente informe. La Representante Especial insta al Gobierno que transmita la información relativa para que este informe pueda ser actualizado.

1336. La Representante Especial quisiera expresar su agradecimiento a la oficina del PNUD en Perú así como a varias ONG por haberle transmitido información en respuesta al cuestionario distribuido para la preparación de este informe.

La comunidad de defensores de los derechos humanos

1337. De acuerdo con la información recibida, la comunidad de defensores en Perú trabaja para la promoción y protección de los derechos humanos en general, como de organizaciones especializadas en ámbitos (derecho a la salud, la vivienda, la alimentación, derechos laborales, medio ambiente, paz, etc.) o grupos (derechos de las mujeres, de los niños, de los pueblos indígenas, y otros grupos en situación de vulnerabilidad) específicos. Por consecuencia del conflicto armado entre 1980 y 2000, los defensores también trabajan para los derechos de las personas cuyas derechos fueron violadas durante este periodo.

1338. La Representante Especial lamenta que no haber podido recoger suficiente información para llevar a cabo una evaluación en profundidad de la comunidad de defensores en Perú.

Marco jurídico

1339. Perú es parte de los principales instrumentos internacionales de derechos humanos, entre ellos el Pacto Internacional de Derechos Civiles y Políticos. Pero todavía no ha ratificado el Segundo Protocolo Facultativo al Pacto Internacional de Derechos Civiles y Políticos y el Protocolo Facultativo de la Convención contra la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes. En el contexto regional, Perú es parte de la Convención Americana sobre Derechos Humanos.

1340. La Representante Especial lamenta no haber recibido información detallada sobre la legislación nacional relativa a la libertad de opinión y expresión, de asociación y de reunión y manifestación. Sin esta información, la Representante Especial lamenta que no pueda concluir si el marco jurídico del Perú es favorable a las actividades de dos defensores de derechos humanos.

Medidas tomadas a nivel nacional para la implementación de la Declaración

1341. La Representante Especial lamenta no haber recibido información sobre las políticas y los programas llevados a cabo por las autoridades peruanas competentes para asegurar la implementación efectiva de la Declaración.

Motivos de Preocupación y Comunicaciones Enviadas por la Representante Especial

1342. La Representante ha sido informada de intimidaciones y amenazas contra aquellas personas que quieren poner fin a la impunidad respecto a las violaciones de los derechos humanos cometidas en el pasado, en particular aquellas dispuestas a colaborar con la Comisión de la Verdad y Reconciliación. Muchas de las 15 comunicaciones que la Representante Especial ha enviado desde el inicio de su mandato y hasta el 1 de diciembre de 2005 se han basado en alegaciones de amenazas e intimidaciones contra personas que han brindado su testimonio o han colaborado con la Comisión de la Verdad y Reconciliación del Perú, incluso el ex presidente de dicha Comisión. Miembros del cuerpo judicial también habrían sido intimidados y amenazados. Además, dos miembros de una ONG habrían sido amenazados tras haber presentado ante la Comisión Interamericana de Derechos Humanos un informe sobre la situación de los defensores de los derechos humanos en Perú. La Representante Especial agradece al Gobierno su respuesta a la mayor parte de sus comunicaciones.

1343. Los altos índices de pobreza en el país crean condiciones difíciles para la realización de los derechos económicos, sociales y culturales. Líderes de comunidades campesinas y representantes de movimientos sociales habrían enfrentado amenazas y hostigamientos en su trabajo en defensa de derechos económicos y sociales. La Representante Especial ha intervenido tras recibir información sobre el asesinato de un líder campesino y también tras recibir información sobre el supuesto uso excesivo de fuerza en la represión de una manifestación de jóvenes.

1344. Si bien actualmente el trabajo de los defensores no se encuentra obstaculizado en la medida de la época de la violencia política, se han registrado campanas de desprestigio contra defensores de los derechos humanos. Según la información recibida, campañas de desprestigio en el marco de las cuales se tilda a los defensores de los derechos humanos de defensores de terroristas y criminales, habrían contribuido en gran medida a crear este clima de hostilidad. La Representante Especial ha sido informada, no sin preocupación, de los intentos de desprestigiar la labor de los defensores de los derechos humanos en Perú.

Philippines

1345. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1346. According to information received through the six years, defenders in the Philippines are active in the fields of urban poverty, farmers' rights and peasants' rights, in trade unions, in

student and teacher organizations, rights of disabled people, rights of children and youths, legal assistance and campaigning for the promotion of environmental rights. Many priests, church leaders and lawyers are also involved in promoting and protecting human rights.

Legal framework

1347. The Philippines has ratified nearly all the core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). It is not yet a State party to the Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment or the Second Optional Protocol to ICCPR.

1348. The Constitution guarantees the right to freedom of speech, of the press and freedom of assembly and association. However, the freedom of speech is subjected to criminal laws punishing libel and slander and the Public Assembly Act of 1995 requires a mayor's permit prior to the holding of a public assembly as long as the assembly is not held in "freedom parks", inside a private property, or on campuses of state universities. The Government has also informed the Special Representative that the sole justification for a limitation to the rights of free speech and assembly would be the danger of a "serious evil to public safety, public morals, public health, or any other legitimate public interest".

Measures taken at national level for the implementation of the Declaration

1349. The Special Representative regrets that she has not received information on the policies and programmes adopted by relevant authorities in the Philippines to ensure an effective implementation of the Declaration.

Communications and concerns

1350. From the establishment of her mandate to 1 December 2005, the Special Representative has sent eight communications concerning 15 defenders to the government. The Special Representative acknowledges that the Government has replied to three of these communications but regrets that it has not yet replied to her other communications.

1351. The Special Representative considers the environment in which many human rights defenders work in the Philippines to be a particularly dangerous one, especially for defenders working towards protecting the rights of the poor, the landless and workers rights or who are critical of the military.

1352. The Special Representative would like to reiterate her serious concern over reports of defenders being killed in the Philippines. Ten defenders who were the subjects of her communications to the Government were reportedly killed in connection with their work to promote and protect human rights. Of the remaining five defenders, two reportedly survived alleged assassination attempts (in addition to the wife of one of the defenders) and the remaining three allegedly received serious threats to their lives.

Poland

The human rights defenders community

1353. The Special Representative regrets that she has not sufficient information at her disposal to offer a description of the human rights defenders community in Poland.

Legal framework

1354. Poland is a State party to most of the core international human rights instruments. It has not yet signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and it has signed, but not ratified, the Second Optional Protocol to the International Covenant on Civil and Political Rights.

1355. In relation to the legal framework in Poland, the Special Representative refers to paragraph 4 of the European Union Profile.

Communications and concerns

1356. From the establishment of her mandate until 1 December 2005, the Special Representative has sent one communication to the Government of Poland. The communication concerned an incident where a mayor banned an Equality March, which had been organized by a number of lesbian, gay, bisexual and transgender (LGBT) and women's rights organizations. The ban was reportedly issued on grounds of security concerns. Reportedly, despite the ban, a few hundred protestors gathered on 20 November 2005 for a demonstration and were thereafter harassed and intimidated by members of a right wing group known as the All Polish Youth. It was also reported that the police roughly handled several individuals and arrested and interrogated over 65 persons, who were later released. The Special Representative thanks the Government for its response to this communication.

1357. The Special Representative regrets that she has not received sufficient information to be able to make an assessment of the legal framework or the situation for human rights defenders in Poland. She would appreciate receiving information from the Government and from civil society on the situation for human rights defenders and the steps taken for the implementation of the Declaration in the country.

Portugal

The human rights defenders community

1358. The Special Representative regrets that she has not sufficient information at her disposal to offer a description of the human rights defenders community in Portugal.

Legal framework in Portugal

1359. Portugal is a State party to most of the core international human rights instruments. It has not yet signed the Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

1360. Article 20 of the Portuguese Constitution meets, to a very important extent, the requirements of Article 9 of the Declaration on Human Rights Defenders, as it provides that: “1. Everyone is guaranteed access to law and to the courts in order to defend his or her rights and legally protected interests; justice shall not be denied to a person for lack of financial resources. 2. Everyone has the right, in accordance with the law, to legal advice and information, as well as to legal aid, and the right to be assisted by a lawyer before any authority. 3. The law shall provide for the definition and proper safeguarding of the secrecy of the investigation in the criminal proceedings. 4. Everyone shall have the right to have a cause which affects him determined in a fair trial within a reasonable time. 5. In order to defend personal rights, liberties and guarantees, the law shall provide citizens with legal procedures that are characterized by swiftness and priority, so that there is effective and timely protection against threats or violations of these rights”.

1361. According to the Government, all Constitutional provisions related to rights, freedoms and guarantees, shall be directly applicable to, and binding on, both public and private bodies (art. 18 (1)), constitute a safety net in case internal law fails to provide for a specific procedure for effectively remedying and redressing any violation of a particular right or of the rights of a particular group. Furthermore, Article 202 goes along this idea, while stating that in administering justice, the courts are under a duty to safeguard the rights and interests of citizens that are legally protected [...]. In accordance with article 18 (2), “Rights, freedoms and guarantees may be restricted by law in only those cases expressly provided for in this Constitution; restrictions shall be limited to the extent necessary to safeguard other rights or interests protected by this Constitution.”

1362. Concerning the right to unhindered access to international bodies, the Government informed the Special Representative that any restriction to this right shall be entirely prohibited, under the provisions regarding the freedom of expression and movement. Besides, Portugal has recognized the competence and vital role played by international instances, both of a judicial and non-judicial nature, and has provided all persons within the country’s jurisdiction with the right to gain access to such international bodies, by acceding to or ratifying important instruments which institute systems of individual complaints.

Freedom of association

1363. Article 46 of the Portuguese Constitution guarantees the right to freedom of association, whose only restriction is set out in paragraph 4 of this article: “Armed, quasi-military, militarized or paramilitary associations, other than those of the State or the Armed Forces, and racist organizations or those that adopt fascist ideology are not permitted”. This exception shall not apply to associations of human rights defenders and, according to the Government, is aimed at reinforcing the idea that associations whose purposes might threaten the full enjoyment of human rights are contrary to the principles of the Portuguese legal system, and therefore prohibited.

1364. In general, the legal framework of Portugal allows for unhindered freedom of association. The Special Representative particularly welcomes the fact that associations in Portugal are subject to a very liberal declaratory regime which allows for organizations to gain legal status with the mere notification of their existence. The establishment of an association in Portugal is not subject to any prior administrative control and the law requires only that the object pursued

be clearly defined, collective, lawful and permanent. All persons, either Portuguese or foreign, natural or legal, whether coming under private or public law, as long as they have full capacity, may form an association. This idea is reportedly reinforced by the provisions of Article 1 of Decree-Law 584/74, of 7 November, which rules the right of association. All associations must register with the National Register of Legal Persons, although registration is not a prerequisite for legal personality. The association's statutes shall be published in the official gazette. The National Register of Legal Persons shall verify whether undertakings and names comply with the principles of exclusiveness, veracity and unity. The dissolution of NGOs (like any other association) may be voluntary, by operation of law (e.g. on expiry of a time limit) or ordered by the court (e.g. where the objects are unattainable or have been attained or the association is declared insolvent). Therefore, dissolution is never ordered by an administrative authority nor can it be based upon political grounds. Furthermore, Article 13 (1) of the Decree-Law 594/74, of 7 November prescribes that Portuguese NGOs shall be free to join international associations or organizations, providing that these do not pursue aims that are contrary to the Law.

1365. There is specific legislation governing youth associations and Act 124/99, of 20 August, ensures youngsters the free exercise of the right of association and simplifies the procedure for setting up a youth association.

Freedom of expression

1366. Article 37 of the Portuguese Constitution guarantees the right to freedom of expression. It provides that "1. Everyone shall possess the right to freely express and publicize his thoughts in words, images or by any other means, as well as the right to inform others, inform himself and be informed without hindrance or discrimination. 2. Exercise of the said rights shall not be hindered or limited by any type or form of censorship. 3. Infractions committed in the exercise of the said rights shall be subject to the general principles of the criminal law or the law governing administrative offences, and shall be brought before the courts of law or an independent administrative body respectively, as laid down by law. 4. Every person and body corporate shall be equally and effectively guaranteed the right of reply and to make corrections, as well as the right to compensation for damages suffered."

1367. Articles 38 and 39 of the Constitution guarantee and regulate the freedom of the press and the media, and article 40 codifies the right to broadcasting time, of reply and of political response. In addition, article 41 of the Constitution guarantees freedom of conscience, religion and worship. Furthermore, Articles 42 (on freedom of cultural originality) and 43 (on freedom to learn and teach) contain provisions that guarantee, within the Portuguese legal system, the rights foreseen in Article 6 of the Declaration on Human Rights Defenders.

Freedom of assembly

1368. The right to assemble and demonstrate is expressly guaranteed under Article 45 of the Portuguese Constitution, which states: "(1) Citizens have the right to assemble peacefully and unarmed, even in public places, without prior authorization". The Government has assured the

Special Representative that this excludes any possibility of restricting the freedom to meet and assemble on the part of human rights defenders. Article 37 of the Constitution guarantees freedom of expression and information. Article 38 guarantees the freedom of the press and the mass media. According to the Government, these rights and liberties are firmly established in the Portuguese legal tradition and there are mechanisms to ensure their implementation.

1369. The freedom to participate in the government of the country is expressly provided for under Article 48 (Participation in public life), under Chapter II (Rights, freedoms and guarantees of political participation) of Title II (Personal Rights, Freedoms and Guarantees) of the Constitution. Article 48 prescribes that: “(1) All citizens have the right to take part in political life and in the direction of the public affairs of the country, either directly or through freely elected representatives. (2) Every citizen has the right to objective information about the activities of the State and other public bodies and to be informed by the Government and other authorities about the management of public affairs.”

1370. In relation to the legal framework in Portugal, the Special Representative refers to paragraph 4 of the European Union Profile

Measures taken at national level for the implementation of the Declaration

1371. The Special Representative welcomes the information that in 2001 the Bureau for Documentation and Comparative Law within the Prosecutor General’s Office translated the Declaration on Human Rights Defenders into Portuguese and made it available on-line. According to the information received, this is part of a more global campaign aimed at promoting human rights education, inter alia within the framework of the United Nations Decade for Human Rights Education.

1372. Through the Office for Documentation and Comparative Law’s website, the public can have free on-line access to a wide range of human rights conventions ratified by Portugal, and texts on a number of human rights topics. A specific section is devoted to the United Nations treaty monitoring bodies and contains a detailed explanation of the functioning of each Committee as well as links to the most relevant documents issued by such bodies, including reports submitted by Portugal to each of them, and information on how to submit a communication (including a model communication). The website also contains information on how to use other procedures. Another section is devoted to the Council of Europe and its various human rights mechanisms. The Office for Documentation and Comparative Law is also publishing the complete United Nations human rights Fact Sheets Series and Professional Training Series, as well as the Decade Series, as well as a handbook on international humanitarian law. All publications have and will be made available on the Internet. Other actions undertaken within the Decade include seminars, congresses and training courses, as well as the granting of a journalism prize. This is a positive step towards fulfilling article 16 of the Declaration which states that “individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions related to all human rights and fundamental freedoms [...]”.

Communications and concerns

1373. No communications have been sent to the Government of Portugal during the two mandate periods.

Qatar

1374. The Special Representative acknowledges the response from the Government of Qatar to the questionnaire transmitted for the preparation of this report.

The human rights defenders community

1375. Qatar became independent from Britain in 1971, after having been a British protectorate. In 1995 Crown Prince Hamad Bin Khalifa become emir and has since brought in several reforms. In 1999 the first elections were held in Qatar, for a 29-member municipal council, and women were allowed to vote and stand for office for the first time.

1376. According to the Government, the human rights defenders community in the country is fairly new, but there are numerous organizations working on the promotion and protection of human rights in Qatar.

Legal framework

1377. Although Qatar has acceded to some international human rights instruments, such as the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Ethnic and Racial Discrimination, it is not yet a State party to most of the international human rights instruments. Most importantly, Qatar has not yet acceded to the International Covenant on Economic, Social and Cultural Rights or the International Covenant on Civil and Political Rights. The latter is a key instrument for the implementation of the Declaration on Human Rights Defenders, since it guarantees the rights of freedom of opinion and expression, freedom of assembly and freedom of association.

1378. In 2003, the Government adopted a permanent written Constitution after a referendum was held in April the same year. According to the Government, the Constitution entered into effect in June 2005. The Special Representative is informed that the new Constitution contains a number of human rights clauses, such as guarantees for the rights of freedom of opinion and expression, freedom of assembly and freedom of association, in addition to guaranteeing the independence of the judiciary. The Government has informed the Special Representative that constitutional protection of human rights and fundamental freedoms has been strengthened and consolidated by the adoption of a number of laws. The Constitution does not make any specific mention of women's rights or gender equality.

Measures taken at national level for the implementation of the Declaration

1379. In 2003 the National Human Rights Committee (NHRC) was set up in Qatar, comprised of 13 members, whereof eight are officials from Government ministries and five are prominent

Qatari nationals. The Law stipulates the tasks of the NHRC as being to act as an advisory body to the government on the promotion of human rights, and to respond to individual complaints concerning human rights.

1380. The Government has informed the Special Representative that various state bodies are involved in the promotion and protection of human rights in Qatar, including the Bureau of Human Rights Affairs at the Ministry of Foreign Affairs and the Department of Human Rights at the Ministry of Interior. The Government has also expressed to the Special Representative that the promotion and protection of human rights is the cornerstone of its policy of comprehensive reform, and that this has had a positive effect on the implementation of the Declaration on human rights defenders at the legislative and institutional level. According to the Government all the rights set forth in the Declaration have been incorporated in the Qatari constitution.

1381. The Government has also informed the Special Representative that it has hosted many conferences on the promotion and protection of human rights, in addition to creating human rights education programs and that it will host a United Nations Human Rights Training and Documentation Centre for Southwest Asia and the Arab Region, which has been established by a General Assembly Resolution. The Government also commends the commitment of human rights defenders to international standards and their ongoing efforts to implant a human rights culture firmly in society. There is reportedly fruitful and continuous cooperation between the Government and civil society. The Government has also informed about the cooperation between the United Nations and the Government in organizing conferences, workshops and training courses.

Communications and concerns

1382. No communications have been sent to the Government of Qatar by the Special Representative throughout the two mandate periods. The information received is not sufficient to give a comprehensive assessment of the situation of human rights community in Qatar. The lack of information may indicate constraints on the civil society for communicating their concerns. The Special Representative would greatly appreciate receiving further information from the Government on future initiatives to strengthen the role of defenders in Qatar. She would also appreciate receiving information from civil society on the situation for defenders in the country.

Russian Federation

1383. The Special Representative acknowledges the response from non-governmental sources to the questionnaire transmitted for the preparation of this report. She regrets that the Government has not provided her with information at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1384. In September 2004, after the terror-attacks in Beslan, the President of the Russian Federation gave a speech to the nation where he linked terrorism to the collapse of the Soviet Union and the deficiencies of Russia's transition to democracy, and therefore he

announced a package of political measures to give the Kremlin increased power. These proposals ultimately went through, and gave the President de facto powers to appoint governors and more power over the State Duma, in addition to increasing the influence of the executive over the judiciary.

1385. The pro-presidential United Russia party now controls more than two-thirds of all seats in the State Duma, which gives it the power to adopt new laws and even change the constitution. Over the past years, Russia's civil society is reported to have been known for its active engagement in debate on political and other issues. More recently it has been reported that there is conspicuous silence that indicates the development of negative trends in the situation of human rights defenders in the country.

1386. The conflict in Chechnya has been ongoing for more than seven years and is one of the most contentious issues both nationally and internationally for the Russian Government. Russian troops have allegedly committed extrajudicial executions, enforced disappearances, and torture of detainees in the Chechen areas. Chechen groups have reportedly carried out attacks both against soldiers and civilians. Human rights defenders are working both within Chechnya and from other parts of the Russian Federation with issues of human rights violations in the context of the conflict.

1387. The number of non-governmental or non profit organizations in Russia is a matter of debate. Numbers are said to be as high as 450 000 organizations, however the Duma Committee on Public Associations set the number at 150 000 as of January 2003. Most of these organizations are involved in activities that are not solely focused on human rights. Amongst those working with a specific human rights focus, most deal with issues such as the war in Chechnya, conscript law, the alternative civil service, refugee issues, minority issues, detention conditions in prisons, legal reform, nationalism and xenophobia, and torture.

1388. Until 2004, the NGO community seemed to be able to continue its work without any significant state controls over their activities. The Special Representative has noted the reports she received regarding the remarks made by the President in his state-of-the-nation speech in May 2004, that seriously undermined the legitimacy of the work of human rights defenders by allegedly accusing NGOs of "receiving financing from influential foreign foundations and serving dubious groups and commercial interests". Some days after the President's speech, the Ministry of Foreign Affairs accused humanitarian organizations in Chechnya of using their work as a cover for anti-Russian activities. In the same period, one of the Russian TV-stations sent a one-hour long primetime program denouncing the work of human rights groups and accusing them of hatred for Russia.

Legal framework

1389. The Russian Federation is a State party to nearly all international human rights instruments. The Russian Constitution of 1993, chapter 2 on "Rights and Freedoms of Man and Citizen" asserts that "in the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of Man and citizen according to the universally recognized principles and norms of international law and according to the present Constitution". The Russian Federation has ratified the European Convention on Human Rights and Protocols No 1, 4 and 7. In Russian law it is applied that if an international treaty stipulates other rules than those

stipulated by the domestic law, the rules of the international treaty should be applied. The basic legal framework in the Russian Federation is in general fairly liberal in terms of the laws and provisions relevant for the work of human rights defenders. Nevertheless, the passing of several pieces of legislation over the past years has led to a very restrictive framework, in particular in relation to the right to freedom of association.

Freedom of expression and access to information

1390. Article 29 of the Constitution states that “[e]veryone shall be guaranteed the freedom of ideas and speech” and that “[t]he freedom of mass communication shall be guaranteed. Censorship shall be banned”.

Freedom of assembly and freedom of movement

1391. In June 2004, a law was passed which prohibits demonstrations in several public places, including close to the presidential residences, court buildings and prisons. The law also puts severe restrictions on demonstrations and public meetings in other places. According to the law, a request for prior authorization and the hour-by-hour program are both necessary ten days in advance of any demonstration. The law also requires all demonstrations to end by 11 pm, hence preventing long-term demonstrations.

Freedom of association

1392. The Russian Constitution recognizes the right of association through its article 30 of chapter 2 which states: “Everyone is entitled to the right to association, including the right to found unions to defend their interests. The freedom of the associations’ activities is guaranteed”. Laws implementing this right have been adopted. Despite these guarantees, the situation in practice is one of increasing restrictions and new laws being adopted in relation to the registration and operation of NGOs. The State is the only authority entitled to authorize or not the registration of NGOs.

1393. Tax legislation has been expanded in recent years, and has been used to further control non-governmental organizations. In August 2004 draft amendments to the tax code passed a first reading in the Duma. These proposals included significant restrictions on sources of financing for NGOs.

1394. In November 2005, the State Duma held the first reading of a proposed new law on non-governmental organizations. Despite certain amendments done after the second hearing, the law will have grave consequences for NGOs and human rights defenders in the Russian Federation.

Measures taken at national level for the implementation of the Declaration

1395. According to information received, the Federal Constitutional Law No. 1 of 26 January 1997 creates the institution and sets out the functions and responsibilities of the Federal Commissioner for Human Rights, in line with recommendations of the Committee for Human Rights. The Committee on Human Rights also noted the election of the first Federal Commissioner in May 1998 (CCPR/CO/79/RUS, para. 6).

1396. The Human Rights Commission to the Russian President was created by presidential decree in September 2001. Reportedly, the role of the Presidential Human Rights Commission has been and remains controversial and complaints have been made especially concerning the lack of influence of the Commission. The Special Representative regrets that she has not received information on policies or programs adopted by relevant Russian authorities to ensure an effective implementation of the Declaration.

Communications and concerns

1397. The Special Representative is gravely concerned with the deteriorating situation for human rights defenders in the Russian Federation over the six years that she has held the mandate. She is concerned about the fact that the situation of defenders in the Russian Federation seems to be increasingly vulnerable, and that both defenders and their families reportedly are in almost constant danger both from State actors and non-State actors. According to information received, human rights defenders are continuously assaulted, threatened, attacked or they simply “disappear”. The Special Representative is deeply concerned that defenders are according to information received still at risk of being killed in relation to their work to promote and protect human rights in the Russian Federation. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 38 communications to the Government concerning the cases of 62 named defenders and in several cases their family members, more than 20 NGOs and an unknown number of staff of these NGOs.

1398. The number of cases from the Russian Federation has increased through the six years, with a notable peak of 15 cases during 2004. In her 2005 report to the Commission on Human Rights, the Special Representative, Russia was given special attention, together with 12 other countries, because of the high number of communications sent to the Government of Russia during 2004. During that year, at least two defenders were killed in connection with their work on minority rights and the violations of human rights in Chechnya. Based on information from numerous non-governmental sources, both national and international, the Special Representative sees the situation of human rights defenders in the Russian Federation, and in particular in Chechnya and Ingushetia as one of the most serious in the world, in particular in light of defenders being killed for their involvement in the promotion and protection of human rights. In relation to this she recalls the concluding remarks of the Committee on Human Rights to the fifth periodical report of the Russian Federation where the Committee stated that it remains deeply concerned about continuing substantiated reports of human rights violations in the Chechen Republic, including extrajudicial killings, disappearances and torture, including rape. The Committee acknowledged that abuse of and violations against civilians also involve non-State actors, but reiterated that this does not relieve the State party of its obligations under the Covenant (CCPR/CO/79/RUS, para. 13). Most of the reported violations during 2004 occurred in the context of this conflict and were perpetrated against defenders working to expose the human rights situation in the region. NGOs have had their offices raided, human rights defenders have been attacked and even assassinated, and defenders and their family-members have been threatened. Attacks have shown a pattern and have followed the publication of reports on human rights violations in Chechnya or reports on minority rights.

1399. The Special Representative reiterates her deep concern over statements made by State Officials about NGOs on several occasions. Statements have reportedly been linking defenders with criminal activity and terrorism. The Special Representative is concerned that these statements will continue to cause an increased vulnerability of defenders and an environment less conducive to the work of promoting and protecting human rights in the Russian Federation.

1400. Women defenders and civilians are at special risk in the Russian Federation. Of the 46 named defenders in the communications of the Special Representative during the six years, 20 were women. The Special Representative would like to recall that the United Nations Special Rapporteur on Women visited Chechnya in December 2004 and subsequently highlighted the climate of fear and insecurity in the region due to the abuse of the civilian population by both Russian security forces and Chechen armed groups.

1401. The Special Representative reiterates her deep concern over restrictions on freedom of association allegedly being imposed on NGOs. The Special Representative has sent several communications to the Government expressing her concern over NGOs that have been denied renewal of their registration, or that have been threatened with closure or have been closed down by the authorities. She has also previously sent letters of concern to the Government concerning new legislation passed in late 2005, which is believed to be coming into effect in April 2006, and which will require all NGOs in Russia to re-register during 2006 followed by a yearly report to the Ministry of Justice on its budgetary dispositions. The legislation also obliges offices of foreign NGOs to inform the government registration office about all projects for the upcoming year, and about the money allotted for every specific project. Russian Government officials will hence have an unprecedented level of discretion in deciding what projects comply with Russia's national interests, as required by the bill. Officials from the registration office will be able to prohibit foreign NGOs from implementing projects without "the aim of defending the constitutional system, morals, public health, rights and lawful interest of other people, guaranteeing defence capacity and security of the state." If a foreign NGO implements a banned project, the registration office can close its offices in Russia. Human rights defence organizations in Russia have since the collapse of the USSR essentially been dependent on international funding. The new law would severely impact on the possibility for Russian NGOs to obtain any foreign funding. Additionally, the draft-legislation drastically increases Government oversight over NGOs and gives the Justice Department the right to demand, at any time, any financial and other papers from NGOs.

1402. The Special Representative acknowledges the quick and detailed responses Government to 30 of her communications, which attest to the willingness of the Government to cooperate with the mandate. She still awaits replies for the remaining eight communications. She nevertheless notes with grave concern that in 31 of her communications to the Government, the alleged perpetrators of violations against defenders were the police, the security forces, local authorities, national authorities or the judiciary.

1403. The Special Representative remains concerned about the persisting level of impunity for those who harm or threaten human rights defenders. She reiterates her concern over the large number of cases of attacks against human rights defenders still pending, where no suspects had been identified. She would like to remind of the concluding remarks of the Committee on

Human Rights to the fifth periodical report of the Russian Federation where the Committee expressed concern over the provision in the Federal Law “On Combating Terrorism” which exempts law enforcement and military personnel from liability for harm caused during counter-terrorist operations (CCPR/CO/79/RUS, para. 13).

1404. The Special Representative is concerned about the deteriorating situation in terms of the right to freedom of expression and information in the Russian Federation. She notes in relation to this that 17 of her communications to the Government were sent jointly with the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. Independent media seems to be at this point nearly non-existent in the Russian Federation. All TV stations are under State control, something that has allegedly led to the news avoiding any criticism of the policies of the State. Most debates on political issues have reportedly been cut from the schedule and only a small number of newspapers and Internet publications provide some kind of alternative opinion. In addition to the above mentioned slanderous statements directed at defenders, journalists have reportedly been increasingly criticized by Government officials, and harassed and persecuted by the Authorities in addition to by non-state actors. The Special Representative reminds of the concerns expressed by the Committee on Human Rights over the closure in recent years of a number of independent media companies and an increase in State control of major media outlets (TV channels, radio stations and newspapers), either directly or indirectly through state-owned corporations (CCPR/CO/79/RUS, para. 18). The Special Representatives concern in this regard encompasses the difficulties that restriction on free speech and freedom of the media have on the work of defenders and their ability to bring violations to public attention.

1405. The Special Representative recalls that she has requested an invitation to visit the Russian Federation. She regrets that despite repeated reminders of the request, the Government has not yet provided a positive response.

Rwanda

1406. La Représentante spéciale regrette que le gouvernement ne lui ait pas fourni de renseignements en réponse au questionnaire distribué pour la préparation de ce rapport avant la finalisation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme au Rwanda

1407. La Représentante spéciale regrette de ne pas disposer d'informations suffisantes pour pouvoir donner une description détaillée de la communauté des défenseurs dans le pays.

Cadre juridique

1408. Le Rwanda est partie à plusieurs des principaux traités internationaux relatifs aux droits de l'homme, y compris le Pacte international relatif aux droits de l'homme, mais n'a pas encore ratifié tous les protocoles facultatifs se rapportant à ces traités, ni la Convention contre la torture

et autres peines ou traitements cruels, inhumains ou dégradants ni la Convention internationale pour la protection des droits de tous les travailleurs migrants et des membres de leur famille. Dans le contexte régional, le Rwanda a ratifié la Charte africaine des droits de l'homme et des peuples.

1409. Par ailleurs, la Représentante spéciale a reçu avec inquiétudes des renseignements sur un projet de loi concernant la réglementation des activités des ONG internationales œuvrant dans le pays. Selon l'article 3 de ce projet, les ONG internationales devront s'enregistrer tous les ans auprès du ministère de l'Administration locale, qui pourra bénéficier d'un droit de regard sur la nature et les lieux d'opération des activités des organisations. Celles-ci devront par ailleurs soumettre annuellement aux ministères concernés un bilan détaillé des activités de l'organisation, le gouvernement pouvant procéder, « chaque fois que s'avère nécessaire » (art. 21) « à une évaluation/audit de ses activités ». Ce projet aurait été approuvé par le gouvernement en novembre 2004 et aurait dû être examiné par le parlement par la suite. La Représentante spéciale souhaiterait recevoir de plus amples renseignements à ce sujet.

1410. La Représentante spéciale regrette ne pas avoir de plus amples renseignements à sa disposition pour être en mesure de présenter un analyse plus élaborée de la législation nationale portant sur les droits énoncés dans la Déclaration sur les défenseurs des droits de l'homme.

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

1411. La Représentante spéciale regrette ne pas avoir reçu de renseignements sur les programmes et les politiques développées par les autorités rwandaises compétentes pour assurer la mise en œuvre de la Déclaration.

Communications envoyées par la Représentante spéciale

1412. Depuis l'établissement de son mandat et jusqu'au 1^{er} décembre 2005, la Représentante spéciale a transmis deux communications au Gouvernement. La première porte sur un membre d'une ONG de défense des droits de l'homme qui aurait disparu après avoir été démis de ses fonctions de Ministre de l'Intérieur. La deuxième porte sur la décision de la Commission parlementaire chargée de mener des enquêtes sur l'éventuelle propagation de l'idéologie génocidaire au Rwanda. La Représentante spéciale regrette que le Gouvernement n'ait répondu à aucune de ces deux communications.

1413. La Représentante spéciale s'inquiète au sujet de l'interprétation faite par la Commission parlementaire chargée de mener des enquêtes sur l'éventuelle propagation de l'idéologie génocidaire au Rwanda établie fin 2003, de la loi contre l'idéologie génocidaire. En particulier, elle s'inquiète de ce que ce texte serait de nature à limiter toute opposition, même modérée, au Gouvernement et à restreindre la pleine jouissance du droit à la liberté d'expression et d'opinion au Rwanda, en particulier à l'égard des défenseurs des droits de l'homme.

1414. Dans ce contexte, elle réitère également sa plus vive préoccupation devant la demande du Parlement au Gouvernement de dissoudre certaines associations de défense des droits de l'homme au motif qu'elles propageraient des idées génocidaires et de la demande faite par ladite Commission parlementaire de prendre des mesures à l'encontre de plusieurs ONG internationales (E/CN.4/2005/101/Add.1, para. 467).

1415. Elle exprime par ailleurs sa plus vive préoccupation au vu de l'apparent harcèlement dont feraient l'objet certains défenseurs des droits de l'homme critiques à l'égard du Gouvernement. En particulier, elle exprime sa plus vive préoccupation quant au fait qu'une dizaine d'entre eux auraient été nommément désignés dans un rapport de la Commission parlementaire dans le contexte de la propagation d'idée génocidaire à la suite de quoi certains d'entre eux craignant pour leur sécurité auraient préféré se réfugier dans la clandestinité.

Saudi Arabia

1416. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1417. Municipal elections were held in 2005 and demands for political reforms have been reported in the past few years. Nevertheless, political parties are still banned and the political opposition is organized from outside the country.

1418. The Special Representative regrets that she has not received sufficient information to be able to complete this section with regards to Saudi Arabia. She regrets that since the establishment of her mandate in 2001 she has not had the opportunity to have any direct contact with individual defenders or human rights defenders' organizations in Saudi Arabia.

Legal framework

1419. Saudi Arabia is a State party to four of the core international human rights instruments but has not yet ratified the International Covenant on Civil and Political Rights (ICCPR) which is a key instrument for the implementation of the Declaration on Human Rights Defenders as it guarantees rights such as freedom of opinion and expression, freedom of assembly and freedom of association. Saudi Arabia is not yet party to the following Conventions, Covenants or Protocols: the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the ICCPR, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the two Optional Protocols to the Convention on the Rights of the Child.

1420. In Saudi Arabia, international treaties, conventions and privileges are promulgated according to article 70 of the Basic Law of Government, which stipulates that international regulations, treaties, conventions and privileges shall be promulgated and amended by Royal Decree. In its initial report submitted under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government stated that: "The Kingdom of Saudi Arabia protects human rights through its system of law and order in the light of its Constitution, consisting in the Holy Koran and the Sunna of the Prophet".

(CAT/C/42/Add.2, para. 4.) In its second periodic report to the Commission on the Rights of the Child the Government stated that “the state encourages the establishment of charitable associations in accordance with The Charitable Associations and Institutions Act No. 107 [...]” (CRC/C/136/Add.1, para. 100). The Special Representative invites the Government to provide her with further information on this act and on whether it also includes human rights organizations, or whether there is other legislation relating to the establishment and activities of human rights defenders’ organizations.

1421. According to the information available to the Special Representative, basic freedoms such as freedom of expression, association and assembly are not guaranteed by the Constitution of Saudi Arabia.

Measures taken at national level for the implementation of the Declaration

1422. The Special Representative notes the establishment of the National Human Rights Commission in March 2004. The Special Representative regrets that she has not received further information on the policies and programmes adopted by Saudi relevant authorities to ensure an effective implementation of the Declaration.

Communications and concerns

1423. From the establishment of her mandate to 1 December 2005, the Special Representative has sent eight communications concerning 22 defenders to the Government. The Special Representative acknowledges the responses to three of her communications. Nevertheless, she is concerned that one response from the Government stated that the defender in question was arrested in relation to “criminal activities”, another response stated that the defenders in question were arrested charged with “engaging in acts which justified terrorism, encouraged violence and incited civil disturbance”, and that the last of the responses stated that the defenders in question were convicted to prison for “violating the laws in force in the Kingdom and jeopardizing its security and stability”. She regrets the lack of replies to the remaining five communications.

1424. The Special Representative notes with concern that defenders working on issues of political reform and democratic rights are targeted in Saudi Arabia. One of the communications sent in 2004 concerned Prince Sultan bin Turki, a member of the ruling Royal family who has reportedly been calling for peaceful political, economic and judicial reform in the country since January 2003. The Prince was reportedly abducted in Switzerland and put under house arrest in Saudi Arabia. Later the same year he was allegedly arrested, and the Special Representative has not been notified of any developments since then.

1425. The Special Representative reiterates concerns expressed in nearly all communications and in addition in the addendum to her report to the Commission on Human Rights in 2005, concerning allegations of arbitrary arrests of human rights defenders in Saudi Arabia (E/CN.4/2005/101/Add.1, para. 475). All eight communications sent to the Government concerned the arrest or detention of defenders and in some cases allegations of torture and incommunicado detention of defenders.

1426. The Special Representative is gravely concerned by the allegations in all eight complaints she received, that the main perpetrators of violations against human rights defenders were the

state authorities. She reminds the Government of the preamble of the Declaration which stresses that “the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State”.

1427. The Special Representative would appreciate receiving information from the Government concerning the situation for human rights defenders and the implementation of the Declaration in Saudi Arabia.

Serbia and Montenegro

1428. The Special Representative thanks the Office of the United Nations Resident Coordinator in Serbia and Montenegro as well as NGOs for their response to the questionnaire transmitted for the preparation of the present report. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community in Serbia and Montenegro

1429. The human rights situation in Serbia and Montenegro is greatly shaped by the Balkans armed conflict and many human rights activists concentrate their efforts combating impunity in relation to war crimes. But there are also reports of present human rights violations such as police torture and ill-treatment, domestic violence, trafficking in women and girls and discrimination against Roma. An increasing number of violations of defender’s rights have reportedly been recorded in Serbia since the end of 2004. According to the information received, the lack of initiative on the part of the state institutions in the Republic of Serbia to deal with the legacy of the Milošević regime as well as the strengthening of right-wing political parties and extreme nationalist groups could be seen as a cause for deterioration of the situation of human rights defenders.

1430. The conditions for human rights NGOs improved significantly after democratic changes in the country in 2000. However, there are conditions that threaten the safety of defenders and their ability to promote and protect human rights. These include sensitivities of the political environment and difficult socio-economic conditions in the post-conflict and transitional period. This environment is further damaged by the lack of adequate legal framework for NGOs, donors downsizing their presence, generally weak human rights knowledge amongst the wider public, and campaigns trying to discredit the work of human rights defenders. Despite these challenges, the Special Representative notes that a new draft law on non-governmental organizations of the Republic of Serbia has reportedly been reviewed and supported by the OSCE and the Council of Europe and passed the public debate. The Government has informed the Special Representative that the endorsement of the law by the Government and the subsequent adoption by the Parliament is expected soon.

1431. There are 170 registered NGOs conducting human rights activities, but only a very limited number of them have, in reality, been operational in the field. Most of these are reportedly small local NGOs, facing a lack of capacity and funds, and are often donor-driven. Only a few of these NGOs have the capacity to deal adequately with emerging human rights issues and the strength to address the most sensitive issues targeting authorities and officials. In

Montenegro, a number of human rights defenders reported that some NGOs were created under direct political influence. Human rights NGOs in Serbia and Montenegro mainly focus their work on political and civil rights. Growing demands to address economic rights are, reportedly, not adequately met.

Legal framework

1432. Serbia and Montenegro is party to almost all the core international human rights instruments, including the International Covenant on Civil and Political Rights. It has not yet ratified the International Convention on the Protection of the Rights of all Migrant Workers and their families. Serbia and Montenegro is also party to relevant regional human rights treaties, including the European Convention for Human Rights and Fundamental Freedoms. In accordance with article 7 of the Charter on Human and Minority Rights and Fundamental Freedoms, which is an integral part of the Constitutional Charter of Serbia and Montenegro, international human rights treaties ratified by the State shall be integrated into the domestic legal system and is directly applicable.

1433. The Constitutional Charter of Serbia and Montenegro and the Charter of Human and Minority Rights and Civil Liberties, the Constitution of Republic of Serbia and the Constitution of Republic of Montenegro, contain provisions that generally safeguard the rights and responsibilities guaranteed by the Declaration on Human Rights Defenders. However, the Special Representative has been informed that despite these Constitutional guarantees, there is still considerable room for improvement in terms of their implementation. The legal framework of Serbia and Montenegro generally guarantee human rights and allow for the exercise of fundamental freedoms. The Special Representative would, however, like to receive more information on this issue, to be able to make a full assessment of the situation in practice.

1434. Some of the principles of the Declaration such as the right to association can be measured from the provisions of the Serbian Law on Civil Organizations and Citizens Associations of 1982 (amended in 1984, 1985, 1989 and 1994). The Special Representative has been informed that this Law treats “civil organizations and citizens’ associations” as profit-making organizations and, for instance, does not exempt them from dues and taxes envisaged for enterprises, companies, etc. The Special Representative would appreciate receiving further information on how the new draft law in non-governmental organizations would affect the situation if adopted by the Parliament.

1435. The Special Representative has been informed about the recent adoption of the Law on Free Access to information of Public Importance in Serbia, which potentially provides for effective implementation of Declaration. She would appreciate receiving further details on this law. The Commissioner for Information of Public Interest has also been established as an independent state body with the aim to support implementation of the law. The Special Representative would appreciate receiving information on the implementation of this law.

1436. Basic Criminal Code (art. 154, Paragraph 2) envisages racial and other discrimination as criminal offence, and stipulates that a sentence (minimum six months but not exceeding five years) shall be imposed on those who persecute organizations or individuals for their advocating equality among the people.

Measures taken at national level for the implementation of the Declaration

1437. The Special Representative welcomes the establishment of the Ministry for Human and Minority Rights. She also welcomes the establishment of Ombudsman institutions in Montenegro and the autonomous province of Vojvodina. She has been informed of the need to develop and strengthen these two institutions. The Special Representative notes with interest that in Serbia the Law on Protector of Citizens was adopted in mid-September 2005. It is expected that this will lead to the establishment of a strong, credible and independent institution.

1438. The Special Representative also welcomes the adoption in May 2003 of the Law on Accountability for Human Rights Violations (also known as “Lustration Law”). It is however regretted that it has not been applied in a single case so far and draws the attention of the Government to the concerns expressed in the next section of this document.

1439. In its examination of the first periodical report submitted by Serbia and Montenegro, the Human Rights Committee noted that “the cooperative spirit professed by the authorities of the State party vis-à-vis the participation of national non-governmental organizations in the process of monitoring, promoting and protecting the enjoyment of Covenant rights” (CCPR/CO/81/SEMO, para. 8). The Special Representative is also pleased to learn that in some cases there has been good cooperation between NGOs and the judiciary regarding war crime cases.

1440. The Special Representative notes, with appreciation, the initiatives and efforts undertaken mainly by international organizations and NGOs to offer a number of training on human rights for civil servants, including police, judges, prosecutors, social workers.

Communications and concerns

1441. From the establishment of her mandate to 1 December 2005, the Special Representative has sent four communications to the Government on three individual defenders, including a woman, and one non-governmental organization, as well as on allegations of harassment against journalist reporting human rights violations. The four communications were sent in 2004. The Special Representative thanks the Government for its responses to her communications.

1442. Despite the willingness shown by the authorities to develop the legal framework in order to ensure a better implementation of the Declaration and bearing in mind the difficulties that the State may face in relation to the effects of territorial disintegration and armed conflicts throughout the 1990s, the Special Representative notes that stronger efforts need to be made in order to offer a better and safer environment for human rights defenders. In this regard, she wishes to refer to the conclusions and recommendations of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, who visited the country in October 2004. (E/CN.4/2005/64/Add.4). She also takes note of the several reports of the former Special Rapporteur on the situation of human rights in the former Yugoslavia.

1443. The Special Representative has been informed that relevant domestic legislation is not applied effectively: Provisions of domestic law regarding sanctions and redress, particularly in cases where the rights of defenders have been violated are not implemented. For instance, provisions that prohibit hate speech or punish persecution of organizations or individuals who

advocate equality among the people are not implemented. Problems also persist in the implementation of existing provisions of domestic law relating to the right to security of person, right to privacy and respect of family and private life, access to information, right to human dignity, and respect for honour and reputation. The special Representative wishes particularly to draw attention of the Government to reports she has received regarding Government practice of maintaining intelligence files which is not regulated by the law and, therefore, lacks any transparency in criteria or objectives.

1444. Based on the information received for the preparation of this report, the Special Representative is concerned about retaliation against NGOs either by the authorities or extremist groups. She observes with regret that in the course of 2005 there has been an increased number of death threats, physical assaults, harassment, and retaliations toward NGOs and media, particularly around the issue of war crimes and dealing with the past.

1445. The Special Representative is also concerned at the reported lack of public condemnation by state officials of some gravest human rights violations from the past or of attacks on human rights defenders who deal with those violations. It is also regretted that some media lead campaigns against human rights defenders, particularly those who address war crimes and are dealing with past violations with the objective of eliminating impunity. The information she has received raises grave concerns for the safety of persons dealing with war crimes.

1446. She has also received information that State officials, including some MPs and politicians, stigmatize and undermine the credibility of human rights defenders by imputing political motivations to their legitimate human rights activity. Parliamentary debates have not been above such vilification of NGOs. This kind of propaganda has resulted in direct harm to defenders including, in one instance a defender being declared *persona non grata* by the Mayor of a town.

1447. The Special Representative requests the Government for information on the concerns raised in the present document and to respond to her communications so that she is able to make a more comprehensive appraisal of the practical implementation of the Declaration as well as the situation of human rights defenders.

Slovakia

1448. The Special Representative thanks the Government of Slovakia for its response to her questionnaire.

The human rights defenders community in Slovakia

1449. According to the Government, several hundred non-governmental organizations in Slovakia are active in the area of promoting and protecting human rights and fundamental freedoms. Defenders are active in numerous areas such as refugees' and asylum-seekers' rights, rights of disabled people, education and training in human rights, legal aid and legal counselling, election monitoring, women's rights, campaigning against domestic violence, and children's rights. Coordinated initiatives of non-governmental organizations have recently started to emerge in Slovakia and include a coordinated and nation-wide campaign on violence against women.

Legal framework in Slovakia

1450. Slovakia is a State party to most of the core international human rights instruments. Slovakia has signed the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. It has not yet signed the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

1451. Full legal guarantees in the area of human rights and fundamental freedoms are laid down in the Constitution of the Slovak Republic which according to the Government guarantees all the rights set out in the Declaration on human rights defenders. The Constitution of the Slovak Republic also guarantees the right of everyone to claim his or her right by procedures laid down by law at an independent and impartial court or, in cases provided by a law, at other public authority of the Slovak Republic. Individual district and regional courts in the Slovak Republic apply the Constitution and other generally binding legal regulations valid and effective in the Slovak Republic in their decision-making process.

1452. The Slovak legislation allows various forms of assembly. The right to peaceful assembly and the freedom of association are guaranteed under the Constitution of the Slovak Republic. Moreover, the Constitution guarantees citizens the right to resist anyone who would try to eliminate the democratic order of fundamental human rights and freedoms, if the activities of constitutional authorities and the effective use of legal means are rendered impossible ('*ius resistendi*').

1453. Legislative measures enacted in the Slovak Republic have created an effectively functioning system of the protection of human rights. Article 46 para. 1 of the Constitution of the Slovak Republic stipulates that every person has the right to invoke his or her right through procedures prescribed by law before an independent and impartial court or, where so provided by a law, before other public authorities of the Slovak Republic; the Constitution also states that all parties to judicial proceedings are equal.

1454. The Constitutional Court of the Slovak Republic is an independent judicial body for the protection of constitutionality. Article 127 provides that the Constitutional Court deals also with the complaints of natural persons and legal persons who allege violation of their fundamental rights or freedoms, or human rights and fundamental freedoms resulting from the international instrument which was ratified by the Slovak Republic and promulgated in a manner prescribed by law, unless the matter involving the protection of these rights and freedoms is pending before another court.

1455. In relation to the legal framework in Slovakia, the Special Representative refers to paragraph 4 of the European Union Profile.

Measures taken at national level for the implementation of the Declaration in Slovakia

1456. The institutional framework for the system of protection of human rights in the Slovak Republic is represented, in particular, by the public defender institution. The public defender is an independent body that takes part, within the scope of and in a manner prescribed by law, in

the protection of fundamental rights and freedoms of natural persons and legal persons vis-à-vis the actions, decisions or inactivity of public administration authorities, if those actions, decisions or inactivity are in conflict with the legal system or with the principles of the democratic state governed by the rule of law.

1457. The Slovak National Centre for Human Rights was set up under Act No. 306/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights, based on an agreement between the Government of Slovakia and the United Nations. With the adoption of an anti-discrimination law (Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws), the already existing Slovak National Centre for Human Rights was also designated as a specialised national body to the fight against discrimination. Pursuant to the anti-discrimination law, the Centre monitors and evaluates compliance with equal treatment principles, gathers and provides information concerning racism, xenophobia or anti-semitism in the Slovak Republic, arranges legal aid for the victims of discrimination and of expressions of intolerance, and draws up expert opinions on matters involving equal treatment.

1458. The National Council of the Slovak Republic works in the field of human rights mainly through its Committee on Human Rights, National Minorities and the Status of Women. Another body was established at the parliamentary level in 2002 - the Commission for Equal Opportunities and the Status of Women in the Society attached to the Committee for Human Rights, National Minorities and the Status of Women. The Commission is chaired by a member of the Committee and its members are representatives of NGOs working for the promotion of women and improving their status in the society.

1459. The following state authorities are also reportedly active in the area of the protection and promotion of human rights and international cooperation: the Government (Deputy Prime Minister for European Affairs, Human Rights and Minorities; Section of Human Rights and Minorities of the Office of the Government, and the Government Plenipotentiary for Roma Communities). A Centre for International Legal Protection of Children and Youth works within the Ministry of Labour, Social Affairs and Family, focusing on the protection of the rights of children.

1460. In the framework of access to and dissemination of information on human rights and fundamental freedoms, the Ministry of Justice of the Slovak Republic organized several professional seminars on the topics of human rights and secures the provision of free legal advice at the Ministry and within regional courts of Slovakia (8 regional courts).

1461. The Ministry of Education of the Slovak Republic reportedly attaches great attention to education towards human rights in the school system by way of teaching of knowledge, skills, and attitudes that are essential for enhancing human dignity and informed and independent participation in the development of the democratic society in harmony with the values of human rights, equality, plurality, justice. The purpose of achieving the objectives of education of human rights is to enable the pupils to understand the most important concepts in this area and internalize them as values that will determine their behaviour. Education to human rights is also incorporated into the system of training teachers through methodology and pedagogical centres.

1462. Besides the schools, awareness of human rights issues is reportedly significantly promoted by non-governmental organizations specialized in this field. They have established a broad-based cooperation with schools, and according to the Government, the experience shows that the success and effectiveness of actions aimed at promoting and protecting human rights is greatly enhanced if the schools and teachers actively participate in the events organized by entities outside of schools. Using adequate means and methods, the knowledge of human rights is promoted also through pupils' self-governing boards.

1463. The Special Representative welcomes the steps taken by the Government to promote human rights education and awareness of human rights. Steps such as these can lead to a more enabling environment for human rights defenders and give further legitimacy to the work of defenders.

Communications and concerns

1464. Concerning Slovakia, the Special Representative has sent three communications to the Government on two individual defenders. A third case related to allegations of criminal prosecution of the authors of a publication under article 199 of the Criminal Code, for "spreading false rumours". This report denounced involuntary and forced sterilization of Roma women in Slovakia. The Special Representative was provided with detailed responses from the Government. She was, in particular, informed that no proceedings were undertaken against the authors of the above-mentioned report.

1465. The Special Representative welcomes the steps taken by the Government to respond to her concern with regards to freedom of expression, in particular in the case of one of allegations of criminal prosecution of the authors of a publication under article 199 of the Criminal Code, for "spreading false rumours". She nevertheless urges the Government to take appropriate measures to ensure that the right to freedom of expression is protected in the future.

1466. She also wishes to refer to a recommendation made by the Human Rights Committee following the examination in August 2003 of the periodical report submitted by the Government of Slovakia, which states: "The State party should ensure that provisions of the criminal code are not used in such a way as to deter individuals from exercising their right to freedom of expression, and in particular for human rights defenders to carry out independent research and publish the results." (CCPR/CO/78/SVK, para. 15).

Spain

1467. La Representante Especial lamenta que en el momento de finalizar este informe, el Gobierno no le haya remitido información en respuesta al cuestionario distribuido para la preparación del presente informe. La Representante Especial insta al Gobierno que transmita la información relativa para que este informe pueda ser actualizada.

La comunidad de defensores de derechos humanos en España

1468. La Representante Especial agradece a una organización non-gubernamental español la información proporcionada en respuesta al cuestionario transmitido para la preparación del presente informe, pero lamenta que no tiene suficiente información para completar este informe.

Marco jurídico

1469. España es parte de los principales instrumentos internacionales de derechos humanos, incluido el Pacto Internacional de Derechos Civiles y Políticos pero todavía no ha firmado la Convención Internacional para la protección de los derechos de los trabajadores migrantes y sus familias. Ha firmado pero no ratificado el Protocolo Facultativo de la Convención contra la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes.

1470. La Representante Especial quisiera referirse a su informe sobre la U.E. para 4.

Motivos de preocupación y Comunicaciones Enviadas por la Representante Especial

1471. La Representante Especial no ha enviado ninguna comunicación al Gobierno desde el inicio de su mandato hasta el 1 de diciembre de 2005. La Representante Especial lamenta la falta de contacto que ha tenido con la comunidad de defensores de derechos humanos en España.

1472. La Representante Especial quisiera recibir información del Gobierno y de la sociedad civil en España en relación con la situación de los defensores de derechos humanos y las medidas tomadas a nivel nacional para la implementación de la Declaración.

Sri Lanka

1473. The Special Representative acknowledges the response from UNDP Sri Lanka to the questionnaire transmitted for the preparation of this report. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1474. The Special Representative regrets that she has not received sufficient information to be able to make an assessment of the defenders community in Sri Lanka. Many defenders however are known to work on human rights issues related to the 21 year long civil war in Sri Lanka which has had a devastating impact on the country and more than 60,000 lives have been lost in the conflict. A ceasefire agreement was signed between the parties to the conflict in 2002, but the peace process is increasingly described as "fragile". NGOs strive to operate under this delicate political climate. Furthermore, in December 2004 Sri Lanka's human rights community were challenged by the Tsunami where more than 30 000 people lost their lives and 400,000 persons were displaced.

Legal framework

1475. Sri Lanka has acceded to most of the core international human rights instruments, including the International Covenant of Civil and Political Rights. Sri Lanka is not yet a State party to the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the Second Optional Protocol to the International Covenant on Civil and Political Rights, or the Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography.

1476. The Special Representative regrets that she has not received specific information on the right to freedom of expression, association and assembly in Sri Lanka. According to information received a State of Emergency has been imposed since August 2005, after the assassination of the Foreign Minister. The State of Emergency is reportedly up for renewal on a monthly basis, and there have been some reports of the State of Emergency impacting negatively on the right to freedom of assembly.

Measures taken at national level for the implementation of the Declaration

1477. The Special Representative regrets that she has not received information on the policies and programs adopted by relevant Sri Lankan authorities to ensure an effective implementation of the Declaration.

1478. The Special Representative notes the comments of the Human Rights Committee in 2003 where it welcomed the establishment of the National Human Rights Commission in March 1997 and noted that the Commission had begun to play an active role in the area of promotion and protection of human rights in the peace process (CCPR/CO/79/LKA, para. 4). The Special Representative would appreciate receiving additional information concerning this.

Communications and concerns

1479. From the establishment of her mandate to 1 December 2005, the Special Representative has sent ten communications to the Government on the cases of eight human rights defenders, in addition to the family of one of them, and the case of one NGO. The Special Representative acknowledges the responses from the Government to seven of her communications, in addition to one communication informing her about the creation of the Directorate of Human Rights and Humanitarian Law in the Sri Lanka Army. The Special Representative is still awaiting a response to the remaining cases.

1480. The Special Representative is concerned by reports of new administrative orders having been put in place in relation to the registration of NGOs since the Tsunami. Allegedly these orders are making the registration process more time-consuming than what was previously the case, and reportedly NGOs need to guarantee that they will spend a certain amount of rupees in Sri Lanka, which could lead to some NGOs being discouraged from seeking registration. The Special Representative would appreciate receiving a clarification from the Government concerning these new administrative orders.

1481. The Special Representative is concerned over the reported intimidation of and violence against human rights defenders in Sri Lanka. Several of her communications to the Government concerned defenders who had been intimidated or received anonymous death-threats. Two of her communications were sent jointly with the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. One of the communications sent concerned an NGO that reportedly had its offices searched and set fire to, and documents and files destroyed.

1482. The Special Representative is concerned by allegations on several occasions that the authorities were the perpetrators of violations against defenders. In four of the communications she sent to the Government this was the case. The Special Representative is concerned by the arrests and reported ill-treatment of defenders by the authorities, in the form of the police. In

relation to this she would like to note that four of her communications were sent jointly with the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Special Representative would like to remind the Government about the Declaration which states both that “the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State” and that “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” (art. 9 (5)).

1483. The Special Representative is concerned by reported restrictions on the freedom of expression in Sri Lanka and notes in relation to this that three of her communications were sent jointly with the Special Rapporteur on the Promotion and Protection of the right to Freedom of Opinion and Expression.

Sudan

1484. The Special representative thanks the Government of the Sudan for providing her, through its Advisory Council for Human Rights, with a response to the questionnaire transmitted for the preparation of the present report.

The human rights defenders community in the Sudan

1485. The situation of human rights defenders in Sudan cannot be dissociated from the war that devastated the southern part of the country for more than 20 years and from the intensification of the crisis in the western Darfur region. The Special Representative is appalled at the atrocities committed against the civil population in Darfur such as bombing and burning of villages, massive killings and rapes, and forced displacement of population. In this context of violence and State instability, human rights defenders have also been targeted and in many instances their work described as “anti-State activities”.

1486. In its response to the questionnaire, the Government stated that there are a considerable number of human rights organizations in the country. It is the Government’s opinion that Sudanese human rights defenders are “in real need for capacity building program such as training, acquiring greater transparency to work as partners with other relevant government authorities to improve methods of protections in Sudan”.

1487. This observation contrasts with the findings of the former Special Rapporteur on the situation of human rights in the Sudan who was glad to report that there had been some progress in the NGOs’ skills and capacities. As he explained, “a network of NGOs working on human rights has been established following the first training organized by OHCHR. Since then, NGOs have coordinated the organization of seminars on human rights and defended victims, including in cases of torture, harassment by security organs, violation of freedom of expression, etc.” He also noted that although the network had not been harassed by security officials so far, single organizations had experienced difficulties at times in the discharge of their activities. Overall, individual cases had continued to occur and it was difficult to identify perpetrators (see E/CN.4/2003/42, para. 27).

1488. During the course of her mandate, the Special Representative has been able to observe the strengthening of the human rights defenders community in Sudan. In particular, she notes that in the context of the conflict, human rights defenders have displayed an impressive capacity to report on human rights violations and to use international networks of NGOs to relay their concerns as well as United Nations mechanisms for their protection. She observes that reports from Sudanese human rights defenders enabled her to detect deterioration in the human rights situation of Sudan early on.

Legal framework

1489. The Sudan has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economical, Social and Cultural Rights, and the Convention on the Elimination of all Forms of Racial Discrimination as well as the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography. The Sudan is also Party to the African Charter on Human and People's Rights. The Special Representative nevertheless notes that it has not acceded yet to a number of relevant international and regional human rights conventions.

1490. The Government informed that "almost all the Articles of the Declaration are well stated in the Constitution and in other domestic laws, e.g. the right to freedom of association and assembly was stated in the 1998 Constitution and is also now stated in Article 40 of the National Interim Constitution 2005." The Government also mentioned the existence of the Registration of Networks act 2004.

Freedom of Association

1491. On 16 November 2005, the Special Representative transmitted her concerns to the Government regarding a number of provisions contained in the provisional Presidential Decree, entitled "Organization of Humanitarian Work Act, 2005", signed on 4 August 2005 and due to be presented to the Parliament for ratification that month. The Government has not replied yet to this communication.

1492. According to the information received, the Decree requires that all new and existing organizations, unions, associations, non-governmental or national semi-governmental local organizations in the Sudan register with a newly established "General Registrar of Organizations" which will be appointed by the President. Concern was expressed that the limited independence of the new body from the executive and its wide-ranging powers for the purpose of registering, regulating and sanctioning organizations may result in arbitrary and politicized processes. The Special Representative expressed specific concern about the powers granted to the new body in connection with accepting or denying registration which do not provide sufficient guarantees for a fair and independent process and may result in the arbitrary denial or cancellation of an organization's registration. In particular she noted with concern that the provisions for the rejection of registration set by chapter 2, section 11 (1) and (2) remain particularly broad and may result in arbitrary or politicized interpretations. She also expressed concern about the authority given to the registrar, under chapter 2, (10), to cancel registration

without judicial review if it assesses fraud or a violation of the law on the part of the organization. The Special Representative drew the Government's attention to the far-reaching regulatory powers granted to the new body and raised concern that they may result in undue interference within NGOs internal operations and limit their space for work. In particular, chapter 3, (14) authorizes the Registrar to scrutinize the work of NGOs by "requesting any information or data concerning [its] work and examine records"; "supervising the election of federal civil society organizations", and to "form administrative investigative committees to investigate into violations".

1493. Furthermore, the act strictly regulates the organization of the work of civil society organizations and provides the Government with broad supervisory powers which may unduly infringe on their autonomy to organize and coordinate their work as they deem appropriate. It gives extensive powers to sanction organizations and individuals without due judicial review granted to the Registrar and the General Commissioner for Humanitarian Work heading the Humanitarian Aid Commission. In this respect, the Registrar is granted powers to suspend NGO activities, dissolve their executive committee and replace it with a transitional committee, cancel registration, and expel International NGOS from the Sudan upon approval from the Minister. Concern was also expressed about the provisions allowing the General Commissioner for Humanitarian Work, upon approval by the Minister, "to expel any foreigner appointed by an INGO"; "Dismiss any member of any national organization or charity institution [...]"; "prohibit any member from practicing any kind of public voluntary activities for a period he deems necessary". Finally, a provision stipulates that in the case of the cancellation of registration of an organization "all assets and properties of the organization [...] should go to the ministry of Humanitarian Affairs." The Act reportedly also restricts access to funding for registered civil society and human rights organizations. Under chapter 9, Article 36, organizations cannot receive funds or donations from outside the country or from any foreign person inside the country or from any other body without specific approval from the Ministry.

1494. The Special Representative regrets that she has not received more detailed information on domestic legislation related the freedom of opinion and expression, freedom of assembly and freedom of association.

Measures taken at national level for the implementation of the Declaration

1495. According to the information transmitted to the Special Representative by the Advisory Council for Human Rights, the Government started implementing policies of openness and transparency in all human rights issues. It also asserted that a channel of communication is now opened between governmental institutions working on human rights issues and the human rights defenders. Additionally, small documentation centres containing some human rights publications have been made available by human rights units within the Ministry of the Interior, Defence, Social Welfare and others.

1496. The Special Representative further takes notes of the implementation of the Technical Assistance Programme of the Office of the High Commissioner for Human Rights, which can contribute to raising awareness about the Declaration.

1497. The Government is optimistic that following the Comprehensive Peace Agreement and the signing of the National Interim Constitution, considerable changes and improvements will take place in the Sudan. However, this optimism is contrasted with the high number of allegations on persistent violations against defenders' rights regularly brought to the attention of the Special Representative and concerns expressed by a number of national and international human rights bodies that have conducted in-situ visits, including the three successive Special Rapporteurs and the Independent Expert on the situation of human rights in the Sudan.

Communications and concerns

1498. Since the beginning of her mandate, the Special Representative has sent 37 communications to the Government on 40 individual defenders, and members of at least seven non-governmental organizations. The Special Representative expresses her serious concerns over the deterioration of the situation of human rights defenders in the past three years and over the high number of communications sent to the Government of Sudan. She also notes that the significant increase in the number of communications sent in 2003 and 2004 clearly coincided with the deterioration of the human rights situation on the ground and the intensification of the internal conflict. The climate of violence in many parts of the country has unquestionable repercussions on the work and activities of human rights defenders and humanitarian workers operating in the country. Human rights defenders also face adverse conditions that are external to the conflict situation.

1499. The Special Representative notes that NGO members, journalists and Student activists have been particularly targeted by security forces and Governmental authorities.

1500. The Special Representative reiterates her concern at the high number of defenders arrested and detained including arbitrarily by security forces, in particular the National Security Agency, while working in Nyala, Zalingy and northern Darfur (12 cases). A majority of defenders are reported to have suffered torture and other forms of ill-treatment during their detention and were held incommunicado. In three cases arrests resulted in actual charges being pressed against defenders for disturbance of the peace or spying. While many defenders were released, a number remain unaccounted for. (E/CN.4/2005/101, para. 85). Arrests typically occurred in connection to the exercise by defenders of their right to freedom of expression and assembly.

1501. In particular, the Special Representative notes with concern that defenders are regularly arrested for publishing reports or articles denouncing human rights violations in Darfur or criticizing the use of torture by the authorities (5 cases). There seems to be a lack of tolerance on the part of Sudanese authorities with regards to the publicizing of human rights issues in particular with regards to sexual abuses. The Special Representative would in this regard like to remind the Government about article 6b of the Declaration which states that everyone has the right "freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms".

1502. In this respect the Special Representative recalls the recent report of the High Commissioner for Human Rights on access to justice for victims of sexual violence which states that "the Government of the Sudan has reacted strongly to reports that rape was and continues to be perpetrated in Darfur [...] The sensitivity of the authorities to allegations of rape and sexual

violence has reached such an extent that some victims of sexual violence and human rights defenders working to document those crimes in order to demonstrate the scale of the problem have had criminal charges brought against them [...] There are many other reports of intimidation and harassment of human rights defenders and medical providers which are of concern. The action taken to threaten, intimidate and harass human rights defenders and medical providers violates international law and seriously impedes victims' access to justice".

1503. Such lack of tolerance is illustrated in the communication she transmitted in June 2005 on the case of four staff members of a humanitarian NGO who were arrested after the publication of a report on sexual violence in Darfur by their organization. Two of them were initially charged with under articles 66 (Publication of False News), 69 (Disturbance of Public Peace) and 53 (Espionage against the Country).

1504. Lastly, defenders in Sudan also face a lack of freedom of assembly with many arrested for participating in demonstrations denouncing abuses or calling for student rights but also for participating in human rights seminars, workshops or conferences. She has sent three communications on this issue. Defenders have also been arrested for their contacts with international human rights NGOs or bodies. In relation to this the Special Representative would like to remind the Government of Sudan about article 5 of the Declaration which states that everyone has the right "for the purpose of promoting and protecting human rights and fundamental freedoms" to "meet or assemble peacefully", to "form, join and participate in non-governmental organizations" and to "communicate with non-governmental or intergovernmental organizations".

Sweden

The human rights defenders community

1505. The Special Representative regrets that she has not sufficient information at her disposal to offer a description of the human rights defenders community in Sweden.

Legal framework

1506. Sweden is a State party to most of the core international human rights instruments. It has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and it has signed, but not ratified, the Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography. The Constitution of Sweden protects the rights to freedom of expression and access to information, freedom of assembly and movement and freedom of association.

1507. In relation to the legal framework in Sweden, the Special Representative refers to paragraph 4 of the European Union Profile.

Communications and concerns

1508. No communications have been sent to the Government of Sweden during the two mandate periods. The Special Representative regrets that she has not received information that enables her to properly assess the situation for human rights defenders in the country. She acknowledges the two responses received from the two Swedish ombudsmen mentioned in the

introduction to the section on the EU, but regrets that neither of the two institutions found that they had the necessary means, knowledge or resources to answer the questionnaire. She would appreciate receiving information from the Government and civil society on the situation for human rights defenders and the steps taken to implement the Declaration in Sweden.

Switzerland

1509. La Représentante spéciale remercie le Gouvernement de sa réponse au questionnaire qu'elle lui avait transmis.

La communauté des défenseurs des droits de l'homme en Suisse

1510. La Suisse est devenue un état membre des Nations Unies en 2002.

1511. Dans sa réponse le Gouvernement a indiqué que la communauté des défenseurs des droits de l'homme en suisse reflète à bien des égards la structure fédéraliste du pays divisé entre structures fédérales et cantonales. Elle s'organise en réseaux avec notamment certaines ONG se regroupant au sein d'une structure plus importante, comme l'Organisation suisse d'aide aux réfugiés (OSAR) ou encore le Réseau suisse des droits de l'enfant. Le Gouvernement a souligné qu'il était dès lors difficile d'estimer le nombre d'organisations actives dans le domaine de la défense des droits de l'Homme. Le Gouvernement a également mentionné que l'Association suisse pour les droits de la personne a compilé un catalogue d'ONG suisses qui pouvait être consulté sur Internet.

1512. Le Gouvernement a également signalé qu'il convient de distinguer les ONG spécifiquement suisses des ONG internationales ayant leur siège en Suisse en particulier à Genève ainsi que celles engagées pour la défense des droits de l'homme en Suisse de celles actives à l'étranger et qui effectuent un travail de lobbying pour influencer la politique étrangère de la Suisse dans les domaines des droits humains et du développement.

Cadre juridique

1513. La Suisse a ratifié la plupart des instruments internationaux de droits humains, dont le Pacte International relatif aux Droits Civils et Politiques. Elle n'a pas encore ratifié le Protocole Facultatif se rapportant au du Pacte International relatif aux Droits Civils et Politiques, le Protocole facultatif à la Convention sur l'Elimination de toutes les Formes de Discrimination à l'égard des Femmes, le Protocole facultatif à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, et la Convention Internationale sur la protection des droits de tous les travailleurs migrants et des membres de leur famille. La Suisse a également ratifié la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (CEDH). Les dispositions directement applicables des traités internationaux peuvent être invoquées devant toute autorité nationale.

1514. D'après les renseignements transmis par le Gouvernement, lorsque le Conseil fédéral envisage de ratifier une convention internationale ou de proposer au Parlement d'adopter une loi, il met en place une procédure de consultation des principaux milieux intéressés (cantons, partis politiques, milieux économiques, universités, organisations non gouvernementales, etc.). Sur cette base, il décide s'il convient de proposer au Parlement l'approbation de la ratification ou

l'adoption d'un projet de loi. Il publie, le cas échéant, un message à l'attention de l'Assemblée fédérale sur la portée et les conséquences d'un tel engagement. Ce message est publié dans la Feuille fédérale (bulletin officiel de la Confédération) et est donc accessible au public intéressé. Les débats parlementaires sur le sujet sont publics et font l'objet d'une publicité supplémentaire par le biais des médias. Dès sa ratification, la convention est publiée dans le Recueil officiel des lois fédérales ainsi que dans le Recueil systématique du droit fédéral, dans les trois langues officielles. Il en est de même du droit national entré en vigueur. Compte tenu de leur importance, certains textes font l'objet d'une publicité spéciale. Tel a été le cas de la Déclaration universelle des droits de l'homme, publiée dans la Feuille fédérale, en annexe du rapport de 1982 sur la politique suisse en faveur des droits de l'homme, et traduite dans la quatrième langue nationale (romanche).

1515. Le peuple suisse et les cantons ont accepté le 18 avril 1999 la mise à jour de la Constitution fédérale, qui contient, selon les renseignements fournis par le Gouvernement, un inventaire complet des droits fondamentaux. Parmi les droits fondamentaux expressément énumérés dans la nouvelle Constitution fédérale du 18 avril 1999 portant sur les droits inscrits dans la Déclaration, le Gouvernement a relevé les suivants : les libertés d'opinion et d'information (art. 16), la liberté des médias (art. 17), la liberté de réunion (art. 22), la liberté d'association (art. 23), la liberté syndicale (art. 28), et les garanties générales de procédure (art. 29), les garanties de procédure judiciaire (art. 30).

1516. En vertu de l'article 35.1 de la Constitution, les droits fondamentaux doivent être réalisés dans l'ensemble de l'ordre juridique. Toute restriction, y compris grave, d'un droit fondamental doit être fondée sur une base légale. Toute restriction d'un droit fondamental doit être justifiée par un intérêt public ou par la protection d'un droit fondamental d'autrui, et doit aussi être proportionnelle au but visé. En outre, l'essence des droits fondamentaux est inviolable (art. 36 de la Constitution). Autrement dit, toute dérogation aux libertés fondamentales doit être conforme aux exigences de l'article 4 du Pacte international relatif aux droits civils et politiques et de l'article 15 de la CEDH.

1517. Dans sa réponse au questionnaire, le Gouvernement a également fourni d'amples renseignements sur la justiciabilité des droits en Suisse ainsi que sur le système de compensation et de réhabilitation des victimes de violations et des victimes d'infractions.

Mesures prises à niveau national pour assurer la mise en œuvre de la Déclaration

1518. Le Gouvernement a assuré que la Suisse reconnaît le rôle crucial des défenseurs des droits de l'homme pour la promotion et la défense des droits ainsi que pour le renforcement de l'Etat de droit. Ainsi, certaines ONG qui se chargent de la diffusion des conventions relatives aux droits de l'homme, en Suisse comme à l'étranger, par le biais de publications, de séminaires ou de campagnes de sensibilisation reçoivent une aide financière de la Confédération. Le gouvernement a mentionné que la Confédération soutenait également, financièrement et/ou politiquement, des manifestations organisées par des ONG visant à examiner la situation en Suisse à la lumière d'une problématique spécifique des droits humains.

1519. Les individus, associations et ONG en Suisse ont le droit de soumettre aux organes et institutions de l'Etat, ainsi qu'aux organismes s'occupant des affaires publiques des critiques et propositions au sens de l'article 8 de la Déclaration. Le Gouvernement a mentionné à titre d'exemple récent le grand nombre de prises de positions adressées au gouvernement et au parlement par la société civile dans le cadre des débats relatifs à la révision sur la loi d'asile.

1520. En ce qui concerne les institutions ou organismes nationaux chargés de veiller au respect des droits de l'homme, le Gouvernement a informé qu'il existe, aux niveaux fédéral et cantonal, divers organismes officiels dont les attributions concernent la protection des droits humains dans des domaines spécifiques. Le Gouvernement a noté qu'il existait d'une part des instances indépendantes telles que les commissions extraparlimentaires notamment: la Commission fédérale des étrangers, la Commission fédérale des réfugiés, la Commission fédérale pour les questions féminines, la Commission fédérale pour la jeunesse, la Commission fédérale contre le racisme et la Commission fédérale de coordination pour les questions familiales ; et des organismes administratifs étatiques en particulier le Bureau fédéral de l'égalité entre femmes et hommes, le Service de lutte contre le racisme, et le Bureau fédéral de l'égalité pour les personnes handicapées. Les différents organismes officiels mentionnés n'ont pas la possibilité d'agir directement devant les tribunaux ou auprès des auteurs de violations des droits humains. Des postes de "médiateurs ou médiatrices", chargés de l'assistance aux particuliers dans leurs rapports avec l'administration, ont été créés par les villes de Berne, Zurich et Winterthur, ainsi que par les cantons de Zurich, Bâle-Ville et Bâle-Campagne.

1521. Par ailleurs, le Gouvernement a signalé que certains de ces organes, notamment les commissions extraparlimentaires, étaient souvent consultés lors de la préparation des rapports adressés aux organes de contrôle des conventions des droits de l'homme par l'administration fédérale en collaboration avec les autorités fédérales et cantonales concernées.

1522. Le Gouvernement a également informé que l'adoption de la Déclaration a conduit le Département fédéral des affaires étrangères à prendre en compte de manière plus systématique la situation des défenseurs en tant que groupe vulnérable. Dès lors, la Suisse se réfère souvent dans le cadre de ses relations bilatérales à la Déclaration, pour souligner la légitimité du rôle des défenseurs ainsi que leur droit de promouvoir et protéger les droits humains.

1523. En outre, le Gouvernement a pourvu la Représentante spéciale d'une liste non exhaustive d'initiatives menées en Suisse pour promouvoir une culture des droits humains, tant auprès du public qu'au sein de l'administration fédérale.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

1524. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé une communication au Gouvernement portant sur la demande d'asile d'un citoyen libyen en Suisse. La demande reposait sur les activités en défense des droits de l'homme que cette personne aurait mené en Libye. La Représentante spéciale remercie le Gouvernement d'avoir répondu à cette communication.

1525. La Représentante spéciale accueille très favorablement les mesures prises par les différentes institutions suisses afin d'assurer la promotion des droits de l'homme, y compris les droits et principes inscrits dans la Déclaration, aussi bien en Suisse qu'à l'étranger.

1526. Elle remarque cependant également que la législation sur l'asile actuellement en vigueur ne garantit pas le droit d'accès des organisations de défense des droits de l'homme aux zones d'aéroport dans lesquelles sont retenus les requérants d'asile ni dans les centres d'enregistrement. Elle prend note de la proposition du Conseil fédéral, faite en 2002 dans le cadre d'une proposition de modification de la loi sur l'asile, selon laquelle le Parlement lui délègue la compétence de définir les modalités d'accès au conseil juridique et à la représentation légale dans les centres d'enregistrement et dans les aéroports (art. 17, al. 4 du projet de loi sur l'asile). Elle note également que la position du Gouvernement qui considère au vu de ce qui précède que l'article 9.3 (c) de la Déclaration, qui garantit à chacun individuellement ou en association d'offrir une assistance juridique professionnelle ou tout autre conseil et appui pertinents pour la défense des droits de l'homme et des libertés fondamentale, pourrait ainsi être mieux mis en œuvre à l'avenir.

Syrian Arab Republic

1527. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1528. The Special Representative regrets that she has not received sufficient information to be able to give a proper assessment of the human rights defenders community in the Syrian Arab Republic. She nevertheless concludes from the cases communicated to her since 2001 that defenders in Syria work on issues such as prevention of torture, minority rights, and campaigning for legal and constitutional reforms.

Legal framework

1529. The Syrian Arab republic is a State party to most of the core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR). Syria has not yet acceded to the Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the ICCPR, or the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

1530. Emergency rule, which was imposed in 1963, remains in effect in Syria today. The legal framework in Syria in general guarantees internationally recognized human rights. Nevertheless, the Special Representative refers to the concerns expressed by the Human Rights Committee in its concluding remarks to Syria's third periodic report where it stated that "(t)he Committee notes with concern that the state of emergency declared some 40 years ago is still in force and provides for many derogations in law or practice from the rights guaranteed under articles 9, 14, 19 and 22, among others, of the Covenant, without any convincing explanations being given as to the relevance of these derogations to the conflict with Israel and the necessity for these derogations to meet the exigencies of the situation claimed to have been created by the conflict" (CCPR/CO/84/SYR, para. 6).

Freedom of expression and access to information

1531. Article 38 of the Constitution affirms that “every citizen has the right to freely and openly express his views in words, in writing and through all other means of expression. [...] The State guarantees the freedom of press, printing and publication in accordance with the law”.

Freedom of assembly and freedom of movement

1532. The right to peaceful assembly is guaranteed by the Constitution in article 39 which states: “Citizens have the right to meet and demonstrate peacefully within the principles of the Constitution.” Conditions for the authorization of public assembly are reportedly the submission by persons desiring to hold a meeting or organize a demonstration of a request to the competent authorities, specifying the venue of the meeting or demonstration, its objective and the persons in charge of it.

1533. Article 33, paragraph 2, of the Syrian Constitution stipulates that: “Every citizen has the right to liberty of movement within the territory of the State unless prohibited there from under the terms of a court order or public health and safety regulations.”

Freedom of association

1534. The right of association and the right to freedom of peaceful association are recognized in article 48 of the Constitution of the Syrian Arab Republic, which stipulates that: “The popular masses have the right to establish trade-unions, social and professional organizations and production or service cooperatives, the framework, interrelationships and operational scope of which shall be prescribed by law.”

Measures taken at national level for the implementation of the Declaration

1535. The Special Representative regrets that she has not received information on the policies and programs adopted by relevant Syrian authorities to ensure an effective implementation of the Declaration.

Communications and concerns

1536. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 21 communications to the Government on the cases of 29 individual defenders, including one concerning a woman. In her 2005 report to the Commission on Human Rights, Syria was given special attention, together with 12 other countries, because of the high number of communications sent to the Government during the previous year. The Special Representative acknowledges the responses to 13 of her communications, but regrets the lack of reply to the remaining eight communications. She also notes that in replies received from the Government to her communications, alleged violations were sometimes partly denied or not commented upon, and the Government on several occasions has referred to its national law as justification for reported incidents of violations.

1537. The Special Representative is concerned that information received indicates that defenders have faced frequent arbitrary arrests and detention, in connection with peaceful demonstrations and demands for democratic reform. Several cases of alleged incommunicado

detention have come to the attention of the Special Representative since 2001. Defenders have also reportedly been attacked and arrested for their involvement in issues of minority rights, and their work against torture.

1538. In relation to arrests and detentions, the Special Representative is concerned with reports of alleged torture and ill-treatment in police custody, and notes that ten of her communications were sent jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

1539. The Special Representative is gravely concerned over information and reports that suggest that the Syrian security forces have been the primary perpetrators of violations against human rights defenders. In nearly all the 21 communications sent through the six years, the police or security forces were the alleged perpetrators. The Special Representative would like to remind the Government that according to the Declaration, “the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State”.

1540. The Special Representative is concerned about information that NGOs in Syria are facing hardship in terms of registration and the right to freedom of association. She would like to reiterate the concerns expressed by the Human Rights Committee “at the obstacles imposed on the registration and free operation of non-governmental human rights organizations in the State party and the intimidation, harassment and arrest of human rights defenders. It also continues to be deeply concerned about the continuing detention of several human rights defenders and the refusal to register certain human rights organizations (arts. 9, 14, 19, 21 and 22).” (ibid, para. 12).

1541. The Special Representative is also concerned with the alleged lack of freedom of expression in Syria. This can be illustrated by the fact that out of the 21 communications sent since 2001, 18 were sent jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Further, the Special Representative would like to remind the Government about the concerns of the Human Rights Committee “at the extensive limitations on the right to freedom of opinion and expression in practice, which go beyond the limitations permissible under article 19 (3). Furthermore, the Committee is concerned at allegations that the Government has blocked access to some Internet sites used by human rights defenders or political activists (art. 19)” (ibid, para. 13). The Special Representative would also like to reiterate her concerns that the use of criminal charges such as “disseminating false reports” frequently implies the risks of suppressing legitimate free speech, and is particularly worrying when such charges are raised against a person for having denounced alleged human rights violations (E/CN.4/2005/101/Add.1, para. 517).

1542. The Special Representative is concerned with the reported lack of freedom of assembly and freedom of movement for defenders in Syria, in particular when it comes to participation in seminars and workshops on human rights issues abroad. Defenders have reportedly been prevented from travelling abroad to attend conferences and meetings on human rights, and have also been accused of anti-state activities in regards to this kind of human rights work. In this regard the Special Representative refers to the concern of the Human Rights Committee that “the laws and regulations and their application prevent the exercise of the right to peaceful assembly (art. 21)” (ibid, para. 15).

1543. The Special Representative would appreciate receiving further information from the Government concerning the situation for human rights defenders and the implementation of the Declaration in the Syrian Arab Republic.

Tajikistan

1544. The Special Representative acknowledges the response from the Office of the United Nations Resident Coordinator in Tajikistan to the questionnaire distributed for the preparation of the present report. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1545. Efforts have been made in Tajikistan to meet international democratic standards and some level of cooperation and dialogue has reportedly been established between the human rights organizations and the government, especially in preparation of state reports under international human rights treaties and also on initiatives for human rights information and education. However, the information gathered suggests that authoritarian tendencies of governance and lack of democratic functioning of institutions has affected the environment for the defence of human rights. Added to these are difficulties that arise owing to the absence of independent national human rights institutions, restrictions on the media and constraints on the civil society that have impeded its growth and development.

1546. According to the information provided by the Office of the United Nations Resident Coordinator, there is a mushrooming of NGOs in Tajikistan. According to the Ministry of Justice, which registers public entities, currently there are 2671 registered NGOs. The founding statutes of most organizations state a broad mandate, encompassing a range of concerns, including economic, humanitarian, educational, health and human rights. Reportedly, this is a common trend amongst NGOs, largely, to allow themselves more flexibility in competing for projects. It is difficult to discern from official statistics exactly how many of them work in the field of human rights. There are several small organizations, usually with family members or friends constituting the management bodies. Many of the groups identified as a part of the human rights community work on gender issues and women's rights, on youth and child rights.

1547. The capacity of the civil society to monitor state practices and their skills in advocacy are still evolving. It is reported that owing to a difficult environment most organizations limit their work to fields of human rights and methodologies that are not sensitive for the government, such as human rights education. According to the information received, the Government's reaction to criticism or exposure of violations of human rights by state authorities has been strong and negative. This has resulted in a level of self-censorship that keeps the human rights discourse rather muted. However the Special Representative is told that despite this environment, some non-governmental monitoring and lobbying initiatives, although not yet very strong, are emerging.

1548. The Special Representative has been informed that no countrywide NGO forum or network exists, though some groups have come together as short term coalitions on specific

issues. They are entirely dependent on international donors and funding. In some parts of the country, non-governmental bodies, reportedly, fear adverse reaction of local authorities and commanders in carrying out their human rights work.

Legal framework

1549. Tajikistan is party to seven core international human rights instruments and some of their respective Optional Protocols. It has not ratified yet, the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, which it signed in September 2000. The international legal instruments recognized by Tajikistan are an integral part of the legal system of the Republic. In the event of a contradiction between Tajik law and these international norms, the norms contained in the international legal instruments shall apply (Constitution, art. 10).

Freedom of association

1550. According to article 28 of the Constitution, citizens enjoy freedom of association. A Law on Public Associations regulating NGO work was passed in 1998. According to the law the NGOs are required to register with the Ministry of Justice and present annual reports regarding continuation of their activities in accordance with the objectives they register. The Ministry of Justice has the right to monitor the activities of the NGOs. After the presentation of all necessary documents the registration procedure should take 30 days in accordance with the law. A reduction of the NGO registration fee occurred in March 2001, which consequently led to the high increase of their quantity. The Law on Charity was adopted in March 2003.

Freedom of expression

1551. According to the initial report submitted by the State to the Human Rights Committee, “Article 30 of the Constitution accords to everyone freedom of expression and freedom of the press and the right to use the media. The Press and Other Media Act and the Television and Radio Broadcasting Act establish and protect the right of every person freely to express his or her opinions and the freedom to seek, receive and impart information. The Criminal Code imposes penalties for refusal to provide citizens with information (art. 148) and for obstruction of the lawful professional activities of journalists (art. 162) (...) State censorship and persecution for criticism of the State are prohibited (Constitution, art. 30; and Press and Other Media Act, art. 2). (...) The media must not abuse the freedom of speech. Prohibitions in this regard include publishing of information constituting a State secret or other secret protected by law, calling for the violent overthrow or change of the constitutional system, denigrating the honour and dignity of the State or the President, propagating war, violence or cruelty and racial, ethnic or religious discrimination or intolerance, disseminating pornography, or inciting the commission of other criminally punishable acts (arts. 6 and 34). The use of the media for the purpose of interference in the private lives of citizens, and the publication of information known to be false or slanderous or provocative information injurious to the honour and dignity of citizens, State agencies, voluntary associations and other organizations are prohibited and subject to prosecution (arts. 6 and 34). (...) The Criminal Code establishes liability for furnishing unreliable or slanderous information to the media (art. 135)” (CCPR/C/TJK/2004/1, paras. 236 241).

Freedom of Assembly

1552. In the same report, the Government of Tajikistan informed that “Article 29 of the Constitution accords to citizens the right to take part in legally authorized meetings, rallies, demonstrations and peaceful processions. (...) The Criminal Code establishes penalties for obstructing the holding of meetings, rallies, demonstrations, processions or picketing or participation in such activities (art. 161). The procedure for holding peaceful assemblies, demonstrations and processions is contained in the 1998 Meetings, Rallies, Demonstrations and Peaceful Processions Act. (...) The State guarantees the right to organize and hold demonstrations and to participate in them by making streets, squares, parks, public gardens and other open spaces available to citizens and their associations free of charge; by disseminating information about such events in the State press, television, radio and other audio-visual media; and by encouraging government agencies and officials to provide organizational assistance. The conduct of such events may involve the use of symbols, slogans and other means of the public expression of collective or individual opinions, as well as means of propaganda. (...)

1553. In order to hold a demonstration, the organizer of the demonstration must send written notification to the concerned authorities at least 15 days before the date set for the demonstration, indicating the purpose, form and place or the route of the march, starting and finishing times, the expected number of participants, the names of the organizers and their particulars, and the date of submission of the notification. Demonstrations may be held in any suitable places, except in places whose use is restricted or prohibited by decisions of local councils of people’s deputies. A demonstration may be banned if its declared purpose is incitement to commit acts, or the commission of the acts themselves, prohibited by the Constitution and the law of Tajikistan, if its proposed venue is a place claimed earlier for a different event, or a place where demonstrations are banned or subject to restrictions, if it causes or may cause unavoidable interference with traffic or the free movement of persons, if it is likely to interrupt the operations of enterprises, institutions or organizations providing vital public services, if it poses a genuine threat to people’s lives, health or safety, or if it injures their rights or legitimate interests (Meetings, Rallies, Demonstrations and Peaceful Processions Act, art. 15).

1554. Failure to comply with the procedure for organizing and holding meetings, rallies, demonstrations, street processions and picketing entails administrative penalties and criminal liability. Government authorities, non-state entities as well as members of the public have no right to obstruct demonstrations conducted in accordance with the law. (...) Unlawful obstruction of a meeting, rally, demonstration or procession or picketing, or obstruction of participation in such events, or coercion of persons to participate, is punishable under the law. When such acts involve the abuse of an official position, they are punishable by deprivation of liberty for between three and five years, with suspension of the right to hold certain posts or engage in certain activities for up to three years (art. 161, para. 2).” (CCPR/C/TJK/2004/1, paras. 252-259)

Measures taken at national level to ensure the implementation of the Declaration

1555. The Special Representative has been informed that the Department on Constitutional Guarantees of citizens’ rights under the Presidential Office, which is competent, amongst other things to handle individual complaints for human rights violations is the highest level body within the executive hierarchy dealing with human rights.

1556. Information has also been brought to her attention according to which a national program called “State System of Education in the Field of Human Rights in the Republic of Tajikistan” was adopted by the Government of the Republic of Tajikistan in June 2001, in the framework of the United Nations Decade on human rights education and in accordance with the President’s Decree of 1 December 1999 “On Further Development of the Process of Democratization of the Public and Political Life”. This program aims at broadening and improving the system of information, education and training of the general population in the human rights area as well as at a higher quality of training of all civil servants, including teachers, law enforcement, army staff, and law students. The Program also introduces human rights as part of the school curriculum and as a mandatory subject in the secondary schools and Universities. Many NGOs have reportedly based their human rights educational activities on the State program of human rights education.

1557. In addition, several international organizations have implemented education programmes and activities for NGO and the general public. These human rights educational activities are reportedly accepted with interest and enthusiasm by the local population, especially in the remote areas where access to information is very limited due to the restricted supply of electricity and overall poverty.

1558. In 2002 the Government established an International Human Rights Obligations Implementation Mechanism with broad competence to discuss and adopt national reports on human rights treaties, to recommend necessary amendments in the legislation in the human rights area, and to coordinate the activities of the state bodies in this field of human rights.

1559. The Special Representative has further been informed that with the support of the Swiss Cooperation Office and an international NGO, several local NGOs prepared a shadow report on the implementation of the International Covenant on Civil and Political Rights and presented it to the Human Rights Committee in July 2005.

1560. A Human Rights Thematic Group, which comprises various United Nations agencies, other international organizations and embassies of donor countries implementing human rights programs, meets bi-monthly to exchange information on current human rights issues and activities.

Communications and concerns

1561. The Special Representative has not sent any communications to the Government since the establishment of the mandate.

1562. The Special Representative wishes to refer to the following concluding observations made by the Human Rights Committee in July 2005, upon consideration of the initial report submitted by Tajikistan: “The Committee is concerned about the apparent lack of independence of the judiciary, as reflected in the process of appointment and dismissal of judges as well as in their economic status” (CCPR/CO/84/TJK, para. 17). “The Committee is concerned about persistent reports that journalists have been harassed by State officials in the exercise of their profession and that newspapers have been seized” (ibid, para. 21). “The Committee is concerned about the existence in the State party’s Criminal Code of broadly worded crimes such as “injuring the honour and dignity of the President” and “attempt against the constitutional order”,

which may lend themselves to manipulation and limitation of freedom of speech” (ibid, para. 22). The Special Representative wishes to remind the Government that an independent judiciary, freedom of the media and safeguards against the misapplication or misuse of state security and public order laws to human rights activity, are critical for the work and safety of defenders.

1563. The Special Representative is concerned that no National Human Rights Institution exists in Tajikistan. She is also concerned about reports that state institutions dealing with human rights are not keen to extend their responsibility to providing human rights protection. She would like to remind the Government of the Declaration which points out that “the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State”.

1564. Finally, the Special Representative is concerned about the reported lack of awareness of the State authorities of the provisions of the Declaration on human rights defenders.

1565. The Special Representative requests the Government to provide her with more information regarding the concerns brought to its attention in this document.

Tanzania (the United Republic of)

1566. The Special Representative thanks the UNDP Office in Tanzania, other relevant United Nations agencies in the country, the Tanzanian Commission for Human Rights and Good Governance (CHRAGG) and non-governmental sources for providing her with a response to the questionnaire transmitted for the preparation of this report. She regrets that the Government has not provided her with information at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1567. Tanzania moved from a one-party State to a multiparty system in 1992. The United Nations in Tanzania has relayed to the Special Representative that with the development of a multi-party system and parliamentary democracy, the environment for human rights defenders is becoming increasingly open.

1568. Although exact figures about the number of NGOs in the country are not available, the United Nations in Tanzania estimates that there are around 15 organizations working in the human rights field in the country.

Legal framework

1569. Tanzania has ratified the core international human rights instruments, including the International Covenant on Civil and Political Rights. Tanzania has yet to sign or ratify some of the international human rights instruments such as the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Tanzania has ratified the African Charter on Human and Peoples’ Rights. According to the Government, Tanzania has amended most of its existing laws in order to incorporate international obligations.

1570. The Constitution of Tanzania guarantees the rights to freedom of expression and access to information, freedom of movement, freedom of assembly, and freedom of association. The legal framework in Tanzania in general is conducive to the work of human rights defenders. The Special Representative nevertheless notes that she does not have sufficient information to make a full assessment of the actual situation of defenders in terms of legal protection of their rights.

Measures taken at national level for the implementation of the Declaration

1571. The Commission for Human Rights and Good Governance (CHRAGG), Tanzania's national human rights institution was established in 2001 under Article 129 (1) of the Constitution. The CHRAGG has a wide mandate covering both human rights functions and ombudsman functions. The Special Representative would like to recall that the Committee against the Right of the Child, in their concluding observations at the time also welcomed amendments to the Constitution (2000) which allowed for the enactment of the Commission for Human Rights and Good Governance Act 2001 (CRC/C/15/Add.156). According to information received, the establishment of the CHRAGG has been a great encouragement for the human rights defenders' community in Tanzania. The CHRAGG has reportedly done its best, despite what is by some described as lack of financial and human resources, to promote and protect human rights and good governance in Tanzania.

1572. The Special Representative has been informed that improved transparency, enhanced access to information, and a more independent media, are all factors contributing to the implementation of the Declaration in the country.

1573. The Special Representative has also received information about the establishment of the Law Reform Commission, which is tasked with reforming outdated laws and enacting new legislation. Tanzania has already removed certain claw-back clauses which had the effect of somewhat limiting the enjoyment of fundamental rights and freedoms, from its Constitution.

1574. The National Strategy of Growth and Reduction of Poverty is reported to clearly spell out the importance of human rights. Nevertheless, the Special Representative does not have sufficient information at her disposal to assess this fully and would appreciate receiving further information on this issue.

Communications and concerns

1575. From the establishment of her mandate to 1 December 2005, the Special Representative has sent two communications to the Government, on three defenders. The Special Representative acknowledges the reply of the Government to one of her communications, but regrets to not have received a reply to the other communication.

1576. The Special Representative would like to reiterate her concerns that there have been reports of infringements to the right to freedom of association in Tanzania, in particular after September 2001, and her concerns over the serious obstacles this creates for the work of human rights defenders. (See A/59/401 para. 48) The Law of NGOs of 2002, due to enter into force in October 2003, was the topic of a communication sent by the Special Representative to the Government of Tanzania in 2002. Article 35 (1) of the law provides for criminal sanctions of up to one year's imprisonment for any person operating a non-registered NGO. The law reportedly

provides that refusal to register an NGO by the Coordination Board (NGO Board) may be based on the assessment that the activities of an NGO does not strive for the “public interest”. The definition of “public interest” reportedly remains vague. It is also provided for in the law that the director of the NGO board be appointed by the President. This limits the independence of the NGO board and possibly limits the freedom of association in Tanzania. Concern has been expressed that the law (art. 7) provides the NGO board with the right “to investigate and to inquire into any matter” in order to ensure that NGOs adhere to their own statutes. The NGO board has also reportedly been charged with providing “policy guidelines to NGOs for harmonizing their activities in light of the national development plan” (E/CN.4/2004/94/Add.3 para. 474). According to the Government, the intention of the Act was to ensure that NGOs operate within the ambit of the Law and in the public interest.

1577. The Special Representative notes that there is reportedly limited awareness of the Declaration and about human rights in general, especially in rural areas and among poor and marginalized people. She is concerned about the very limited contact she has had with defenders and defenders’ organization in Tanzania during the two mandate periods and would appreciate receiving information on the situation for human rights defenders and the implementation of the Declaration both from the Government and from civil society.

1578. The Special Representative is concerned about information that law enforcement agencies lack the funds to ensure effective and quick field operations and corruption is reportedly widespread in the police force and other legal institutions. Prompt and impartial investigations by the State in cases of violations of human rights are allegedly not always conducted. The Government has informed the Special Representative that it has taken measures to fight against the prevalence of corruption, such as the establishment of the Anti Corruption Bureau and the Ethics Commission for leaders. Seminars and workshops have been held to sensitize the public against corruption. The Special Representative welcomes these measures.

Thailand

1579. The Special Representative acknowledges the responses from the Government, the United Nations Resident Coordinator, the National Human Rights Commission of Thailand and non-governmental sources to the questionnaire transmitted for the preparation of the present report.

1580. The Special Representative visited the country from 19 to 27 May 2003 and reported about this fact-finding mission to the Commission on Human Rights in document E/CN.4/2004/94/Add.1. The Special Representative acknowledged the very transparent approach taken by the Government to her visit with every effort made to provide her with free access to officials and locations and to respond directly to her questions.

The human rights defenders community in Thailand

1581. In her report the Special Representative noted the strong potential for defenders within Thailand and the positive actions taken by the current Government, but also several concerns that overshadow the enabling environment required by defenders to conduct their work.

1582. According to the information provided by United Nations sources, there are approximately 20 human rights defenders organizations in the country. Despite some challenges, this community is growing and is organizing itself in local, regional and national networks. Many human rights defenders reportedly believe that their situation is worsening due to the legal environment, harassment and intimidation against them and the lack of any serious investigations of attacks against human rights activists and community leaders. In her report, the Special Representative describes the vibrant human rights community in Thailand more extensively.

Legal framework

1583. Thailand has ratified several of the core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). Thailand has not yet signed the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the ICCPR, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or the two Optional Protocols to the Convention on the Rights of the Child.

1584. In 1997 Thailand adopted its 60th Constitution, which provides protection for a broad range of human rights, including rights that are essential to the work of defenders, such as the right of access to information, and emphasizing greater transparency and accountability in government affairs.

1585. However, the Special Representative has been informed that some legislative initiatives adopted recently may undermine the work and freedoms of human rights defenders. In particular, a law has reportedly been passed which prohibits protesting along the roadside. The Special Representative would appreciate receiving more detailed information about this law.

1586. The Special Representative has also been informed that a Decree on Government Administration in State of Emergency came into effect on 16 July 2005. It reportedly allows detention of people without charges for seven days and wiretapping based on court approval, news censoring and banning of sales of publications in the areas covered by the Decree. It is reported that it allows authorities under the Decree to be exempt from civil and criminal charges and from the power of the Administrative Court, should it be proven they acted in good will, in a non-discriminatory manner and without use of more force than normally required. It is questioned who will be mandated to make these judgments. Although the Government has authority to declare the state of emergency in all areas of the country, the Decree is currently only used in the three southernmost provinces. The Special Representative refers to her report to the General Assembly in 2003 (A/58/380) in which she has pointed out the problems that human rights defenders could confront because of restrictions on rights as a result of states of emergency. She mentions the right of freedom of information, access to places and sites of alleged violations, monitoring respect for human rights in judicial procedures, and executive action, and freedom of expression and opinion in reporting the human rights situation as particularly important for the defenders to perform their functions. She reiterates her view that the role human rights defenders becomes even more critical under conditions that heighten the risk of violations of human rights.

Measures taken at national level for the implementation of the Declaration

1587. The Special Representative is aware of several Government initiatives in the field of human rights that have received wide support from the human rights community and may contribute to enhancing the situation of human rights defenders. A summary of the establishment and functioning of Thai institutions supporting human rights may be found in report E/CN.4/2004/94/Add.1, paras. 7 to 17, including references to the work of the National Human Rights Commission and Parliament committees.

1588. In response to her questionnaire, the Government brought to the Special Representative's attention, efforts made from the Rights and Liberties Protection Department of the Ministry of Justice. According to the information provided by the Government, the Department receives complaints in cases where justice is not served in a judicial process or when rights and liberties of people are violated. In such cases, the Department will coordinate with agencies concerned to ensure that the complainants receive adequate assistance and their rights are fully protected. People can request for these services free of charge through 82 Justice Clinic Offices nationwide with cooperation from the Council of Lawyers. In case human rights defenders are defendants in criminal cases, they can request for protection for themselves and their family as well as acquaintances. Moreover, they are entitled to compensation in case they suffer an injury to the life. Witnesses also have the right to file a complaint to the court if they are not satisfied with the protection service. In addition, in accordance with the Compensation for Crime Victim Act 2001, the Department will ensure for adequate remedy to human rights defenders in case they are injured persons or defendants in criminal case. Finally, the Government has informed that it acts as a focal point to coordinate with concerned agencies from all sectors in implementing National Human Rights Action Plan (2001-2005). In this connection, it has drafted a Human Rights Strategy Plan for different target groups, including human rights defenders.

Communications and concerns

1589. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 14 communications to the Government on 24 individual defenders and members of several non-governmental organizations. The human rights defenders who have been the object of communications include lawyers, NGOs' activists, persons assisting migrants, and indigenous leaders. The Special Representative thanks the Government for its responses to almost all her communications.

1590. Following her visit, the Special Representative expressed her concerns about a series of trends and incidents observed, including numerous cases of alleged or attempted murder of defenders, the widespread sense of insecurity expressed to her by defenders, multiple arrests, detentions and prosecutions of defenders, public statements by government officials denigrating NGOs, efforts to control NGO funding, limitations on the freedom of association, alleged surveillance and harassment of some NGOs through State security mechanisms and apparent misconception by some State authorities of the role of civil society. In spite of Government initiatives and some authorities efforts to create an enabling environment for human rights defenders in the country, the allegations received by the Special Representative since then and the information analysed for the preparation of this report do not ease her concerns.

1591. In this connection, the Special Representative wishes to refer to the concluding observations adopted by the Human Rights Committee after it considered the first periodical report of Thailand in July 2005. While welcoming the aspiration of the State party to accept and foster a vibrant civil society, including many human rights organizations, the Committee expressed concern about “the number of incidents against human rights defenders and community leaders, including intimidation and verbal and physical attacks, enforced disappearances and extrajudicial killings” (CCPR/CO/84/THA, para. 19).

1592. The Special Representative has intervened upon allegations received according to which defenders received death threats, were subjected to judicial prosecution, beaten, abducted, forced in to hiding or even killed. She would like to note that the Human Rights Committee in 2005 also referred to “persistent allegations of serious human rights violations, including widespread instances of extrajudicial killings and ill-treatment by the police and members of armed forces, illustrated by incidents such as the Tak Bai incident in October 2004, the Krue Se mosque incident on 28 April 2004 and the extraordinarily large number of killings during the “war on drugs” which began in February 2003” and how “human rights defenders, community leaders, demonstrators and other members of civil society continue to be targets of such actions. The Committee further noted with concern that “any investigations have generally failed to lead to prosecutions and sentences commensurate with the gravity of the crimes committed, creating a culture of impunity” and that “this situation reflects a lack of effective remedies available to victims of human rights violations” (ibid, para. 10).

1593. While welcoming the work done by the Rights and Liberties Protection Department of the Ministry of Justice, the Special Representative wishes to draw attention to concerns expressed by human rights defenders, according to which the Department’s ability to respond quickly is limited and that its reliance on the police for implementation does not ensure greater security for those at imminent risk. Some defenders have reportedly declined police protection in cases where they believed that police officers were involved in attacks and threats against them.

1594. The Special Representative had expressed her concern on past allegations of death threats against members of the National Human Rights Commission. In relation to the NHRC, the Committee on Human Rights in 2005 also welcomed its important work in the promotion and protection of human rights but regretted that many of its recommendations to the relevant authorities had not been implemented and expressed concern about the lack of sufficient resources allocated to the Commission (ibid, para. 9).

1595. The Special Representative invites the Thai Government and human rights defenders and other interested stakeholders to provide her with information about the measures taken to give follow-up and implement these recommendations.

1596. In relation to a Decree on Government Administration in State of Emergency that came into effect on 16 July 2005, the Special Representative is mindful of the concerns expressed by the Human Rights Committee about this Decree (CCPR/CO/84/THA, para. 13) and would appreciate receiving further information on its application and effects on the work of human rights defenders.

Togo

1597. La Représentante spéciale remercie le Gouvernement, le bureau du PNUD au Togo et plusieurs ONG pour leurs réponses au questionnaire qu'elle leur avait transmis pour la préparation de ce rapport.

La communauté des défenseurs des droits de l'homme

1598. La Représentante spéciale note que la période qui a précédé et suivi l'élection présidentielle du 24 avril 2005 a été marquée par un contexte de violences et de violations des droits de l'homme. Par ailleurs, les clivages dans la société togolaise se retrouveraient au sein de la société civile où des organisations auraient été créées dans le but de contrecarrer d'autres organisations œuvrant dans un secteur identique ou similaire. La mise en place de la Commission nationale spéciale d'enquête indépendante est une étape vers l'établissement de la vérité sur les violences postélectorales et une manière de situer les responsabilités afin de mieux promouvoir le respect des droits et libertés fondamentales.

1599. Selon les données du Gouvernement, il y aurait environ une centaine d'ONG et associations travaillant dans le domaine de la protection des droits de l'homme au Togo. La majorité d'entre elles concentrent leurs efforts dans l'éducation et la formation dans le domaine des droits de l'homme. La plupart des ONG togolaises ne possède pas de moyens suffisants pour développer leurs activités par manque de locaux et de matériel pour travailler. Il existe au Togo des collectifs et des coalitions qui permettent aux différentes associations d'unir leurs efforts afin de rendre leurs actions plus efficaces.

Cadre juridique

1600. Le Togo a ratifié plusieurs des principaux traités internationaux, dont le Pacte International relatif aux Droits Civils et Politiques. Le Togo a ratifié le Protocole facultatif à la Convention relative aux droits de l'enfant concernant l'implication d'enfants dans les conflits armés. Il n'a pas encore ratifié le Deuxième Protocole facultatif au Pacte international relatif aux Droits Civils et Politiques, le Protocole facultatif à la Convention sur l'Élimination de toutes les formes de Discrimination à l'égard des Femmes, le Protocole facultatif à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants. Le Togo a signé la Convention internationale sur la protection des droits des travailleurs migrants et des membres de leur famille. Dans le contexte régional, le Togo a ratifié la Charte Africaine des droits de l'homme et des peuples. En vertu de l'article 50 de la Constitution togolaise, adoptée en 1992, « les droits et devoirs, énoncés dans la Déclaration Universelle des Droits de l'Homme et dans les instruments internationaux relatifs aux droits de l'homme, ratifiés par le Togo, font partie intégrante de la présente Constitution ».

Liberté d'expression

1601. Les articles 25 et 26 de la Constitution régulent la liberté d'expression en garantissant la liberté de presse et le droit de toute personne à la liberté de pensée, de conscience, de religion, de culte, d'opinion et d'expression. Ces droits ne peuvent être limités que pour garantir le respect des libertés d'autrui, de l'ordre public et des normes établies par la loi et les règlements.

1602. En 2004, le Togo a adopté un nouveau code de la presse (Loi No. 2004-015 du 27 août). Celui-ci serait favorable au travail des journalistes et dépenaliserait entre autres les délits de presse relatifs à la diffamation et à l'atteinte à l'honneur.

Liberté d'association

1603. L'article 30 de la Constitution togolaise stipule que « l'Etat reconnaît et garantit dans les conditions fixées par la loi, l'exercice des libertés d'association, de réunion et de manifestation pacifique et sans instrument de violences ». Les libertés d'association et de réunion sont également régies par la Loi No. 40-484 du 1^{er} juillet 1901 (loi de droit français applicable au Togo depuis 1946) qui établit un régime de déclaration et ne soumet pas les associations à la nécessité d'un enregistrement pour exister.

Mesures prises au niveau national pour assurer la mise en œuvre de la Déclaration

1604. En juillet 2005, la Ministre des droits de l'homme, de la démocratie et de la réconciliation nationale a rencontré des responsables d'organisations des droits de l'homme pour solliciter leur appui afin de formuler des propositions dans le cadre du processus de réconciliation. Un projet national pour l'organisation d'un forum sur les droits de l'homme et la réconciliation serait en cours d'élaboration.

1605. Le gouvernement a également indiqué que le Ministère chargé de la Promotion de la Démocratie et de l'Etat de Droit avait facilité la représentation des organisations de défense des droits de l'homme à la Commission Nationale des Droits de l'Homme (CNDH) et avait mis en place, en juin 2004, une commission composée de sept membres désignés *intuitu personae*, y compris les membres des organisations de défenseurs de droits de l'homme, chargée d'étudier le statut et le mandat de la CNDH et de faire des recommandations au Gouvernement sur les voies et moyens à suivre pour assurer l'indépendance effective de cette institution vis-à-vis des autorités administratives. A la fin de juillet 2004, cette commission a remis au Ministre un rapport qui contient plusieurs recommandations, dont la modification de neuf articles de la loi organique no. 96-12 du décembre 1996 relative à la composition, l'organisation et le fonctionnement de la CNDH. La loi organique no. 2005-004 du février 2005 modifie et complète la loi organique no 96-12 du décembre 1996.

1606. Depuis 2002, les défenseurs des droits de l'homme au Togo se sont regroupés au sein de la Coalition togolaise des défenseurs des droits humains (CTDDH), dont l'objectif principal est la promotion de la Déclaration sur les défenseurs de droits de l'homme. La CTDDH aurait été reçue à plusieurs reprises par le Ministère chargé de la Promotion de la Démocratie et de l'Etat de droit. La Coalition a organisé un colloque sur la situation des défenseurs des droits de l'homme qui s'est tenu au mois d'octobre 2005. Les participants ont discuté les stratégies à adopter pour créer un cadre plus sûr et propice pour l'activisme des défenseurs des droits de l'homme. La Représentante spéciale ne peut que se féliciter de ce genre d'initiatives.

1607. En 1998, l'enseignement des droits de l'homme a été introduit dans les programmes scolaires. Cependant, certaines sources ont indiqué que les mesures nécessaires à la formation des professeurs chargés de cette formation n'avaient pas été prises. Les ateliers organisés par les ONG pour offrir cette formation aux formateurs n'auraient par ailleurs pas reçu le soutien financier et matériel des autorités.

1608. La Représentante spéciale a également été informée de l'existence d'une Haute Autorité de l'Audio-visuel et de la Communication (HAAC). Cette institution a pour mission de garantir et d'assurer la liberté et la protection de la presse et des autres moyens de communication de masse dans le respect de la dignité de la personne humaine et de veiller à l'accès équitable des partis politiques et associations aux moyens officiels d'information et de communication. Certaines sources non gouvernementales ont signalé qu'en dépit de son indépendance, cette institution n'avait pas joué son rôle dans les moments critiques afin de protéger la liberté d'expression.

Communications envoyées par la Représentante spéciale et motifs de préoccupation

1609. Depuis le début de son mandat et jusqu'au 1^{er} décembre 2005, la Représentante spéciale a envoyé cinq communications concernant la situation de six défenseurs des droits de l'homme. L'une des communications concernait un avocat et activiste des droits de l'homme qui avait rencontré les membres de la Commission d'enquête de l'ONU et l'Organisation de l'Unité Africaine et avait été condamné pour diffamation. Dans trois autres cas, des journalistes avaient été arrêtés et détenus au secret. La dernière des communications concernait une ONG qui aurait été empêchée de mener à bien ses activités et dont les membres auraient été menacés et intimidés. La Représentante Spéciale regrette que le Gouvernement n'ait répondu à aucune de ces communications.

1610. La Représentante spéciale exprime ses plus vives préoccupations quant à la détérioration de la situation des défenseurs ayant coïncidé avec le contexte de violence ayant précédé et suivi les élections. Elle note avec préoccupation les rapports de diverses sources faisant état d'obstructions d'ordre variés de la part des autorités visant à empêcher les défenseurs des droits de l'homme de mener à bien leurs activités dans le cadre du processus électoral.

1611. En particulier, elle exprime sa plus vive inquiétude devant les menaces directes ou anonymes, les insultes, les agressions physiques, les surveillances policières des locaux et du personnel et les actes d'intimidation dont ont fait l'objet les défenseurs des droits de l'homme ainsi que leurs familles, ayant amené certains d'entre eux à se cacher ou à s'exiler.

1612. Elle est également préoccupée par les restrictions faites aux droits à la liberté de réunion, en particulier l'interdiction des manifestations organisées pour dénoncer le coup d'Etat constitutionnel et réclamer le retour à la légalité constitutionnelle et par l'apparente violente répression de ces manifestations pacifiques par les forces de l'ordre.

1613. Elle exprime aussi son inquiétude devant les apparentes restrictions d'accès et de mouvements qui semblent frapper les défenseurs. En particulier, elle s'inquiète du refus manifesté par les autorités nationales d'accorder le statut d'observateurs électoraux aux organisations non gouvernementales nationales et d'interdire aux médias privés de couvrir la campagne électorale et les élections. Certaines sources ont également indiquée que l'accès à certaines parties du pays, comme par exemple la région de Kara, serait très difficile pour les ONG. Les autorités locales refuseraient souvent d'autoriser les ONG à mener à bien leurs activités dans ces zones. L'accès des ONG aux lieux de détention, ou même aux sources hospitalières en temps de crises, serait fréquemment interdit.

1614. Par ailleurs, elle note que de nombreuses sources non gouvernementales ont fait état de l'hostilité des autorités à leur égard et de leur appréhension à dénoncer et critiquer ouvertement les pouvoirs publics au vu du sort d'autres collègues et de la peur de représailles. Certaines sources ont mentionnés que dans ce contexte les défenseurs recouraient parfois à l'autocensure.

1615. Certaines sources ont également noté qu'en dépit du cadre garantissant la liberté d'association, l'obtention du récépissé garantissant la reconnaissance officielle d'une organisation pouvait être difficile à obtenir pour les organisations critiques vis-à-vis des politiques gouvernementales. Quoique le récépissé ne soit pas obligatoire, il a été souligné que certains bailleurs de fonds exigeraient ce document avant d'apporter un quelconque appui à une association togolaise.

1616. La Représentante spéciale remercie le Gouvernement du Togo pour sa réponse favorable à sa demande d'invitation pour effectuer une visite officielle dans le pays.

Tunisia

1617. La Représentante spéciale regrette que le Gouvernement ne lui ait pas fourni à temps des renseignements en réponse au questionnaire distribué pour la préparation de ce rapport. Elle encourage le Gouvernement à lui transmettre une réponse afin qu'elle puisse être reflétée dans les futures versions de ce profil.

La communauté des défenseurs des droits de l'homme en Tunisie

1618. La communauté des défenseurs des droits de l'Homme en Tunisie est très active et s'organise autour de nombreuses associations de défense des droit de l'homme, d'étudiants, de syndicats, ainsi que des organisations professionnelles de journalistes, d'avocats et de magistrats tunisiens. Les défenseurs tunisiens œuvrent dans des domaines extrêmement divers tels que la promotion et protection des droits de l'homme en général, la lutte contre la corruption, la bonne gouvernance, l'état de droit, les droits de la femme, les droits du travail, la lutte contre la torture et l'indépendance de la magistrature.

1619. La Représentante spéciale a également été informée qu'un certain nombre d'organisations non gouvernementales et d'associations ont été créées par le Gouvernement ou fonctionnent grâce à son soutien. Ces associations et leurs membres supposément proches du gouvernement diffuseraient des messages qui contrediraient en partie le discours des associations plus indépendantes et qui viseraient en outre à discréditer le travail des défenseurs les plus critiques envers les abus commis par les autorités.

Cadre juridique

1620. La Tunisie a ratifié le Pacte international relatif aux droits économiques, sociaux et culturels, le Pacte international relatif aux droits civils et politiques, la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, la Convention contre la torture et

autres peines ou traitements cruels, inhumains ou dégradants, ainsi que la Convention relative aux droits de l'enfant et ses deux protocoles. La Tunisie a également ratifié la Charte africaine des droits de l'homme et des peuples. En application de l'article 32 de la Constitution les instruments internationaux ratifiés par l'État partie ont une autorité supérieure à celle des normes du droit interne de l'État partie et peuvent être invoqués directement devant les tribunaux.

1621. D'après l'article 8 de la Constitution, « les libertés d'opinion, d'expression, de presse, de publication, de réunion et d'association sont garanties et exercées dans les conditions définies par la loi ».

Liberté d'expression

1622. En ce qui concerne la liberté d'expression, le Code de la presse, promulgué par la loi du 28 avril 1975 et révisé en 1988, 1993 et 2002, garantit « la liberté de la presse, de l'édition, de l'impression, de la distribution et de la vente des livres et des publications ». Il est par ailleurs à noter que son article 49 prévoit que la publication, la diffusion ou la reproduction de fausses nouvelles qui pourraient troubler l'ordre public seront punies d'une peine d'amende et de peines d'emprisonnement de deux mois à trois ans. La diffamation, prévue à l'article 51, est punissable d'un emprisonnement d'un mois à trois ans et d'une peine d'amende. En outre, d'après le Code, « la publication, l'introduction et la circulation en Tunisie des oeuvres étrangères, périodiques ou non, pourront être interdites par décision du Ministère de l'intérieur, sur avis du Secrétaire d'État auprès du Premier Ministre chargé de l'information ».

1623. Dans son rapport sur sa visite en Tunisie en décembre 1999, le Rapporteur spécial sur le droit à la liberté d'opinion et d'expression s'est montré « convaincu que l'actuel Code de la presse joue un rôle prohibitif qui contribue à entretenir censure et autocensure dans les rédactions des journaux tunisiens » (E/CN.4/2000/63/Add.4, para. 33). La Représentante spéciale a été informée que lors du dernier amendement de ce Code, en 2002, certains éléments répressifs ont été élimés pour être introduits dans le Code pénal.

Liberté d'association

1624. La liberté d'association est reconnue par l'article 8 de la Constitution tunisienne et régie par la loi du 7 novembre 1959 modifiée le 2 août 1988 et 2 avril 1992. Cette loi prévoit qu'une demande d'agrément déposée au gouvernorat en échange d'un récépissé est nécessaire pour créer une association. Le Ministère de l'intérieur peut dans un délai de trois mois prendre une décision de refus de la constitution de l'association. Une réforme à cette loi a ouvert la possibilité de recours judiciaire à l'encontre des décisions du Ministre de l'intérieur en matière de création et de dissolution d'une association. D'après le Rapporteur spécial sur le droit à la liberté d'opinion et d'expression, « cette loi ferait l'objet de vives critiques dans la mesure où elle accorderait notamment des pouvoirs exorbitants au Ministre de l'intérieur et en raison de la rigueur des sanctions pénales qui peuvent frapper toute personne accusée d'appartenir à une association non constituée légalement. » (ibid, para. 67)

Liberté de réunion

1625. La liberté de réunion en Tunisie est garantie par la Constitution et régie par la loi du 24 Janvier 1969 qui stipule que seul un préavis de l'autorité compétente est nécessaire.

1626. Selon les informations reçues de sources non gouvernementales, le cadre juridique assurerait théoriquement en grande partie la protection des libertés fondamentales, mais sa mise en œuvre et son interprétation par les autorités seraient souvent arbitraire et contraire aux normes internationales.

Mesures prises dans le pays pour assurer la mise en œuvre de la Déclaration

1627. La Représentante spéciale regrette ne pas avoir reçu de renseignements sur les politiques et les programmes développés par les autorités tunisiennes compétentes pour assurer la mise en œuvre de la Déclaration.

Communications transmises par la Représentante spéciale et motifs de préoccupation

1628. Du début de son mandat au 1^{er} décembre 2005, la Représentante spéciale a envoyé 54 communications au Gouvernement portant sur 78 défenseurs, dont au moins 12 femmes, la plupart étaient des membres d'organisations de défense des droits de l'homme et un grand nombre de journalistes. La majeure partie de ces communications concernait des cas de menaces, d'intimidation, d'arrestations et de poursuites judiciaires pour appartenance à une organisation non reconnue ou pour avoir exercé leur droit à la liberté d'expression. Certains cas concernaient également des défenseurs ayant été physiquement mal menés par des agents de police, ayant fait l'objet de campagne de diffamation, ou de sanctions professionnelles ou de restrictions à leur liberté de mouvement, de réunion et d'association. La Représentante spéciale est également intervenue dans le cas d'intimidations contre des membres des familles de ces personnes, y compris des enfants. La Représentante spéciale est également intervenue par le biais d'un communiqué de presse conjointement avec le Rapporteur spécial sur la liberté d'opinion et d'expression et le Rapporteur spécial sur l'indépendance des juges et des avocats suite aux allégations faisant état d'attaques répétées contre des organisations de défense des droits de l'homme et leurs membres y compris des associations de magistrats, ainsi que contre des journalistes et certains avocats dans le contexte du Sommet Mondial pour la Société d'Information en Novembre 2006.

1629. La Représentante spéciale remercie le gouvernement pour ses nombreuses réponses à la plus grande partie de ses communications mais note qu'en dépit de ces dernières, elle demeure extrêmement préoccupée par la situation dans laquelle se trouvent les défenseurs des droits de l'Homme tunisiens.

1630. Elle demeure profondément préoccupée par les obstructions à la liberté d'association auxquelles semblent se heurter les défenseurs des droits de l'homme en Tunisie en dépit des garanties juridiques apparentes. Elle note que quoique la création d'une association soit en théorie soumise à un régime de déclaration contre laquelle le ministère de l'intérieur délivrerait un récépissé permettant la publication au journal officiel, il semblerait qu'en pratique, les autorités se comportent comme si les associations étaient soumises à un régime d'autorisation préalable, ce qui aurait pour effet de contraindre les défenseurs à fonctionner dans l'illégalité afin de pouvoir poursuivre leur travail. En particulier, les informations à sa disposition font état de nombreux cas d'organisations non gouvernementales travaillant à la défense des droits de

l'homme qui se verraient contraintes d'opérer dans l'illégalité, alors même qu'elles auraient fait les démarches nécessaires selon la loi en vigueur pour se constituer en associations. De nombreuses associations auraient physiquement été empêchées par les forces de l'ordre de déposer leurs statuts, se seraient vu refuser la délivrance du récépissé confirmant leur déclaration ou le dépôt de leurs statuts serait resté sans réponse.

1631. L'absence de reconnaissance légale des organisations de défense de droits de l'homme a été utilisée par les autorités pour leur refuser certains droits, notamment la publication de rapports ou la tenue de réunions. Les informations reçues de sources non gouvernementales font également état de tentatives d'interférence dans la gestion interne des associations visant à bloquer leur fonctionnement. En particulier, des membres effectifs ou fictifs desdites associations proches du gouvernement tenteraient de discréditer les organes directeurs pourtant dûment élus par des communiqués de presse diffamatoires, des appels à de nouvelles élections internes ou des actions en justice.

1632. Par ailleurs, la Représentante spéciale réitère sa plus vive inquiétude devant les entraves à la liberté de réunion qui semblent être imposées aux défenseurs des droits de l'homme. En dépit des garanties juridiques protégeant la liberté de réunion, il semblerait que les organisations de droits de l'homme se verraient fréquemment empêchées de tenir leurs réunions, assemblées générales, congrès annuels ou séminaires. En particulier, la Représentante spéciale a reçu au cours de son mandat de nombreux rapports faisant état de l'encerclement des bureaux des ONG par les forces de l'ordre, voire du bouclage de quartiers entiers pour interdire l'accès des participants aux réunions. Par ailleurs, comme il lui a été donné d'observer, les forces de sécurité exercent une surveillance permanente des associations et de leurs membres, notamment en postant des policiers en civil aux alentours.

1633. Elle tient également à souligner sa plus vive inquiétude devant les restrictions qui semblent être imposées à la liberté d'expression en Tunisie. Depuis début 2002, elle a suivi quelques 14 cas concernant la mise à l'amende, la mutation forcée, l'arrestation, et l'emprisonnement de nombre de journalistes, d'avocats et de magistrats pour avoir soulevé publiquement des questions de droits de l'homme. Il semblerait, en particulier, que les journalistes fassent face à une criminalisation grandissante de leur activité. Dans le cadre de son mandat, elle a reçu de nombreux cas de journalistes faisant l'objet de poursuites judiciaires pour « diffamation », « propagation de fausses nouvelles de nature à troubler l'ordre public », « outrage » aux autorités pour avoir publiquement dénoncé des violations des droits de l'homme.

1634. Certaines ONG de défense de droits de l'homme rencontreraient aussi des difficultés pour accéder aux fonds étrangers destinés à leur activité. Il semblerait que les restrictions soient, en partie, fondées sur la législation mise en place pour combattre le terrorisme. Quoiqu'elle reconnaisse pleinement l'importance pour le Gouvernement tunisien de combattre ce fléau, elle souhaiterait souligner que la capacité des défenseurs des droits de l'homme de mener à bien leurs activités repose sur leur aptitude à accéder aux financements, notamment en provenance de l'étranger et que ce droit ne saurait être remis en question dans le cadre de la lutte contre le terrorisme en particulier lorsque et les bénéficiaires et les bailleurs de fonds représentent des entités connues et transparentes dont l'activité de défense des droits de l'homme est clairement reconnue ainsi que stipulé par l'article 13 de la Déclaration.

1635. L'interdiction de quitter le territoire national aurait été imposée à des défenseurs tunisiens qui étaient sur le point de se rendre à des conférences sur les droits de l'homme à l'étranger, notamment à la Commission des droits de l'homme. Par ailleurs, des activistes étrangers auraient été expulsés du pays.

1636. La Représentante spéciale regrette que le Gouvernement ne lui ait toujours pas donné une réponse positive à sa demande d'effectuer une visite officielle dans le pays en dépit de ses multiples requêtes.

Turkey

1637. The Special Representative thanks the Government of Turkey and non-governmental sources for their respective responses to the questionnaire transmitted for the preparation of this report.

1638. The Special Representative visited the country on official mission from 11 to 20 October 2004. Her full findings may be found in documents E/CN.4/2005/101/Add.3 and E/CN.4/2005/101/Add.3/Corr.1.

The human rights defenders community

1639. Discussions on opening negotiations for Turkey's entry in the European Union have reportedly created a climate more favourable for progressive reforms at legislative level than what has previously been the case. However, as noted in her report, legislative reforms are not always fully implemented on the ground and human rights defenders still face obstacles and repression in the performance of their work, mainly due to the reported tendency of official institutions to interpret legislation as restrictively as possible. It is the view of the Government that the role and situation of human rights defenders in Turkey have improved significantly.

1640. In the course of her visit to Turkey, the Special Representative met with a host of civil society representatives remarkable for their number and enthusiasm. As previously noted in her report, the Special Representative was impressed to see how vibrant the human rights movement has been in Turkey despite difficult circumstances. As she said in her report, she was "encouraged by the existence of a genuine and active human rights community in Turkey, which is actively implanted throughout the country including NGOs branches at the municipal level" (see E/CN.4/2005/101/Add.3, paras. 54-57). Turkish defenders come from varied backgrounds, including lawyers, human rights activists, physicians, trade unionists, students, journalists, writers, artists and academics. This leads to a diverse movement covering a range of issues. Defenders work on protection of civil rights including freedom of expression, fair trial, torture and ill-treatment and democratic rights. They are also active in areas of economic, social and cultural rights, in particular minority rights, language rights, education and labour rights. Women's issues are also well represented in civil society.

1641. NGOs have managed to document cases, raise issues within and outside the country and to create national networks of human rights defenders through the creation of temporary platforms to address specific issues. Many Turkish human rights organizations are members of

recognized international human rights NGOs or work in cooperation with them. Such cooperation has allowed them to access international human rights bodies, including the United Nations Commission on Human Rights.

Legal framework

1642. Turkey has ratified the seven main human rights international treaties, including the International Covenant on Civil and Political Rights (ICCPR). The ratification process of the two optional protocols to the ICCPR is reportedly underway. The Special Representative is pleased that Turkey signed, in September 2005, the Optional Protocol to the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment. The Special Representative encourages the Government to consider favourably the withdrawal of reservations to the ratified international treaties. Turkey has also acceded to relevant regional human rights treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms. International human rights treaties become directly applicable into Turkish law. In the case of a conflict with national legislation, the provisions of the international treaties will prevail. The Government also pointed out that as State party to the European Convention on Human Rights, Turkey recognized the right of individual application to the European Court of Human Rights in 1987 and the Court's jurisdiction in 1990.

1643. The Government has informed the Special Representative that all the rights and freedoms contained in the Declaration are under constitutional guarantees in Turkey and gave some illustrative examples of national laws that regulate the promotion and protection of these rights.

1644. Apart from restrictions on their rights to express and organize, defenders have suffered particularly from the use of anti-terrorism legislation. The Anti-Terror Law has now been amended to exclude non-violent actions from the scope of its applications. The Special Representative reiterates that she welcomes the abolition as part of the constitutional package of 2004 of State security courts, which had been used to prosecute human rights defenders.

1645. The Ministry of Interior has issued several circulars giving instructions on how to interpret and apply relevant new laws. These circulars are also mentioned in the mission report of the Special Representative.

Freedom of expression and access to information

1646. Articles 25, 26 and 27 of the Constitution guarantee freedom of thought and freedom of expression.

1647. The Special Representative has been informed that a new penal code was introduced on 1 June 2005. This introduced Article 301, on the denigration of Turkishness, the Republic, and the foundation and institutions of the State. It reportedly replaces article 159 of the old penal code.

Freedom of assembly and freedom of association

1648. The right to association and the right to assembly are guaranteed in articles 33 and 34 of the Constitution.

1649. The activities of human rights organizations are regulated by a multitude of laws and regulations. Apart from the provisions contained in the Constitution, these include: Law No. 5253 on Associations, Law No. 2762 on Foundations, the Civil Code, the Turkish Penal Code (TPC), the Press Law, Law No. 2911 on Meetings and Demonstrations, the Law on the Gathering of Donations, the Law on Police Duties and Competencies, and public order legislation. Since 2001, the last two Governments have launched a series of impressive constitutional and legislative reforms. Nine legislative harmonization packages were adopted to adapt the existing legislation to the constitutional amendments and new civil, penal and criminal procedure codes were adopted. The reforms include key measures on fundamental freedoms, of particular relevance to the framework in which human rights defenders operate. Amendments of the Penal Code adopted by the Parliament in 2004 and summarized in the above-mentioned report entered into force on 1 June 2005.

Measures taken at national level for the implementation of the Declaration

1650. Human Rights Boards, also referred to as Human Rights Councils have been established since 2001 at the provincial and district levels to conduct investigations of allegations of human rights abuses and transmit their findings to competent authorities for relevant administrative or legal action. According to official sources, 931 boards have been established. The Special Representative reiterates that she notes serious shortcomings of several aspects of the boards. This is elaborated on in the section on concerns.

1651. In its response to the questionnaire, the Government raises the attention of the Special Representative to the Investigation Bureau for allegations of human rights violation that has been established in February 2004 within the Inspection Board of the Ministry of Interior, with a view to processing allegations submitted by NGOs and individuals. A special website was put into operation for the submission of the allegations. The inspectors are authorized to inspect police stations and detention centres. The Government also informed the Special Representative of the newly created Department of Associations within the Ministry of Interior.

1652. The Government also informed the Special Representative that the Gendarmerie Human Rights Violations' Investigation and Evaluation Centre (JIHIDEM) was founded in April 2003 to investigate and evaluate complaints regarding allegations of human rights violations perpetrated under the responsibility of the Gendarmerie.

1653. In 2001, the Human Rights Presidency was established by the Government in the Prime Minister's office with the mission to oversee human rights issues including the implementation of efforts in this field and to coordinate with relevant private and public structures working on human rights. The Government has also informed the Special Representative that a standard application form for the allegations of human rights violations to be submitted to the relevant authorities has been posted on the website of the Office of the Prime Minister, in order to ensure efficiency and prompt conclusion and to follow-up such applications.

1654. Finally, the Government informed the Special Representative that efforts to raise awareness of human rights through education have intensified. Compulsory and optional course have been included in primary and high schools programmes and new human rights institutes have been created in various universities. Human rights courses are compulsory at Police Academies and have been introduced in preparatory programs for civil service candidates. The

Government has also mentioned the program envisaged by the National Committee on the United Nations Decade for Human Rights Education for the period 1998-2007. It has also noted that human rights training projects, which include dissemination of the Declaration on Human Rights Defenders, for security forces and the judiciary are being conducted in cooperation with the Council of Europe and the European Union. Bilateral programs with several European countries have also reportedly been initiated.

Communications and concerns

1655. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 31 communications to the Government on 97 individual defenders, including numerous women, and members of several non-governmental organizations. In addition to individual defenders, communications have been sent concerning non-governmental organizations and NGO networks who have faced harassment and have had legal action taken against them because of their work to promote and protect human rights. The Special Representative acknowledges the prompt and detailed response from the Government to virtually all communications she has sent. Nevertheless, she is concerned about the fact that the Government in many of its responses confirmed that defenders had been prosecuted, often on dubious charges such as “inciting hatred and enmity amongst peoples because of racial and regional differences”, “having insulted the Turkish armed forces”, hanging up posters without permission, aiding terrorist organizations and “professional misconduct”.

1656. The Special Representative notes with great concern that in the great majority of the communications she has sent throughout the six past years, the alleged perpetrators of violations against human rights defenders have been the authorities, either in the form of the State authorities, the police, the courts or members of the security forces or gendarmerie. The Special Representative would like to remind the Government of the Declaration which states that “the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State”.

1657. The Special Representative is pleased to detect improvement in Turkey’s human rights record, including in connection with the situation of human rights defenders. She welcomes the reform process put in place in Turkey, in particular in the field of freedom of expression, assembly and association. She also appreciates government initiatives and policies to develop a culture of human rights in the country. Nevertheless, she is concerned about the Government’s still persistent views on many counts of defenders as enemies of the State. The Special Representative regrets that efforts to stop the stigmatization of human rights defenders as enemies of the State are still too weak and that the perception of human rights defenders as potential threats to the State persists in the public opinion and among law-enforcement officials.

1658. While welcoming the extensive reforms in the past years, the Special Representative reiterates her concern that in certain areas relevant to the work of human rights defenders, reforms have relaxed but not removed restrictions on basic freedoms. Defenders are still reporting facing massive numbers of trials and investigations under various laws and regulations. The Special Representative notes that a large number of her communications deal with prosecution of defenders and legal action against organizers of demonstrations or against NGOs working on human rights issues. Defenders have been charged in particular because of promoting the rights of the Kurdish population, issuing “unauthorized press statements”, alleged

misconduct against lawyers, “inciting hatred and enmity amongst peoples”, aiding terrorist organizations and “professional misconduct”. NGOs have had legal proceedings brought against them for alleged violations of laws and regulations regulating the operation of non-governmental organizations.

1659. The Special Representative is concerned about the restrictions on the right to freedom of expression and freedom of assembly in Turkey. The Special Representative has sent communications upon receiving allegations that police have forcibly dispersed peaceful demonstrations and arrested demonstrators. She also notes that around 50 per cent of her communications have been sent jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

1660. Specifically on the right to freedom of expression, the Special Representative is concerned about the possible effects of the new article in the Turkish Penal Code, Article 301. This article is worded in wide and vague terms and may therefore be applied to criminalize a huge range of critical opinions. Non-governmental organizations have expressed concern at the frequent use of this provision to prosecute human rights defenders, journalists and other members of civil society expressing dissent peacefully.

1661. The Special Representative reiterates her deep concern at the continuing practices of harassment of human rights defenders. She is concerned by the reports of continued extensive Government surveillance of defenders and their organizations by State authorities.

1662. The Special Representative notes efforts to hold internal investigations on violations against defenders, but still reiterates that she is concerned by the high level of impunity for human rights violations. She also reiterates her grave concern with regards to the large number of prosecutions filed against human rights defenders and their organizations.

1663. While the Special Representative welcomes the steps taken to establish the Human Rights Boards, she is concerned that despite reforms, these boards remain problematic because of the selection process for their members and for their general modus operandi where governors act as chairs and cases are decided by majority vote. The Special Representative also notes with regret that no independent national human rights body exists to monitor human rights nationally and to conduct independent investigations.

Turkmenistan

1664. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1665. Due to severe restrictions upon civil society activists, it is reportedly impossible for independent human rights activists to operate openly and without risks. The Special Representative regrets that she does not have sufficient information to report further on the status of the human rights defenders community in Turkmenistan.

Legal framework

1666. Turkmenistan is party to most of the international core human rights treaties, including the International Covenant on Civil and Political Rights. It has not ratified yet the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Although under article 6, the Constitution recognizes the primacy of generally recognized norms of international law, the status of international human rights treaties in domestic law remains unclear. This was also noted by the Committee on the Elimination of Racial Discrimination in August 2005 (CERD/C/TKM/CO/5, para. 10). In general the legal framework of Turkmenistan is restrictive in terms of the laws and provisions relevant for the work of human rights defenders.

Freedom of association

1667. On 21 October 2003, the Government of Turkmenistan adopted a new law on association which regulates the establishment and operation of associations and NGOs within the country. The Criminal Code was amended accordingly. The registration procedures set by the new law remain unclear and render the registration of organizations unduly difficult. Under article 17 of this law all public associations are required to register with the Ministry of Justice (*Adalat*) or face criminal charges, including imprisonment up to one year and “corrective labour” for activities if unregistered. It appears that article 17 requires that organizations reregister for any change in their charter and any factual changes in their registration details. Article 18 reportedly grants wide-ranging power to the Ministry of Justice with regards to grounds on which registration can be denied. The law places undue restrictions on the work of foreign and international NGOs based in Turkmenistan, which are required to have a minimum of 500 members, as opposed to 50 members for national associations and just five for local ones. In addition an NGO has to have a branch abroad in order to be eligible for registration under the category of “international association”. Concerns have also been expressed with regards to restrictions imposed on authorized activities for public associations by article 21, which establishes a list of permitted activities. Additionally, according to the information received, article 22 establishes undue scrutiny by the Ministry of Justice into the activities of registered association by requiring that associations submit annual reports and copies of management decisions on their activities to this Ministry, and to provide it with prior notification of any events the association organizes and to allow for government officials to attend. Finally, Articles 21 and 22, respectively, place undue restriction on cooperation with international NGOs and access to foreign funding. The Special Representative sent a communication concerning this piece of legislation on 29 April 2004, to which the Government responded by letter dated 17 May 2004, denying that these legal changes were not in conformity with the Declaration.

1668. The Special Representative welcomes information subsequently received according to which the Criminal Code was amended again on 2 November 2004 with a view to rescinding article 223/1, which stipulated criminal penalties for unregistered activities of public associations, including NGOs.

Measures taken at national level for the implementation of the Declaration

1669. The Special Representative regrets that she has not received information regarding policies or programmes set up by relevant Turkmen authorities to ensure an effective implementation of the mandate.

Communications and concerns

1670. From the establishment of her mandate to 1 December 2005, the Special Representative has sent six communications to the Government in relation to four human rights defenders, including two women, and a proposed law. The Special Representative thanks the Government for its response to one of the communications but regrets that it has failed to respond to the remaining five.

1671. The Special Representative is deeply concerned about the severe repression faced by human rights defenders in Turkmenistan which not only prevents them from operating openly but also puts them at serious risks. Reported intimidation, harassment, constant surveillance, arbitrary arrests, imprisonments and ill-treatment against human rights activists, reprisals against their relatives and restrictions on their rights to freedom of movement are dismaying.

1672. Restraints on the right to freedom of association are equally alarming. Lack of free media and restraints to freedom of expression are of great concern. It is reported that the Government subjects all media outlets to pre-publication censorship, that most Russian-language media have been banned and that access to the Internet has been severely restricted. The situation of human rights in Turkmenistan has been considered by the Commission on Human Rights and the General Assembly since 2003, although no resolution was adopted by the Commission on Human Rights in 2005. Other international bodies, such as the OSCE, the European Parliament and the European Bank for Reconstruction and Development have raised grave concern about the deteriorating human rights situation in the country. The Government has always denied that there were any human rights abuses of the country and has so far turned down requests by international experts to conduct fact-finding missions in the country.

1673. The Special Representative is concerned about the fact that even international human rights defenders have been denied visas to visit the country. Reports reveal that some dissidents have even been traced down and intimidated abroad by the Turkmen Secret Service. Turkmen civil society activists are reportedly subjected to harassment and interrogated and in some cases, they have been arbitrarily arrested or imprisoned and subjected to torture or other forms of ill-treatment. Defenders included in the Special Representative's communications were reportedly arrested for participating in a human rights meeting, intimidated following a meeting with OSCE representatives, threatened, beaten and forcibly displaced. These persons include ecological activists, journalists, human rights NGOs' representatives and relatives of prominent human rights defenders. Several activists have reportedly fled the country due to increased pressure on them. The Special Representative notes that the Committee against Racial Discrimination in 2005 was deeply concerned by "information that the State party has adopted measures drastically limiting access to foreign culture and art, foreign media and the Internet.

While taking note of the abolition of the exit visa in 2004, it also remains concerned about the reported impediments imposed on Turkmen students wishing to study abroad” (CERD/C/TKM/CO/5, para. 19). The Special Representative is concerned that these restrictions may hinder the work of Turkmen human rights defenders wishing to exchange information with partners abroad.

1674. The Special Representative is gravely concerned about reports that the authorities have increasingly attempted to co-opt NGOs under governmental structures; they have stepped up scrutiny of funding in relation to independent civil society groups and have shown resistance to registering such groups. Human rights defenders have been frequently prevented from meeting with representatives of foreign governments and international organizations. Those who have nevertheless managed to attend such meetings have reportedly faced serious repercussions. One of the communications sent by the Special Representative concerned the adoption of a Law on public associations which reportedly imposes conditions on associations conducting human rights activities which may be in violation of the Declaration (see above).

1675. The Special Representative is concerned about the serious restrictions on the right to freedom of movement which gravely hinder the work of human rights defenders in Turkmenistan. It is reported that since the year 2000 Turkmen citizens have had to obtain special permission from the police to travel to the regions bordering on neighbouring Uzbekistan. Procedures to obtain permission were allegedly tightened in September 2004. Several human rights bodies, including the Commission on Human Rights have called upon the Government to put an end to forced displacement and to guarantee freedom of movement inside the country. (see resolution 2004/12, para. 3 (c)).

1676. The Special Representative wishes to refer to Commission on Human Rights resolution 2004/12, through which the Commission expressed grave concern at: “(a) The persistence of a governmental policy based on the repression of all political opposition activities; (b) The abuse of the legal system through arbitrary detention, imprisonment and surveillance of persons who try to exercise their freedoms of thought, expression, assembly and association, and harassment of their families; (c) Restrictions on the freedoms of information and expression, including through the suppression of independent media; (d) Restrictions on the exercise of the freedoms of thought, conscience, religion and belief, including by the harassment and persecution of members of independent faith groups and the discriminatory use of registration procedures for such groups; (e) Discrimination by the Government of Turkmenistan against ethnic Russian, Uzbek and other minorities in the fields of education and employment; (f) The poor conditions in prisons in Turkmenistan”. The Commission also expressed its grave concern at “the continuing failure of the Government of Turkmenistan to respond to the criticisms identified in the report of the Rapporteur of the Moscow Mechanism of the Organization for Security and Cooperation in Europe as regards the investigation, trial and detention procedures following the reported assassination attempt against President Niyazov in November 2002, as well as the failure of the Turkmen authorities to allow appropriate independent bodies, family members and lawyers access to those convicted, or to provide any kind of evidence to dispel rumours that some of the latter have now died in detention” (paras 1 and 2).

1677. The Special Representative regrets that the Government has not yet responded favourably to her request to visit the country, in spite of Commission on Human Rights resolution 2004/12.

Uganda

1678. The Special Representative regrets that she has not received a response from the Government of Uganda to the questionnaire transmitted for the preparation of this report. She acknowledges information received from non-governmental sources.

The human rights defenders community

1679. Defenders in Uganda have for a number of years been working in a context where the main contentious issue in the country has been the war in northern Uganda that started in 1986 and is still ongoing. The two parties in the war are the Lord's Resistance Army (LRA) and the government's Ugandan Peoples' Defense Forces (UPDF).

1680. The Special Representative regrets that she has not received sufficient information to be able to complete this section with regards to Uganda. She would appreciate receiving further information from the Government and from civil society.

Legal framework

1681. Uganda has ratified most of the core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). It is not yet a State party to the Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the Second Optional Protocol to the ICCPR, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Uganda is a State party to the African Charter on Human and Peoples' Rights.

Freedom of expression and access to information and freedom of assembly and movement

1682. Article 29 of the Constitution guarantees freedom of expression, including freedom of the press and other media. Article 21 provides for the right to peaceful assembly.

Freedom of association

1683. Article 29 guarantees the right to freedom of association. According to the initial report of Uganda to the Human Rights Committee, this article has been the most controversial in Uganda since the introduction of the Movements system in spite of Constitutional provisions (ibid, para. 458). The Movement system is based on the idea that candidates run for elections based on their personal merit whilst being a part of an allegedly all-inclusive "movement", rather than being representatives of a party. Ugandans voted to lift this system in 2005, but the Special Representative regrets that she has not received further information concerning the developments after the referendum and would appreciate receiving such information and also information on how the present system affects the environment for human rights defenders and their rights according to the Declaration.

Measures taken at national level for the implementation of the Declaration

1684. The Special Representative notes the comments by the Human Rights Committee in its concluding remarks where it welcomed "the establishment in 1996 of the Uganda Human Rights Commission, which is endowed with powers to address human rights violations and seeks to adhere to the Paris Principles" (CCPR/CO/80/UGA, para. 4).

1685. In 2005, the National Seminar on the Protection of Human Rights Defenders, where the Declaration and Plan of Action were adopted, was organized by the Foundation for Human Rights Initiative and reportedly attended by human rights defenders and representatives of various institutions of Government. The Special Representative welcomes the Entebbe Declaration on the Protection of Human Rights Defenders in Uganda of July 2005, and the conjoining Entebbe Plan of Action for the Protection of Human Rights Defenders in Uganda, that both came out of this seminar. The Entebbe Plan of Action aims to “define strategies to respond to the difficult situation faced by Human Rights Defenders in Uganda” and lists strategies to enhance the capacity of human rights defenders, strategies to enhance the protection of defenders and strategies in respect to international and regional actors.

1686. The Special Representative regrets that she has not received further information on the policies and programmes adopted by Ugandan relevant authorities to ensure an effective implementation of the Declaration.

Communications and concerns

1687. From the establishment of her mandate to 1 December 2005, the Special Representative has sent three communications to the Government. The Special Representative regrets that the Government has failed to respond to her communications. She is concerned with the lack of contact she has had with the defenders community in Uganda during her two mandate periods, and she would appreciate receiving responses to her communications from the Government, in addition to any information the Government and civil society can provide her with concerning the situation of human rights defenders and the implementation of the Declaration in Uganda.

1688. The Special Representative reiterates her concern over the policies of the Government towards the Uganda Human Rights Commission. In 2003 she sent a communication to the Government regarding the reported proposal of the Government to phase out the UHRC. She would like to refer to the concluding remarks of the Human Rights Committee where it stated that “While acknowledging the important role of the Uganda Human Rights Commission in the promotion and protection of human rights in Uganda, the Committee is concerned about recent attempts to undermine the independence of the Commission. It is also concerned about the frequent lack of implementation by the State party of the Commission’s decisions concerning both awards of compensation to victims of human rights violations and the prosecution of human rights offenders in the limited number of cases in which the Commission had recommended such prosecution (art. 2). The State party should ensure that decisions of the Uganda Human Rights Commission are fully implemented, in particular concerning awards of compensation to victims of human rights violations and prosecution of human rights offenders. It should ensure the full independence of the Commission” (CCPR/CO/80/UGA, para. 7). The Special Representative would greatly appreciate receiving updated information from the Government on this case.

1689. In 2001, the Special Representative communicated her concern to the Government over proposed amendments to an NGO registration bill which it was thought would have negative impact on the possibility of NGOs to work independently without fearing reprisals from the authorities. She has not received a response to her communication and would appreciate an update on the issue from the Government.

1690. The Special Representative notes that in its initial report to the Human Rights Committee, Uganda noted that neither the right to freedom of expression nor the right to peaceful assembly are absolute, as, according to article 43 of the Constitution, they can be subjected to limitations in the protection of the rights of other persons and in public interest (CCPR/C/UGA/2003/1, para. 457). She would appreciate receiving further information on this from the Government and reminds the Government of article 5 of the Declaration which states that “for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right [...] to meet or assemble peacefully” and article 6 which states that “everyone has the right [...] as provided for in international 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”.

Ukraine

1691. The Special Representative acknowledges the response from the Government to the questionnaire transmitted for the preparation of this report. Some of the information in this section comes from additional, non-governmental, sources.

The human rights defenders community

1692. Presidential elections in November 2004 sparked a popular uprising in support of presidential candidate Viktor Yushchenko. In what became known as the Orange Revolution, thousands of Ukrainian citizens took to the streets to peacefully protest the Government’s reported manipulation of the elections in favour of Prime Minister Viktor Yanukovich. Yushchenko won the repeat elections on December 26 and was sworn in as president in January 2005. Upon taking office, the new Government announced its intention to protect and promote human rights and to rectify the abuses of the previous government.

1693. The Special Representative regrets that she has not received sufficient information on the human rights defenders community in the Ukraine to be able to complete this section.

Legal framework

1694. Ukraine is a State party to most of the core international human rights instruments. It has not yet signed the Optional Protocol to the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the Second Optional Protocol to the International Covenant on Civil and Political Rights, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The European Convention forms part of Ukraine’s national legislation and is implemented through national and international legal mechanisms, e.g. the European Court of Human Rights. The legal framework in Ukraine is in general fairly liberal in terms of the laws and provisions relevant for the work of human rights defenders. Nevertheless, the Special Representative regrets that she does not have sufficient information available to her to be able to make a full assessment of the implementation of this legal framework in practice.

1695. The Government has noted that, under the Constitution, parliamentary scrutiny of respect for constitutionally guaranteed human and civil rights and freedoms is exercised by the Commissioner for Human Rights of the Verkhovna Rada. The aim of parliamentary scrutiny as

exercised by the Commissioner is to protect the human and civil rights and freedoms proclaimed by the Constitution, laws and international treaties of Ukraine, to adhere to and protect human and civil rights and freedoms, to prevent violations of human and civil rights and freedoms or promote their restoration, to promote alignment of Ukrainian legislation regarding human and civil rights and freedoms with the Ukrainian Constitution and international standards in this sphere, to improve and further develop international cooperation on the protection of human and civil rights and freedoms, to prevent any form of discrimination with regard to the individual's ability to exercise his or her rights and freedoms, and to promote greater public awareness of the law and the protection of confidential personal information.

Freedom of expression and access to information

1696. The Constitution stipulates that everyone is guaranteed the right to freedom of thought and speech, and freely to express his or her views and beliefs.

1697. The Constitution stipulates that everyone has the right freely to gather, store, use and disseminate information orally, in writing or by other means, as he or she chooses. The Information Act of 2 October 1992 states that all Ukrainian citizens, corporations and public bodies have the right to information. This Act also states that the exercise of the right to information by citizens, corporate bodies and the State must not violate the public, political, economic, social, moral, environmental and other rights, freedoms and legitimate interests of other citizens or the rights and interests of corporations.

Freedom of assembly

1698. The Ukrainian Constitution guarantees the right to peaceful assembly, but prior notice needs to be given to executive or local Government bodies.

Freedom of association

1699. The Constitution guarantees the right to association with the exception of statutory restrictions that apply in connection with national security, public order, public health and the protection on the rights and freedoms of others. The procedure for exercising the right to freedom of association is established by, inter alia, the Citizen's Associations Act of 16 June 1992, the Political Parties Act of 5 April 2001 and the Trade Unions (Rights and Safeguards) Act of 15 September 1999.

Measures taken at national level for the implementation of the Declaration

1700. It is the view of the Government, many of the rights enshrined in the Declaration are guaranteed under the European Convention. The Special Representative would nevertheless appreciate information on steps taken by the Government to implement the Declaration and to take specific measures to ensure an enabling environment for human rights defenders to carry out their activities of promoting and protecting human rights.

Communications and concerns

1701. No communications have been sent to the Government of Ukraine. The Special Representative regrets that she has had very little contact with the human rights defenders and

their organizations in Ukraine throughout the six years that she has held this mandate. She would appreciate receiving information from civil society actors on the situation for human rights defenders and the activities they are involved in.

1702. The Special Representative notes with concern reports about restrictions on freedom of assembly and freedom of association during the elections in 2005. She notes that the Organization for Security and Cooperation in Europe (OSCE) stated after the second round of elections (a third and decisive round was later held), that the elections “did not meet a considerable number of OSCE, Council of Europe and other European standards for democratic elections [...] in particular, the rights to peaceful assembly and freedom of association were violated”.

1703. The Special Representative is concerned about allegations of torture and ill-treatment in police detention, from several sources. In its December 2004 report on Ukraine, the Council of Europe’s Committee for the Prevention of Torture noted that detainees are at high risk of being physically ill-treated at the time of their apprehension and while in police custody, particularly when being questioned. The Special Representative would appreciate receiving information from the Government and from defenders and defenders’ organizations on the situation for defenders who have been detained.

1704. The Special Representative would appreciate receiving information from the Government on measures taken on the national level for the implementation of the Declaration. She would also appreciate receiving information from the Government on the situation of human rights defenders in Ukraine.

United Kingdom of Great Britain and Northern Ireland

1705. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1706. The Special Representative regrets that she has not sufficient information at her disposal to offer a description of the human rights defenders community in the United Kingdom.

Legal framework

1707. The United Kingdom is a State party to most of the core international human rights instruments. It has not yet signed the Optional Protocol to the International Covenant on Civil and Political Rights or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The United Kingdom has signed, but not ratified, the Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography.

1708. In relation to the legal framework in the United Kingdom, the Special Representative refers to paragraph 4 of the European Union Profile.

Communications and concerns

1709. From the establishment of the mandate until 1 December 2005, the Special Representative has sent three communications to the Government of the United Kingdom. The Special Representative thanks the Government for responses to all her communications.

1710. The Special Representative is concerned by the fact that all three communications she has sent during her two mandate periods concerned cases from Northern Ireland. The Special Representative has previously [in 2002] urged the Government of the United Kingdom to investigate, thoroughly and without delay, cases of threats against defenders in Northern Ireland.

1711. The Special Representative would appreciate receiving information from the Government and civil society on the situation for human rights defenders and the steps taken towards the implementation of the Declaration in the United Kingdom.

United States of America

1712. The Special Representative thanks the Government of the United States of America (USA) for its response to the questionnaire she transmitted for the preparation of the present report. She regrets not having received a response to the questionnaire from any non-governmental sources.

The human rights defenders community

1713. The Government has informed the Special Representative that the human rights defenders community in the United States of America is large, varied, and vibrant and there are organizations and individual defenders working on a vast array of human rights issues all over the country. There are numerous NGOs, both national and international, who work on numerous human rights issues, including women's rights, labour rights and environmental rights. In addition to organizations, there are also many activists and professionals who work in an individual capacity to promote and defend human rights.

Legal framework

1714. The United States of America has ratified several core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). The United States has not yet acceded to the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women (signatory), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the Convention on the Rights of the Child (signatory).

1715. The first amendment of the Constitution of the United States of America protects the right to freedom of worship, speech and press, the right of peaceful assembly, and the right to

petition the government. The legal framework in the United States of America generally guarantees the exercise of fundamental freedoms, also in relation to the work of human rights defenders.

Measures taken at national level for the implementation of the Declaration

1716. The Special Representative regrets that she has not received sufficient information on the policies and programs adopted by relevant US authorities to ensure an effective implementation of the Declaration.

1717. The Government has informed the Special Representative that the United States Constitution guarantees the rights to meet and assemble peacefully, to form, join and participate in non-governmental organizations, associations or groups and to communicate with non-governmental organizations and that this creates an environment in which human rights defenders can freely defend human rights.

Communications and concerns

1718. From the establishment of her mandate to 1 December 2005, the Special Representative has sent four communications to the Government, on 11 defenders, one umbrella organization and three NGOs. The Special Representative acknowledges the Government's response to one of her communications, but regrets not having received replies to the remaining three.

1719. Despite the fact that the Constitution guarantees most rights stipulated in the Declaration and that most rights are also guaranteed in practice, the Special Representative is concerned about possible negative effects of anti-terrorism laws and provisions introduced in the past years, on the environment for defenders. In particular she is concerned about the effects this could have on the right to freedom of assembly and expression. She would like to remind the Government about the Declaration which recognizes the "relationship between international peace and security and the enjoyment of human rights and fundamental freedoms [...]".

1720. The Special Representative has previously expressed her concern about reports that peaceful demonstrations have been reacted violently to by the police and that it in certain cases is difficult to obtain permits for demonstrations. One communication concerned police allegedly firing rubber-bullets at peaceful demonstrators in an anti-war demonstration.

1721. The Special Representative is concerned about reports that there has been a move towards less acceptance of criticism against the Government and in particular the Government's policies in Iraq over the past years. All communications sent concerned issues related in one way or the other to the Government's policies in relation to Iraq. Nine of the defenders included in the communications were either Iraqis or working in Iraq.

1722. The Special Representative is concerned about reports of problems with access to certain detention centres, and in particular in Guantanamo Bay. It has not been possible to agree to the terms of reference for Special Representative to get admission to detention facilities at Guantanamo Bay. One communication concerned three NGOs whose request to observe the

military commission trials of detainees at Guantanamo Bay was denied. The Government has informed the Special Representative that representatives of other organizations and members of the press were allowed to attend the military commission trials.

Uzbekistan

1723. The Special Representative thanks non-governmental sources that have responded to the questionnaire distributed for the preparation of the present report. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community in Uzbekistan

1724. The Special Representative notes that an Independent Expert was appointed by the Commission on Human Rights under the 1503 procedure to examine and report on the situation of human rights in Uzbekistan in 2005.

1725. It is evident from the information received, that human rights defenders in Uzbekistan work against a back drop of difficult social and economic conditions and an absence democratic rights. It is reported that the long-term campaign against religious extremism and terrorism has lead to serious human rights violations and has also been used to clampdown those who voice criticism against the style of governance, including on human rights defenders. The reported use of excessive force by law-enforcement officials against reportedly peaceful protestors in Andijan in May 2005, which resulted in the death of around 200 persons according to Uzbek authorities (more than 500 persons according to non-official sources), has heightened concerns.

1726. According to the information received, about half a dozen human rights organizations are working in Uzbekistan. Besides these, individuals work for the promotion and protection of human rights as defenders their personal or professional capacities without belonging to any NGO. The Special Representative notes that only two human rights organizations have been granted registration by the authorities. Defenders work on issues such as awareness raising, monitoring of and research on the human rights situation and on the rights of disabled people.

Legal framework

1727. Uzbekistan has acceded to a number of international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). It is not yet party to the Second Optional Protocol to the ICCPR, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the Convention on the Rights of the Child and to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In Uzbekistan's legal system, international treaties once ratified become part of domestic legislation

Freedom of expression and access to information

1728. According to article 29 of the Constitution, “everyone has the right to freedom of thought, speech and opinion. Everyone shall have the right to seek, receive and impart any information, except information directed against the existing constitutional order and other restrictions specified by law. Freedom of opinion and the freedom to express one’s opinion may be restricted by law only in connection with a State or other secret”.

1729. In its second periodic report to the Human Rights Committee, the Government of Uzbekistan explained that “the Freedom of Information (Principles and Guarantees) Act and the Mass Media Act were adopted on 12 December 2002 and 26 December 1997, respectively. Article 30 of the Constitution obliges State bodies, voluntary associations and officials to grant individuals access to documents, decisions and other materials affecting their rights and interests. The Guarantees and Freedom of Access to Information Act governs the relations that arise in the exercise of the constitutional right of all citizens to seek, receive, study, transmit and impart information, freely and without hindrance. The Act guarantees that everyone shall have the right of access to information. This right is protected by the State. The Foundation for the Support of Democratization of the Mass Media has been set up to protect freedom of speech and the mass media and uphold the interests and rights of journalists, and the Centre for Retraining Journalists has been established with support from the Konrad Adenauer Foundation in Uzbekistan. (CCPR/C/UZB/2004/2, paras. 238-239).

1730. Non-governmental sources have conveyed information to the Special Representative according to which although censorship was officially lifted in 2002, media outlets that are allowed to operate keep exercising strict censorship. Internet access is reportedly blocked by the Government. They also referred to the Criminal Code, which contains provisions that make defamation and libel punishable.

1731. It is further reported that a new law adopted in 2003 broadened the definition of media that require registration so as to include bulletin-style publications and websites. As the registration process for media outlets is reportedly complicated, it is feared that these amendments may restrict the circulation of independent information by making it unlawful for NGOs and others to spread information through bulletins and websites without official registration.

Freedom of assembly

1732. Article 33 of the Constitution reads: “citizens have the right to engage in public life by holding rallies, meetings and demonstrations in accordance with the laws of Uzbekistan. Government bodies shall have the right to suspend or ban such events solely on justified security considerations”.

1733. As far as the Special Representative has been informed, apart from a resolution of the Cabinet of Ministers regulating gatherings of no fewer than 100 people for cultural, theatrical, sporting, advertising, and other entertainment events, as well as religious and professional

celebrations, no primary legislation on freedom of assembly has been adopted. In this context, the 1988 Decree of the Presidium of the Supreme Council of the Uzbek Soviet Socialist Republic (UzSSR) “On regulations for the organization and conduct of assemblies, meetings, street processions, and demonstrations in the USSR” is still in force.

1734. The Special Representative has further been informed that article 217 of the Criminal Code provides for imprisonment sentences for those who infringe procedures for organizing or holding assemblies, demonstrations or cult ceremonies.

Freedom of association

1735. In its second periodic report to the Human Rights Committee, the Government indicated that “Article 34 of the Constitution provides for the right to form trade unions, political parties and other voluntary associations, and to take part in mass movements. These rights are given specific form in the Voluntary Associations Act of 15 February 1991 and the Act on Trade Unions, Their Rights and Guarantees of Their Activities of 2 July 1992.” (ibid, para. 253). The Government further stated that “Voluntary associations are a very important component of civil society. The Constitution contains a special chapter - Chapter XIII - on voluntary associations. According to article 56 of the Constitution, “trade unions, political parties, scientific associations, women’s, veterans’ and youth organizations, unions of creative artists, mass movements and other citizens’ associations, which have been registered in accordance with the established procedure, are recognized as voluntary associations in the Republic of Uzbekistan”.” (ibid, para. 254). “The principal legislative acts governing the organization and activities of voluntary organizations are the Constitution of the Republic of Uzbekistan (arts. 56-62); the Act on Voluntary Associations in the Republic of Uzbekistan of 15 February 1991 (as amended on 3 July 1992 and 25 April 1997); the Act on Trade Unions, Their Rights and Guarantees of Their Activities of 2 June 1992; and the Political Parties Act of 26 December 1996.” (ibid, para. 255).

1736. In December 2005, the Senate approved an amendment to the Criminal Code on Administrative Liability. The amendment creates a number of new regulatory measures for NGOs and increases the power that the authorities will have to penalize NGOs. Amongst these new provisions are that NGOs can be penalized for the use of unregistered logo, for conducting events without the consent of the registering body, for failing to provide reports of their activities to the registering body or for failure to provide reports in a “timely manner”.

Measures taken at national level for the implementation of the Declaration

1737. The Special Representative regrets that the State has not informed her of the measures it has taken to implement the Declaration.

1738. The Special Representative observes that the Human Rights Committee recently noted with interest that “following the 2004 revision of the Act on the Parliamentary Ombudsman (1997), the Ombudsman’s institution is now operational and receives numerous complaints each year”. The Committee also welcomed the State party’s invitation to national non-governmental organizations “to participate actively” in current discussions on Criminal Code reform (CCPR/CO/83/UZB, paras. 4 and 5).

Communications and concerns

1739. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 40 communications to the Government on 69 individual defenders, including 18 women. The Special Representative acknowledges replies sent by the Government to many of her communications but regrets that some of her communications remain unanswered.

1740. In the light of the allegations received during the six-year period of her mandate and information in response of her questionnaire, the Special Representative remains deeply concerned about the situation of human rights defenders in Uzbekistan. Communications have been sent on defenders who have reportedly been subjected to arbitrary arrests, incommunicado detention, harassment, threats, forced detention in a psychiatric hospital, unfounded criminal charges, imprisonment sentences, death in custody, torture and ill-treatment, defamation campaigns or other types of persecution in relation with their human rights activities. In some cases, their relatives were also reportedly put under serious pressure. The Special Representative has also intervened in connection with closure of human rights associations and with the prohibition of holding human rights conferences in Uzbekistan, in particular on death penalty.

1741. She wishes to refer to the concluding observations of the Human Rights Committee, who has expressed concern about issues directly related to her mandate. The Committee was concerned "that the State party requires an "exit visa" from its nationals for their travel abroad, and in particular that representatives of non-governmental organizations who were refused an exit visa were thereby prevented from attending meetings on human rights issues" (CCPR/CO/83/UZB, para. 19).

1742. Following his visit to the country in 2002, the Special Rapporteur on torture concluded that torture or similar ill-treatment was systematic in Uzbekistan. The Special Rapporteur also referred to other human rights concerns, including the absence of legal guarantees for those deprived of liberty, the lack of independence of the judiciary and allegedly rampant corruption in the judiciary and law enforcement agencies (E/CN.4/2003/68/Add.2). More recently, the Human Rights Committee has echoed these and other human rights concerns. In addition, information conveyed to the Special Representative for the preparation of the present report indicates serious restraints on the freedom of expression, freedom of information, freedom of assembly and freedom of association in Uzbekistan.

1743. Uzbek human rights defenders face persecution, defamation campaigns orchestrated by State representative, the reticence of the Government to register independent human rights NGOs, and restrictions preventing financial and technical aid from abroad. Inadequate legal framework and a reported lack of will of the Government to fully implement relevant provisions of the Declaration put them at serious risk.

1744. The Special Representative is gravely concerned over the new amendment to the Criminal Code concerning NGOs, and information that only two human rights NGOs have so far been granted official registration by the competent authorities. This is particularly troubling in the light of Government's responses to the Special Representative's communications justifying the prohibition of human rights activities, such as conferences on death penalty, on the grounds that the organization responsible for the event was not officially registered.

1745. The Special Representative recalls that she has repeatedly requested an invitation to visit Uzbekistan. She regrets that the Government has not given her a positive response yet.

Venezuela (Bolivarian Republic of)

1746. La Representante Especial agradece al Gobierno de la Republica Bolivariana de Venezuela su respuesta al cuestionario remitido para la preparación de este informe.

1747. La Representante Especial agradece la Oficina del PNUD en Venezuela su respuesta al cuestionario remitido para la preparación de este informe.

La comunidad de defensores de los derechos humanos en Venezuela

1748. Según la información recibida por la Representante Especial, los estimados no oficiales del número de ONG de derechos humanos indican que hay alrededor de 82 asociaciones que trabajan en este ámbito en todo el territorio nacional.

1749. Según la información proporcionada a la Representante Especial por la oficina del PNUD, existen varias redes de organizaciones defensoras de los derechos humanos. Algunas de estas organizaciones y redes desarrollan actividades de investigación y educación en derechos humanos, otras actúan principalmente en la asesoría y asistencia legal o asistencia a víctimas y otras que concentran su atención en la documentación, información, educación y promoción de políticas públicas y legislación. Todas varían en tamaño y alcance territorial, reconocimiento público, prestigio e, incluso, por su autonomía e independencia. Según las agencias de las Naciones Unidas en Venezuela, la labor cumplida por estas organizaciones y redes se puede considerar eficaz en términos de información, sensibilización y defensa de derechos humanos.

1750. De acuerdo con la información recibida, las organizaciones de mayor reconocimiento público gozan generalmente de autonomía e independencia. Sin embargo, en los últimos años – a raíz de la polarización política y social en el país- habrían surgido organizaciones que no serían del todo autónomas o independientes del gobierno o de otros actores políticos y cuya actuación habría propiciado que la polarización también se perciba en el campo de los defensores de derechos humanos.

Marco jurídico

1751. Venezuela ha ratificado los principales tratados internacionales de derechos humanos, entre ellos el Pacto Internacional de Derechos Civiles y Políticos. Todavía no ha ratificado el Protocolo Facultativo a la Convención contra la Tortura y otros Tratos o Penas Cruelles, Inhumanos o Degradantes y la Convención Internacional sobre la protección de los derechos de todos los trabajadores migratorios y de sus familiares. Por otra parte, Venezuela también ha ratificado instrumentos regionales de derechos humanos, entre los cuales la Convención Americana sobre Derechos Humanos.

1752. El artículo 23 de la Constitución de la República Bolivariana de Venezuela consagra la jerarquía constitucional de los instrumentos internacionales sobre derechos humanos ratificados por Venezuela y que ellos prevalecen en el orden interno en la medida en que contengan normas más favorables que las nacionales.

1753. Asimismo, la Constitución ofrece un marco legal propicio para que los defensores de derechos humanos ejerzan los derechos a la libertad para la búsqueda y difusión de información, a comunicarse entre sí y con otros y estudiar y a discutir asuntos relacionados con los derechos humanos.

Libertad de expresión

1754. El artículo 57 de la Constitución reconoce el derecho a la libre expresión de pensamientos e ideas, con las limitaciones indispensables en una sociedad democrática. Otras leyes relacionadas con el derecho a la libertad de expresión son: La Ley del Ejercicio del Periodismo, la Ley Orgánica de Telecomunicaciones y la recientemente aprobada Ley de Responsabilidad Social de Radio y Televisión.

1755. En general el derecho a la libertad de expresión estaría asegurado en Venezuela pero se han reportado algunos aspectos que han constituido motivo de preocupación para las organizaciones y personas defensoras de derechos humanos.

1756. Una reciente reforma del Código Penal habría reforzado la penalización de delitos de vilipendio o desacato. Según ha sido informada la Representante Especial, el Fiscal General de la República ha anunciado que introducirá un recurso de nulidad por inconstitucionalidad de esta reforma.

Libertad de asociación y de reunión

1757. El artículo 52 de la Constitución establece que “Toda persona tiene derecho de asociarse con fines lícitos, de conformidad con la ley. El Estado estará obligado a facilitar el ejercicio de este derecho.” Por su parte, de acuerdo con el artículo 53 “Toda persona tiene el derecho de reunirse, pública o privadamente, sin permiso previo, con fines lícitos y sin armas. Las reuniones en lugares públicos se registrarán por la ley.”

Acceso a la información

1758. El artículo 28 de la Constitución reconoce que “toda persona tiene derecho de acceder a la información y a los datos que sobre sí misma o sobre sus bienes consten en registros oficiales o privados, con las excepciones que establezca la ley [...] Igualmente, podrá acceder a documentos de cualquier naturaleza que contengan información cuyo conocimiento sea de interés para comunidades o grupos de personas [...]”. Las disposiciones de la Ley Orgánica de Procedimientos Administrativos también protegen este derecho. Sin embargo, la Comisión Interamericana de Derechos Humanos habría observado que en la práctica no existe un verdadero acceso a la información en poder del Estado.

Derecho a la petición

1759. En su artículo 51, la Constitución garantiza el derecho a la petición, estableciendo que “Toda persona tiene el derecho de representar o dirigir peticiones ante cualquier autoridad, funcionario público o funcionaria pública sobre los asuntos que sean de la competencia de éstos, y a obtener oportuna y adecuada respuesta. Quienes violen este derecho serán sancionados conforme a la ley, pudiendo ser destituidos del cargo respectivo”. A pesar de ello, el Tribunal Supremo de Justicia habría producido una interpretación restrictiva de este artículo en el sentido

de exigir al peticionante un interés directo sobre lo que solicita. Organizaciones defensoras de derechos humanos han considerado que esta doctrina afecta el desempeño de personas u organizaciones defensoras de derechos humanos por cuanto representa una limitación a la actuación legítima de estas personas u organizaciones, además de constituir un obstáculo para la defensa colectiva de estos derechos.

Medidas tomadas en el país para la implementación de la Declaración

1760. De acuerdo con la información transmitida por el gobierno a la Representante Especial, en los últimos años el Estado ha tomado medidas legislativas y administrativas orientadas a crear y fortalecer sistemas sociales de promoción y protección de los derechos humanos. En especial cabe destacar el surgimiento y progresivo fortalecimiento de la Defensoría del Pueblo, creada por la Constitución de 1999, y el cambio del proceso penal inquisitivo por el acusatorio. Asimismo, la Defensoría del Pueblo ha realizado importantes esfuerzos en la divulgación de información sobre derechos humanos hacia la población en general, incluyendo población indígena.

1761. También ha sido llevado a la atención de la Representante Especial el esfuerzo que ha hecho el Estado venezolano en la difusión de la Constitución de la República Bolivariana de Venezuela promulgada en el año 1999, incluyendo la difusión del amplio catálogo de derechos humanos que reconoce. También se reconocen los esfuerzos que se han hecho en educación en derechos humanos para funcionarios policiales, funcionarios judiciales y de la Defensoría del Pueblo.

1762. Según el PNUD, la contribución que han hecho las organizaciones defensoras de los derechos humanos en la difusión de normas nacionales e internacionales sobre derechos humanos, así como en el mejor conocimiento público de los sistemas internacionales de protección de los derechos humanos, especialmente del Sistema Interamericano, han sido valoradas muy positivamente.

1763. Según se ha informado el Gobierno, el Mandato Constitucional de la Defensoría del Pueblo es la promoción, defensa y vigilancia de los derechos humanos y garantías reconocidos en la Constitución y en los tratados internacionales. Estas funciones se ejerce a través de varios mecanismos, mediante de la investigación, indiciada de oficio o la solicitud de parte y a través de visitas de inspecciones de dependencias y establecimientos de los órganos del Estado se ejerce la vigilancia, la formación de recomendaciones y observaciones, la exhortación a los órganos competentes y la interposición de acciones o recursos que sean necesarias para ejercer sus funciones constituyen las vías para el ejercicio de la defensa y la promoción se ejerce a través de la presentación de proyectos de ley y otras iniciativas legislativas. Según el gobierno, la Defensoría del Pueblo promueve iniciativas alternativas en beneficio mayor y más expedito de los derechos tutelados, mediación, conciliación y demás mecanismos de resolución de conflictos. El ámbito de la Defensoría del Pueblo abarca las actuaciones de cualquier órgano y funcionario o funcionaria perteneciente al Poder Público Nacional, Estatal y Municipal. La Defensoría del Pueblo cuenta con defensorías delegadas estatales en cada uno de las entidades federales de la República. También forman parte de la Institución las defensorías delegadas especiales con competencia nacional, encargadas de apoyar técnicamente. Estas son la Defensoría Especial de los Pueblos Indígenas, Defensoría Especial de los Servicios Públicos, Defensoría Especial de los

Niños, Niñas y Adolescentes, Defensoría Especial para el Régimen Penitenciario, Defensoría Especial para Personas Discapacitadas, Defensoría para la Materia Ambiental y la Defensoría Especial en el Área de Salud y Seguridad Social.

Motivos de preocupación y Comunicaciones Enviadas por la Representante Especial

1764. Desde el inicio de su mandato y hasta el 1 de diciembre de 2005, la Representante Especial ha transmitido seis comunicaciones al Gobierno, relativas a 13 defensores de los derechos humanos y sus familiares. Cuatro de estas personas son mujeres. Los casos que han motivado una intervención de la Representante Especial se refieren a defensores o familiares de víctimas que han sido seriamente amenazados tras denuncias violaciones de derechos humanos. La Representante Especial aprecia que el Gobierno haya contestado a prácticamente todas las comunicaciones.

1765. En este sentido recoge las observaciones y comparte las preocupaciones expresadas por la Comisión Interamericana de Derechos Humanos en su informe sobre la situación de los derechos humanos en Venezuela (OEA/Ser.L/V/II.118, del 24 de octubre de 2003).

1766. En particular, la Comisión Interamericana de Derechos Humanos manifestó su preocupación por atentados contra la vida e integridad personal de defensores de derechos humanos y por hechos que pretenden desprestigiar, deslegitimar o criminalizar a organizaciones no gubernamentales o defensores individuales de derechos humanos. La Comisión Interamericana también constató que se han verificado “una serie casos en los cuales los defensores han sido objeto de mecanismos difusos de intimidación, mediante amenazas veladas que se hacen perceptibles a través de hechos aparentemente insignificantes que alteran la cotidianidad y que son percibidos como irregulares o extraños por la persona intimidada, colocando a la misma en aviso de que esta siendo vigilada. Un mecanismo que puede ilustrar esta situación es la realización de amenazas y visitas por parte personas no identificadas a las inmediaciones de las instalaciones donde los defensores desempeñan su labor” (ibid., para. 233).

1767. La Representante Especial también quiere referirse al examen del segundo informe periódico del Comité contra la Tortura, el cual llevó al Comité a expresar su preocupación por “Las denuncias sobre amenazas y ataques contra minorías sexuales y activistas transgénero, en particular en el Estado de Carabobo” y “La información sobre amenazas y hostigamiento contra personas que presentan denuncias por malos tratos contra agentes policiales y la falta de protección adecuada para testigos y víctimas” (CAT/C/CR/29/2, párr. 10 (d) y (e)).

1768. Ha sido puesto al conocimiento de la Representante Especial por fuentes no gubernamentales que existen decisiones del Tribunal Supremo de Justicia en las cuales se habría sentado una doctrina que pudiera limitar la participación de organizaciones defensoras de los derechos humanos que reciben subsidios del exterior o cuyas directivas estén integradas por extranjeros o religiosos en los comités de postulaciones para la designación de titulares de órganos del Poder Judicial, Electoral y Ciudadano. En este sentido, la Comisión Interamericana de Derechos Humanos ha expresado su preocupación por una eventual aplicación discriminatoria de esta doctrina que puede limitar la participación de organizaciones defensoras de los derechos

humanos en estos espacios. Eventualmente, se afirma que podría representar una limitación al derecho a solicitar, recibir y utilizar recursos provenientes del exterior para actividades de defensa de derechos humanos. (OEA/Ser.L/V/II.118, del 24 de octubre de 2003, párrafos 223 a 225).

1769. La Representante Especial también toma nota de la preocupación expresada por la Comisión Interamericana de Derechos Humanos por disposiciones contenidas en el entonces Proyecto de Ley Sobre Responsabilidad Social de Radio y Televisión, especialmente en cuanto a las sanciones previstas, por cuanto su rigurosidad daría lugar a la autocensura. Esta Ley fue aprobada en diciembre de 2004 y está en plena vigencia. Hasta el momento ningún medio de comunicación social habría sido objeto de sanción bajo esta ley.

1770. La Representante Especial acoge muy favorablemente los esfuerzos realizados por el Estado para mejorar la situación de los derechos humanos. Sin embargo, las alegaciones que ha recibido a lo largo de estos últimos seis años y las observaciones emitidas por otros órganos internacionales y regionales de derechos humanos le llevan a pensar que estas medidas no son suficientes para crear condiciones favorables a la labor de los defensores de los derechos y garantizar su seguridad.

1771. La Representante Especial agradece al Gobierno de Venezuela la invitación que le ha extendido para visitar el país.

Viet Nam

1772. The Special Representative regrets that the Government has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1773. The Special Representative regrets that she has not received sufficient information to be able to complete this section with regards to Viet Nam. She has previously expressed her concerns to the Government about reports that all “social organizations” in Viet Nam must belong to the “Fatherland Front” which is an umbrella organization composed of elements, though not belonging to the Vietnamese Communist Party (VCP), but nevertheless said to be under the control of the VCP.

1774. Defenders in Viet Nam include, amongst others, journalists, writers, religious leaders, farmers and peasants. They work on issues such as economic and social rights, democracy and human rights, labour rights, freedom of religion, land rights and minority rights.

Legal framework

1775. Viet Nam is a State party to many of the core international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). Nevertheless, Viet Nam has not acceded to the Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the two Optional Protocols to the ICCPR, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against

Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

1776. In its second periodic report pursuant to article 40 of the International Covenant on Civil and Political Rights, Viet Nam reported that its Constitution protects the rights to freedom of speech, freedom of the press, to have access to information, to assemble, set up associations and hold demonstrations (art. 69) (CCPR/C/VNM/2001/2, para. 6). Despite this information, the Special Representative regrets that she does not have sufficient information available to her to make a proper assessment of the legal framework of Viet Nam in relation to laws and provisions relevant for the protection human rights defenders and for the effective implementation of the Declaration.

Measures taken at national level for the implementation of the Declaration

1777. The Special Representative regrets that she has not received information on the policies and programmes adopted by the concerned authorities in Vietnamese to ensure an effective implementation of the Declaration.

Communications and concerns

1778. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 11 communications to the Government, on 20 defenders, in addition to a number of members of the Degar Tribe.

1779. The Special Representative thanks the Government for responding to all her communications, except one which was sent in late 2005 and which she is hoping to receive a response to shortly. Nevertheless, she notes that the Government in nearly all of its replies denied that the persons in mentioned could be considered human rights defenders and expressed to the Special Representative that the allegations were “inaccurate and falsified”, that the defenders were “criminal offenders” and on at least one occasion indicated that the defender in question was involved in “acts of espionage”.

1780. The Special Representative reiterates her concern over human rights defenders allegedly being perceived with unveiled hostility by the authorities and that defenders are said to be at risk of detention or arrest based on vaguely defined “national security” provisions embodied in the Criminal Code and other domestic legislation. Defenders are also commonly put under house-arrest. She would like to remind the Government that according to the Declaration, article 2 (1) “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”. She would also like to remind the Government that according to the Declaration “the absence of international peace and security does not excuse non-compliance” with human rights norms.

1781. The Special Representative remains gravely concerned about the reports of arrests, assaults on and killings of defenders in Viet Nam for exercising their rights to freedom of expression and freedom of assembly. She would like to remind the Government that according to the Declaration Article 6 (b) and (c), “everyone has the right, individually and in association

with others 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;" and article 5 (a) provides that "everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully".

1782. The Special Representative remains gravely concerned about the fact that in most of the cases where communications were sent, the alleged perpetrators of violations against defenders were the authorities.

1783. The Special Representative would appreciate and welcome more information from the Government on the concerns she has brought to its attention.

Zambia

1784. The Special Representative appreciates the response from the Government to the questionnaire transmitted for the preparation of the present report. However, due to the delay in the transmission of the response, she regrets that this may lead to a less detailed assessment of the situation for human rights defenders in Zambia.

The human rights defenders community

1785. In 1991, Zambia saw a transition from a one-party State to plural politics and the Movement for Multi-party Democracy (MMD) government was elected on a platform that promised to uphold human rights.

1786. The human rights defenders community in Zambia is comprised of associations and individuals advocating and protecting both civil and political rights and economic, social and cultural rights. There are, by the Government's estimate, approximately 50 organizations working within the field of human rights, in addition to several networks of defenders and defenders' organizations. Women are active in promoting and protecting human rights, and there are women's groups and organizations particularly active in working on the rights of women and children. The Government notes an increased awareness of human rights amongst its population, and illustrates this by informing the Special Representative that cases have been brought against the Government in Zambian courts alleging violation of human rights.

Legal framework

1787. Zambia has acceded to most of the international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). Zambia is not yet a State party to the second Optional Protocol to the ICCPR, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the two optional protocols to the Convention on the Rights of the Child. Zambia has ratified the African Charter on Human and Peoples' Rights.

1788. The Special Representative notes that the President has promised legal reform to strengthen the laws on violence against women. New legislation on gender-based violence has reportedly been drafted.

1789. The Special Representative has been informed by the Government of the Societies Act, chapter 119, which regulates the registration of human rights organizations and their objectives.

Freedom of expression and access to information

1790. According to article 20 of the Constitution of Zambia, “[...] no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference, whether the communication be to the public generally or to any person or class of persons, and freedom from interference with his correspondence”.

Freedom of assembly, freedom of movement and freedom of association

1791. According to article 21 of the Constitution of Zambia, “[...] no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests”. The Special Representative has been informed by the Government about the Public Order Act, chapter 113 which facilitates the freedom of assembly for all persons including defenders. The Special Representative would appreciate receiving further information on this Act.

1792. According to article 22 of the Constitution, “[...] no citizen shall be deprived of his freedom of movement, and for the purposes of this Article freedom of movement means (a) the right to move freely throughout Zambia; (b) the right to reside in any part of Zambia; and (c) the right to leave Zambia and to return to Zambia”.

Measures taken at national level for the implementation of the Declaration

1793. In 1996 the Government made amendments to the Constitution that provided for the establishment of a permanent human rights commission. The Human Rights Commission Act of 1997 was passed by the Parliament in March 1997 and signed into law by the President in the same month. The Permanent Human Rights Commission is Zambia’s national human rights institution. The mandate of the Commission is reported to be fairly broad, and according to Section 9 (a)-(f) of the Human Rights Commission Act, its functions are to investigate human rights violations, investigate any maladministration of justice, and propose effective measures to prevent human rights abuse.

1794. The Special Representative has been informed by the Government that it intends to develop a legally binding Code of Conduct that will guide the activities of defenders. The Special Representative would appreciate receiving further information from the Government on this initiative and whether it also includes guidelines for how the authorities will improve their strivings to create an enabling environment for defenders. The Government has also informed the Special Representative about the existence of the Human Rights Inter-Ministerial Committee under the Ministry of Justice, which is responsible for administrative procedures of strengthening the role of defenders.

Communications and concerns

1795. From the establishment of her mandate to 1 December 2005, the Special Representative has sent one communication to the Government concerning a female defender and her family. The Special Representative thanks the Government for the two responses she received on this case.

1796. The Special Representative notes the low number of communications and the near total lack of contact with defenders in Zambia throughout her two mandate periods. Subsequently she is unable to make a proper assessment of the situation for human rights defenders, and she encourages civil society to send her further information on their activities and any obstacles they might face in their work.

1797. The Special Representative is concerned with reports that journalists as well as members of civil society groups are at risk of arbitrary detention, harassment and intimidation. Libel and security laws have reportedly been used to intimidate journalists.

1798. The Special Representative welcomes the establishment of the Permanent Human Rights Commission. Nevertheless she notes with concern reported limitations to the work of the Commission such as a lack of funds, lack of enforcement powers, too much caution by the commissioners to follow up on initial recommendations when they are rejected by the Government, and too much caution in addressing more politically sensitive abuses by the Government.

1799. The Special Representative regrets that she has not received a response from the Government regarding her request for an invitation to visit the country and urges the Government to give due consideration to her request.

Zimbabwe

1800. The Special Representative thanks the non-governmental sources who have provided her with information for the preparation of this report. She regrets that the Government of Zimbabwe has not provided her with information in response to the questionnaire she transmitted for the preparation of the present report at the time of the finalization of the report. She encourages the Government to transmit this information so that the below profile can be updated in the future.

The human rights defenders community

1801. Following the 2002 elections, the United States and the European Union imposed targeted sanctions against the Government of Zimbabwe. Western bilateral donors accordingly stopped their bilateral assistance to the Government of Zimbabwe, and instead began to channel their aid directly through NGOs.

1802. From the information she has received, the Special Representative ascertains that the human rights defenders community in Zimbabwe is well organized and active. The defenders community is broad-based both in terms of issues and actors involved and has developed well-established strategies of protection and solidarity which have proved efficient in the face of hardship and harassment. It is comprised of NGOs, faith-based groups, individuals such as

lawyers and students, social movements, and community-level activists who are not attached to a formal NGO but work on an ad-hoc basis or with human rights in general. A core group of human rights organizations are collaborating in the coalition Zimbabwe Human Rights NGO Forum, which consists of 17 member-organizations from a broad field of human rights expertise. The information indicates that in general there is a high level of awareness of international mechanisms in the human rights field, and also of the Declaration, amongst defenders in Zimbabwe. Defenders have a good methodology in terms of reporting on human rights issues to international organizations and organs. Zimbabwe has a strong community of human rights lawyers, who have been involved in representing many of the defenders who have been subjected to prejudicial treatment because of their human rights work. The human rights community includes organizations promoting the right to health. Women defenders are prominent in the work to promote and protect human rights in Zimbabwe.

1803. In 2003 the opposition, labour groups and much of civil society launched general strikes and other forms of campaigns. Public gatherings have reportedly been met with disproportionate use of force. Humanitarian aid workers and human rights defenders have reportedly been subjected to repressive measures for their work in promoting or protecting human rights and fundamental freedoms.

Legal framework

1804. Zimbabwe is a State party to some of the most important human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR). Zimbabwe is not yet party to any optional protocols and has also not signed some of the international human rights instruments, such as the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. Zimbabwe has ratified the African Charter of Human and Peoples' Rights.

1805. The rights to freedom of expression, assembly and association are provided for in the Constitution of Zimbabwe, in sections 20 and 21. Nevertheless, since 2002, the Government has introduced or re-introduced several laws that, reportedly, restrict freedom of expression, assembly and association. It is alleged that the legislation has been used in a selective and discriminatory manner against human rights defenders and critics of the Government, but rarely against supporters of the Government. The Special Representative is informed that the legislative framework is becoming increasingly restrictive in terms of the laws and provisions relevant for the work of human rights defenders.

Freedom of expression and access to information

1806. The Access to Information and Protection of Privacy Act (AIPPA) was introduced in March 2002 and remains in place. The Act provides for a Media Information Commission, whose stated role is to ensure accurate and unbiased reporting in the media. However the Special Representative notes there are serious doubts as to the independence and impartiality of the Commission.

Freedom of assembly and freedom of movement

1807. The Public Order and Security Act (POSA) was enforced in January 2002. According to information relayed to the Special Representative over the past years, it has been used to prevent civil society groups campaigning on human rights issues from engaging in peaceful protest. Reportedly, hundreds of defenders, including independent media-workers, have been arbitrarily arrested or detained under this act, and many of these have been subjected to ill-treatment, harassment and intimidation by the police while in custody. The Special Representative is told that due to lack of evidence courts have often dismissed charges against human rights defenders arrested for participating in allegedly “illegal” meetings or protests. In other cases charges under POSA were subsequently converted to the offence under other laws, such as “conduct likely to cause a breach of the peace”, under the Miscellaneous Offences Act (MOA).

1808. The Special Representative is disturbed by complaints of widespread irregularities committed by public officials in the enforcement of POSA and other public order laws that have resulted in violations of human rights, including those of defenders arrested in this connection.

1809. The Special Representative has also been informed that under POSA the police must be notified at least four days in advance of any public meeting or demonstration, but in practice the police have frequently interpreted the law as requiring their permission before a public event can take place. They have therefore used POSA to prohibit public events such as peaceful protest if they are of the opinion that the event will result in public disorder. Furthermore the police have used arbitrary criteria when distinguishing between “private” and “public” gatherings, and have used the Act to arrest people meeting in private homes or places of business.

1810. In August 2005 the Parliament of Zimbabwe passed a Constitutional Amendment Act (No. 17), subsequently signed into law by President Mugabe. According to information received by the Special Representative, article 22 of the Constitution that guarantees the freedom of movement was amended adding further grounds for restricting the freedom of movement. It is feared that the amendments increase the potential for subjective use of the limitations by the Government to restrict movement for the exchange of information and to participate in human rights activities.

Freedom of association

1811. In 2002 the Government revived the Private Voluntary Organizations (PVO) Act, a law initially introduced under Zimbabwe’s white minority rule. NGOs were since September 2002 obliged to register with the Ministry of Public Service, Labour and Social Welfare, or risk imprisonment up to two months for refusal to register. The Non-Governmental Organizations Bill (NGO Bill) was passed by Parliament in December 2004. When enacted it replaced the PVO Act. The Special Representative notes the very positive statement in the opening paragraph of the Act that it intends to “provide for an enabling environment for the operations, monitoring, and regulation of all non-governmental organizations”. However, the information she has received indicates that this objective is not reflected in many of the provisions of the law. Reportedly, registration requirements, regulatory controls and conditions for receiving foreign funding allow the Government disproportionate powers that amount to infringement of the independence and autonomy of NGOs in financial and operational aspects.

1812. The Special Representative has been informed of a Government appointed NGO Council to be established under the law. The details of its composition and powers have raised concerns regarding its independence and impartiality as well as objections regarding intrusive nature of its authority over registration and closure of NGOs. Registration can reportedly be denied or withdrawn at any time if the Council determines that the organization has “ceased to operate bona fide in furtherance of the objects for which it was registered”. Registration can reportedly also be denied on the grounds of “maladministration”. There are reportedly no safeguards in place to ensure independence of the NGO Council, and the Minister in charge has veto over the nominations of NGO representatives. The NGO Bill further states that no foreign NGO will not be allowed to register if the objects of its work can in any way be said to involve or include issues of governance. On the same note, local organizations that are working on matters such as governance issues are reportedly barred from receiving foreign funding to support their human rights work. There is a limited right of appeal against a decision of the Council, or the Minister, and only on matters of an essentially administrative or procedural nature.

1813. In a communication to the Special Representative in September 2004 the Government stated to the Special Representative that the NGO Act is intended to ensure that social protection is guaranteed and that it does not remain in the hands of dubious players who are not accountable. The Government further argued that foreign-funded organizations have proven to be a threat to national security when it comes to dealing with governance issues, and that the NGO Act aimed at hindering foreign donors from employing local puppets or others to champion foreign values or governance issues under cover of “human rights” or “democracy” (E/CN.4/2005/101/Add.1 para. 625).

1814. In December 2004 the Zimbabwean Government passed the Electoral Commission Act reportedly as part of the efforts to bring Zimbabwe in line with the Principles and Guidelines Governing Democratic Elections of the Southern African Development Community (SADC). The act has been widely criticized by non-governmental sources, allegedly, for contributing to violations of the rights to freedom of association and information. The Special Representative would welcome more information on this issue from the Government.

Measures taken at national level for the implementation of the Declaration

1815. Articles 107 and 108 of the Constitution provide for the establishment of the office of the Ombudsman its functions that include investigation of any official action that has resulted in injustice and there is no judicial remedy available under the law. In this regard the Special Representative recalls the concluding observations of the Human Rights Committee, noting that the Ombudsman has no *suo moto* power to initiate investigation. The Committee also noted that the President, the President’s Office, the Attorney General and Secretary for Justice, Legal and Parliamentary Affairs and any member of their staff are specifically excluded from investigation by the Ombudsman (CCPR/C/79/Add.89, para. 10).

1816. The Special Representative regrets that she has no further information on any measures, policies or programs adopted by the concerned authorities in Zimbabwe to ensure an effective implementation of the Declaration.

Communications and concerns

1817. The Special Representative is disturbed by the noticeable deterioration of the situation of human rights and of human rights defenders in the country. This is illustrated by the information that she continues to receive from multiple sources. She believes that laws that do not conform to the principles of the Declaration or other international instruments in the field of human rights have placed severe restraints on activities for the defence of human rights, particularly with respect to the freedom of expression, assembly, movement and association. The information she has received indicates that the human rights community as a whole, and defenders individually, are at a critical level of risk.

1818. From the establishment of her mandate to 1 December 2005, the Special Representative has sent 28 communications to the Government, concerning 44 named defenders. In addition to these named defenders, the communications have been concerned with hundreds of trade unionists and other defenders, several NGOs, dozens of women of the Women of Zimbabwe Arise (WOZA), 400 members of the National Constitutional Assembly (NCA), and members of the political opposition when action has been taken against them for activity directly related to the promotion and protection of human rights. The Special Representative acknowledges the responses of the Government to 17 of her communications. The Special Representative regrets the lack of responses to the remaining communications.

1819. The Special Representative remains gravely concerned over reports of detention, arrests and torture of defenders, and detects their systematic targeting. Six of the communications were sent jointly with the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and that six were sent jointly with the Working Group on Arbitrary Detention. She is also concerned with the number of reported attacks on defenders by the police during demonstrations. Mainly defenders were detained and allegedly tortured or ill-treated after participating in peaceful demonstrations on issues such as women's rights, protests against new restrictive legislation, trade unions rights and democratic reform. She would like to remind the Government of article 5 of the Declaration which gives everyone the right to "meet or assemble peacefully", and of article 12 (3) which states that "everyone is entitled [...] to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms [...]".

1820. The Special Representative wishes to reiterate her concern regarding serious and numerous allegations that restrictions on fundamental freedoms in the law have been used by the Government to suppress criticism of Government for violation of rights and to strangle public debate. Already in 2002, the Special Representative expressed her concerns to the Government over the Public Order and Security Act (POSA), which has reportedly been used to violate defenders' rights to freedom of expression and access to information, freedom of assembly and movement and freedom of association. The POSA has severely limited the right to freedom of assembly for Zimbabwe's human rights defenders, and has restricted their possibilities to engage in and organize peaceful protest. She also wishes to reiterate her deep concern that the new NGO Bill of 2004 may result in the prohibition of legitimate activities for the defence of human rights in Zimbabwe and lead to the further criminalization and closure of many existing human rights organizations. The law makes specific reference to organizations that "promote and protect human rights" and places additional restrictions on the operation and funding of these

organizations. The Special Representative has sent three communications expressing her concerns and requesting further information on legal provisions or other national initiatives that could hamper the work of human rights defenders.

1821. The Special Representative notes that there is reference in the information that she has received to consultations held by the Government on proposed legislation. She acknowledges this as a positive trend that provides defenders the opportunity of contributing towards legislative reform and ensuring conformity of proposed legislation to human rights norms. Such an opportunity must result in appropriate attention to their views and response to their concerns by the Government. In the absence of such results these consultations will only be seen as superficial steps taken at the cost of the time, energy and resources of NGOs that can be better spent on core human rights activity.

1822. The Special Representative is concerned with the lack of freedom of expression found in Zimbabwe today. She notes that she has sent more than half of her communications jointly with the Special Rapporteur on the Promotion and Protection of the right to Freedom of Opinion and Expression. She is also concerned with reports that the Government reportedly has continued to use the “Access to Information and Protection of Privacy Act” (AIPPA) to silence journalists and close down media-outlets viewed as critical of its policies. In 2004 the Parliament amended the AIPPA to criminalize the practice of journalism without accreditation. It has reportedly also been used to prevent foreign journalists from working in Zimbabwe. The Special Representative has been informed that several media outlets have been closed down in the past years and that the Government now controls all TV and radio-stations and all daily newspapers. The Special Representative reminds the Government of Article 6 of the Declaration that states the right of everyone individually and in association with others freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, and to draw public attention to those matters.

1823. The Special Representative is gravely concerned about the fact that the authorities are the alleged perpetrators of violations against defenders in a large majority of the cases she has sent communications to the Government about. She is deeply concerned over reports that human rights organizations and their activities are subjected to state surveillance and on many occasions Government or its agents have labelled defenders as being “subversive”, “foreign-controlled” and “racist” with the deliberate intention of misguiding public perceptions of about the role of human rights defenders. These attempts to discredit their work have, reportedly, resulted in a difficult and dangerous environment of human rights defenders. There have also been reports that the Government has obstructed and discredited the work of human rights defenders at regional forums, such as the African Commission for Human and People’s Rights.

1824. Finally, the Special Representative calls that she has repeatedly requested an invitation to visit Zimbabwe, and regrets that the Government has not given her a positive response yet.
