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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**

Summary

This is the sixth and final report by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, submitted pursuant to Commission on Human Rights resolutions 2000/61 and 2003/64. The report reviews the six years of implementation of the mandate entrusted to her.

Section I presents an account of the activities undertaken by the mandate holder in the past year. It draws the attention of member States to the 310 communications sent under the mandate during the reporting year, which are presented in addendum 1 to the present report, and to the comprehensive country-by-country compilation of developments in the situation of defenders conducted in 2005, to assess the evolution in the situation of human rights defenders and the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). The latter can be found in addendum 5 to the present report.

Section II describes the development and implementation of the mandate since its creation in 2000. The Special Representative reiterates her conviction that the creation of the mandate played a significant role in the dissemination and implementation of the Declaration and in raising awareness about the urgent need to create an environment favourable to the defence of human rights, in particular through the establishment of working dialogues with stakeholders. She also reiterates some benchmarks in the interpretation of the Declaration, notably she stresses the need for an activity-based definition of human rights defence, for domestic laws in conformity with international standards to be understood as the framework for the implementation of the Declaration and for the need to guarantee the rights to defend rights, including during conflicts and states of emergency. She notes that one of the pivotal tasks of the mandate has been to work at developing effective protection strategies for defenders on the ground but deplors that the limited resources available for the mandate and the insufficient level and quality of cooperation received from some States have limited the effectiveness of her work.

Section III examines the key developments and major constraints in the implementation of the Declaration and the protection of human rights defenders over the past six years. It stresses that while certain States have publicly acknowledged the positive role played by human rights defenders, many others have continued to stigmatize them. It also notes that while a few States have adopted national laws reflecting the international obligations contained in the Declaration, the overall trend has been for States to adopt new laws restricting the space for human rights activities, particularly in the context of measures to fight terrorism. Failure to adopt comprehensive protection strategies, which would not only take into account physical safety but also address impunity, have allowed for serious violations against defenders to continue. In section V, the Special Representative reiterates a series of cornerstone recommendations for effective implementation of the Declaration and optimal protection of the work and security of human rights defenders.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1	5
I. ACTIVITIES DURING THE PERIOD UNDER REVIEW	2 - 12	5
A. Communications transmitted to Governments	2	5
B. Country visits	3	5
C. Cooperation with the United Nations system and intergovernmental organizations	4 - 7	5
D. Cooperation with non-governmental organizations	8	6
E. Compilation of developments in the situation of human rights defenders	9	6
F. Defending women, defending rights	10 - 11	6
G. Other activities	12	7
II. IMPLEMENTATION OF THE MANDATE SINCE ITS CREATION IN 2000	13 - 43	7
A. Establishment and specificity of the mandate	13 - 15	7
B. Methodology adopted and priority issues identified by the Special Representative	16 - 18	8
C. Visibility and accessibility of the mandate	19 - 28	8
D. Interpretation of the Declaration	29 - 32	10
E. Efforts for creating protection strategies	33 - 38	11
F. Remaining challenges in the implementation of the mandate	39 - 43	12
III. KEY DEVELOPMENTS AND MAJOR CONSTRAINTS IN THE IMPLEMENTATION OF THE DECLARATION	44 - 82	14
A. States	45 - 59	14
B. Regional intergovernmental organizations	60 - 66	17

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
C. The United Nations system	67 - 71	19
D. The Office of the High Commissioner for Human Rights	72 - 74	20
E. United Nations treaty bodies	75	20
F. National human rights institutions	76 - 78	21
G. Civil society	79 - 82	21
IV. RECOMMENDATIONS	83 - 93	22

Introduction

1. The present report is the sixth submitted to the Commission by the Special Representative of the Secretary-General on human rights defenders, pursuant to Commission on Human Rights resolutions 2000/61 and 2003/64. The report reviews the six years of implementation of the mandate entrusted to her. Section I presents an account of the activities undertaken by the mandate holder in the past year. In section II the Special Representative describes the development and implementation of the mandate since its creation in 2000. In section III she examines the key developments and major constraints in the implementation of the declaration and the protection of human rights defenders over the past six years. In section V, the Special Representative reiterates a series of cornerstone recommendations for effective implementation of the Declaration and optimal protection of the work and security of human rights defenders.

I. ACTIVITIES DURING THE PERIOD UNDER REVIEW

A. Communications transmitted to Governments

2. From 9 December 2004 to 2 December 2005, the Special Representative sent 310 communications on more than 351 cases, including jointly with other mandates, regarding some 799 defenders and 316 organizations working on human rights. She has sent communications to 68 countries, 46 of whom have provided her with a response. Communications sent and responses received can all be found in addendum 1 to this report.

B. Country visits

3. During the reporting period the Special Representative visited Nigeria (3-12 May 2005), Israel and the Occupied Palestinian Territories (5-11 October 2005), and Brazil (5-20 December 2005). Separate reports on the two earlier visits have been submitted to the current session of the Commission as addenda to the present document.

C. Cooperation with the United Nations system and intergovernmental organizations

4. In the last year of her mandate, the Special Representative continued her efforts to work in cooperation with all bodies of the United Nations and with intergovernmental organizations.

5. In that context, she was invited to participate in an Organization for Security and Cooperation in Europe (OSCE) conference held in Almaty, Kazakhstan, in March which focused on developing adequate legal framework for freedom of association and assembly in Central Asia. One of her staff attended the meeting and presented the findings contained in her 2004 General Assembly report. This provided a fruitful joint effort to tackle some of the difficulties faced by defenders within the region. The Special Representative was also invited to participate in a meeting organized by the OSCE and Human Rights House in Azerbaijan, which focused on challenges for human rights defenders in the country. The Special Rapporteur gave a keynote address looking at "Challenges for human rights defenders in the region".

6. Building on the grounds laid down in 2004, the Special Representative pursued her efforts to strengthen cooperation with the European Union (EU). In July, at the invitation of its newly appointed Special Adviser on Human Rights and the European Parliament, she held discussions with the Parliament's Subcommittee on Human Rights, met with the chief of staff of the High Representative for foreign and security policy and some of his desk officers to discuss the situation of human rights defenders worldwide and the implementation of the EU Guidelines on human rights defenders. She also had the opportunity to hold a discussion with the Political and Security Committee of the Council of Ministers and present her views on the important role of human rights defenders in the preservation of international peace and security. She thanks the Special Adviser on human rights for facilitating this visit and the Fédération internationale des droits de l'homme for providing the material support to make it possible.

7. In June, at the invitation of the United Nations Assistance Mission for Iraq (UNAMI), the Special Representative participated in a United Nations organized workshop for Iraqi civil society in Amman which provided a fruitful opportunity for her to hear their concerns and establish channels of communication to the mandate.

D. Cooperation with non-governmental organizations

8. As in previous years, the Special Representative continued to interact frequently with civil society at the international and local level. Owing to her heavy schedule she could not attend personally all meetings but tried as much as possible to have one of her staff present. In 2005, she participated in a consultation focusing on human rights defenders in the Maghreb held in Tunis, coordinated by the Ligue tunisienne des droits de l'homme, in an International Commission of Jurists meeting on human rights and counter-terrorism in Berlin and at the biannual platform of defenders organized by Front Line in Dublin.

E. Compilation of developments in the situation of human rights defenders

9. In order to make an overall assessment of the situation of human rights defenders and the progress made by States in the implementation of the Declaration and also to provide a solid basis for future work on the mandate, the Special Representative decided to compile an assessment of the implementation of the Declaration worldwide. The findings, which are reflected in addendum 5, provided the basis for section III of the present report. The Special Representative is very grateful to Governments, United Nations field offices, national human rights institutions (NHRIs) and international and local NGOs that provided information to her for the preparation of this study. Responses received after 5 December 2005 are not reflected in this report.

F. Defending women, defending rights

10. During her mandate, the Special Representative gave particular attention to the specificity of the situation of women human rights defenders. She reiterates that women defenders are more at risk to certain forms of violence and restrictions and become vulnerable to prejudice, to exclusion and to public repudiation, not only by States forces but by social actors as

well, especially when engaged in the defence of women's rights. She emphasizes that there is no better protection for women defenders than the strength and support of their own movements. Additional protection measures are, therefore, needed by States and the human rights community at large to provide for a secure environment for their work.

11. As part of her focus on this issue, the Special Representative had recommended an international consultation on women human rights defenders. She supported the international campaign on women human rights defenders and participated in the International Consultation on Women Human Rights Defenders held in Colombo, Sri Lanka (29 November to 2 December 2005), which was attended by 180 women from over 70 countries. The Consultation focused on identifying and developing new strategies for protecting women defenders against a range of sources and types of abuse, with the aim of ensuring that activists could carry out their work free of persecution, violence and harassment in the future. The areas of threat to women human rights defenders identified included States, non-State actors, families and communities, and sexual and sexuality-based attacks. The Special Representative thanks all the organizations who responded to her call and organized this important event.

G. Other activities

12. In October, the Special Representative presented her annual report to the General Assembly (A/60/339). It focused on the essential role of human rights defenders in the preservation, restoration and building of peace and security.

II. IMPLEMENTATION OF THE MANDATE SINCE ITS CREATION IN 2000

A. Establishment and specificity of the mandate

13. By its resolution 2000/61, entitled "Human rights defenders", the Commission requested the Secretary-General to appoint a Special Representative on human rights defenders whose mandate was extended for a second three-year period in 2003 by Commission resolution 2003/64. Both resolutions were adopted by consensus.

14. At the end of six years, the Special Representative reiterates her conviction that the creation of this mandate has played an essential role in the dissemination and implementation of the Declaration and in raising awareness about the urgent need to create a favourable environment for activities for the defence of human rights. It is now a generally shared opinion that the added-value of this mandate exceeds any possibility of duplication with other special procedures of the Commission. Contrary to other thematic procedures, the concerns of this mandate not only encompass human rights violations but are primarily focused on protecting activity carried out for the protection and defence of human rights. Often, these situations do not fall within the ambit of other mandates and addressing them required the Special Representative to adopt a comprehensive approach that also considers the surrounding conditions that threaten or impede the work and security of defenders. Over the years, she developed specific strategies focused on enhancing the environment and security of defenders. Another important specificity of the mandate has been to act as a channel of communication between Governments and human rights defenders and to be a voice relaying civil society concerns at the international level.

15. The Special Representative hopes that the initial reservations expressed by some States about the establishment of a procedure exclusively dedicated to the situation of human rights defenders have been shed to a large extent. She also trusts that her endeavours in the fulfilment of the mandate have both met the expectations of the Commission and other stakeholders and contributed to creating better conditions for human rights defenders.

B. Methodology adopted and priority issues identified by the Special Representative

16. The methods of work of the Special Representative, presented in her first report to the Commission, have been similar to those of other thematic mechanisms, with due regard to the specificity of the mandate. In devising the methodology that she would follow, the Special Representative's primary concern was to ensure wide accessibility, enhanced dialogue, prompt response and effective initiatives.

17. In her initial report, the Special Representative also identified a series of issues requiring her special consideration. These included activities of armed groups; freedom of association, assembly and movement; repressive measures and specific risks faced by the defenders, need of protection strategies for defenders; domestic legislation and regulatory framework criminalizing certain aspects of human rights activities, the prosecution and judicial investigation of human rights defenders, the greater risks faced by defenders of the rights of certain groups whose work challenges social structures, traditional practices and interpretations of religious precepts, and in particular, women's human rights groups; reprisals against individuals and groups reporting alleged violations to international bodies; states of emergency and the occurrence of impunity insofar as they affect the activities of human rights defenders.

18. In the present report, the Special Representative wishes to offer an overview of the steps taken so far in implementing the mandate conferred to her in accordance with the above-mentioned methods of work and with a special attention to these priority issues.

C. Visibility and accessibility of the mandate

19. During her six years as mandate-holder, the Special Representative engaged in a dialogue with a wide range of stakeholders with a view to raising awareness about the Declaration and the situation of human rights defenders and working at creating an enabling environment for defenders with Governments, international and regional intergovernmental organizations, the United Nations system, national human rights institutions and NGOs.

Dialogue and cooperation with Governments

20. Throughout her two terms, the Special Representative maintained regular contacts with States. Consultations with States' representatives during sessions of the Commission and General Assembly have allowed substantial discussions on the situations of defenders in the country and region and concrete measures to effectively implement the Declaration. Overall, Governments have been keen to meet with her and have extended messages of support and cooperation. It is her opinion that a more systematic exchange on issues of concern, such as regular meetings with the regional groups of the Commission, should be considered to enhance an effective dialogue with Governments.

21. Information received from Governments in response to her communications also attests to their willingness to cooperate with the mandate. This has enabled the Special Representative to better assess situations brought to her attention and maintain an objective view of issues. She welcomes the cooperation she received from Governments of States where she conducted visits and the dialogue which followed. The Special Representative calls on the 10 States she visited to take into consideration her recommendations and provide information on the measures taken for their implementation.

Cooperation with the United Nations system

22. In line with the Secretary-General's support for mainstreaming human rights through the whole United Nations system, the Special Representative attempted to develop cooperation with specialized agencies and programmes with the ultimate objective that their work take human rights defenders into greater consideration. She notes that while her endeavours to establish contact were well received by most, setting up regular working relationships has proven more difficult, mainly due to lack of resources to pursue such collaborative efforts. Notable good practices of collaboration were achieved with United Nations Development Programme country offices and Office for the Coordination of Humanitarian Affairs teams on the occasion of country visits and in preparation of the final study contained in addendum 5 to this report. She hopes that this groundwork can be built on in the future to strengthen those ties in order to ensure effective implementation of the Declaration.

Ties with intergovernmental organizations

23. Collaboration between universal and regional mechanisms is vital to ensure a coordinated and effective strategy for the protection of human rights defenders worldwide. The Special Representative hence sought to establish working relations with regional intergovernmental organizations, including the African Union, the Organization of American States, the Organization for Security and Cooperation in Europe, the European Commission and the Council of Europe. She participated regularly in meetings and consultations on human rights defenders organized by these bodies, engaged in an exchange of information with their experts and secretariat, and took part in initiatives to develop regional approaches and mechanisms to implement the Declaration on Human Rights Defenders. In a few instances, this collaboration led to joint actions, for instance, on 10 December 2004, a statement was issued jointly with the Special Rapporteur on human rights defenders of the African Commission on Human and People's Rights, and the Executive Secretary of the Inter-American Commission on Human Rights, following their meeting during the 6th European Union Human Rights Discussion Forum.

Cooperation with NGOs

24. The Special Representative reiterates that NGOs in their daily work of advocating, monitoring, lobbying the respect for human rights and directly assisting victims are at the forefront of the defence of human rights defenders. In the eyes of the Special Representative, NGOs constitute the *raison d'être* of the mandate. Consequently, the Special Representative has made every effort to be accessible and responsive to their concerns and needs and to develop cooperation with them.

25. In the past six years, the data provided by international organizations, regional or country-specific networks and grass-roots groups in their reports, appeals, and campaigns has represented an essential source of information without which her mandate could not have functioned in an effective manner. NGOs' expertise has also helped by informing the direction and work of the mandate. Regular regional consultations organized by NGOs allowed the Special Representative to identify reliable sources and devise effective strategies for the promotion and protection of their rights. The Special Representative and her staff also seized every possible opportunity to hold meetings with defenders and civil society representatives from all regions of the world in Geneva and when travelling.

26. With a view to increasing the visibility of her mandate and enhancing civil society use of this tool, the Special Representative made herself available to brief human rights defenders and all interested stakeholders on the mechanism, including during country visits and during presentations of her reports to the Commission and the General Assembly. The Special Representative participated in efforts to put the issue of human rights defenders on the international agenda by attending a multitude of public events. The impressive number of invitations received illustrates how human rights defenders are an issue of growing importance and recognition at the international level.

27. With a view to offering a better understanding of the mandate and facilitating the submission of information on individual cases, the Special Representative prepared and distributed guidelines (see appendix to E/CN.4/2002/106). These guidelines have contributed to setting minimum and consistent standards of information for communications. She notes with satisfaction that these have been largely used by complainants.

28. It has been reported to the Special Representative that the questionnaire distributed in view of the preparation of addendum 5 represented an opportunity to raise awareness about the Declaration and the mandate among local human rights defenders communities, in particular those operating in remote areas. In many countries, replying to this questionnaire provided a chance to foster dialogue among local NGOs and prepare a joint survey on the Declaration's implementation.

D. Interpretation of the Declaration

29. To effectively fulfil her mandate, the Special Representative adopted a broad definition of human rights defenders based on activities rather than status. In doing so, she was guided by the broad categorization of the fourth preambular paragraph of the Declaration, in accordance to which human rights defenders can be any person or group of persons working to promote human rights. As such, what characterizes a human rights defender is not his/her professional background, status or skills but the human rights basis of the activities undertaken. Accordingly, the Special Representative has included in the scope of her mandate NGO members, lawyers, trade unionists, journalists, student activists, witnesses of human rights violations, certain civil servants, members of NHRIs, leaders of indigenous communities and social movements, environmental activists, lesbians, gays, transsexual and bisexual rights activists, health professionals, humanitarian workers and staff of the United Nations. Peaceful advocates of democratic or minority rights also fall within the ambit of the mandate. The list cannot be exhaustive.

30. With a view to assisting States and other stakeholders in their implementation of the Declaration at the national level, the Special Representative also interpreted key provisions of the Declaration with a view to ensure the highest standard of human rights. In particular, the Special Representative emphasized that articles 3 and 4 which define the juridical framework for the implementation of the Declaration must be read together with the Declaration's preamble, which reaffirms and reiterates the importance of the Charter of the United Nations and international human rights law. Consequently, in the discharging of her mandate, she took full account of domestic legislation and reaffirmed the full applicability of international human rights norms to the domestic context, by seeking to identify shortcomings and problem areas and recommending constructive solutions.

31. In accordance with article 13 of the Declaration, the Special Representative has recommended that Governments must allow access by human rights defenders, in particular NGOs, to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments. The only legitimate requirements imposed on defenders should be those in the interest of transparency.

32. The Special Representative has also assessed that while international human rights law provides for possible restriction or derogation of rights by law to ensure "morality, public order and the general welfare in a democratic society" or national security (International Covenant on Civil and Political Rights, arts. 4, 18, para. 3, 19, para. 3, 21, 22, para. 2 and International Covenant on Economic, Social and Cultural Rights, arts. 4, 8, para. 1 (a), (c), (d)), activities guaranteeing the monitoring and defence of internationally recognized rights and allowing for the monitoring of limitation and derogation of rights can be neither restricted nor suspended. This interpretation has proven instrumental in defining the space and ensuring an adequate environment for defenders, especially those working in conflict situations.

E. Efforts for creating protection strategies

33. In her first report, the Special Representative stated that the measure of success of the work of the Special Representative would be the degree of security that this mechanism could infuse in those acting for the promotion and protection of human rights (E/CN.4/2001/94, para. 89). The Special Representative has therefore devised and developed strategies aimed at guaranteeing the security of human rights defenders within the limits of her own mandate. These include communication of concern to Governments regarding individual situations as well as laws, policies and practices of States that repress or endanger those who carry out activities for the defence of human rights. She has also used the mandate to promote national and international civil society networks for the protection of defenders and to advocate for a better integration of their human rights agenda with the concerns and demands of movements that are striving for the attainment of human rights and fundamental freedoms. She believes that support networks have been a deterrent against forces violating the rights of defenders and has, in many instances, deflected or diluted the harm directed at human rights activities.

34. In addition, the Special Representative has given priority to studies aimed at increasing knowledge about repressive trends, measures and practices affecting human rights defenders in order for States to remedy them. The Special Representative has also addressed the issue of protection strategies during official country visits and issued specific recommendations related to

the security of human rights defenders. In addendum 5 to the present report, she has also tried to identify protection strategies implemented at national level to guarantee the security of human rights defenders and for ensuring an environment propitious to their work.

35. The number of urgent appeals and allegation letters sent by the Special Representative to Governments concerning reported human rights violations against human rights defenders has constantly and dramatically increased since the establishment of the mandate. While in her first year of the mandate, the Special Representative sent 11 communications to 6 countries, in 2005, 310 communications were sent to 68 countries. In total, she has sent some 1,263 communications. This dramatic growth in the number of communications may in part reflect the increased visibility of her mandate. However, the Special Representative is concerned at the continued increase in reports of serious violations of the rights of human rights defenders throughout the world, which attests to the continuing need for their effective protection and the implementation of the Declaration. Throughout her mandate, human rights defenders have stressed the importance of this procedure as a tool for their protection that fulfils both a humanitarian and preventive purpose.

36. The Special Representative also notes that communications have been instrumental in grasping the complexity of the situation of defenders worldwide as they provide the most reliable source of information to identify trends affecting human rights defenders in every region of the world. In particular, this data allowed the Special Representative to get an objective and documented picture of the type of violations affecting defenders, legislation, policies and practices undermining their work, and to identify the main perpetrators as well as the measures that could prevent further violations.

37. Nevertheless, communications transmitted by the Special Representative to Governments cannot be taken as a comprehensive reflection of the worldwide situation of human rights defenders. The absence of communication to a Government does not necessarily mean that there are no gaps in the implementation of the Declaration in that country. This could be an indication of factors such as a lack of awareness about the mandate and difficulties or deficiency in the capacity of the civil society in reporting situations to international human rights mechanisms. The Special Representative is worried that in some cases State repression may be the cause of this silence.

38. Official country visits have also provided an opportunity for protection. During her tenure, the Special Representative conducted 10 fact-finding missions in the following countries: Kyrgyzstan, Colombia, Guatemala, The former Yugoslav Republic of Macedonia, Thailand, Angola, Turkey, Nigeria, Israel and the occupied Palestinian territories, and Brazil.

F. Remaining challenges in the implementation of the mandate

39. The Special Representative regrets that in certain areas she has not been able to achieve the level of effectiveness that she had sought. Insufficient material and human resources have prevented her from ensuring an effective follow-up to the cases and to country visits and not allowed her to monitor the implementation of her recommendations with more consistency.

40. The Special Representative is grateful to Governments that have given support to the mandate and collaborated with her since her first appointment as mandate-holder. She acknowledges the standing invitations extended by a number of countries to all the special procedures of the Commission on Human Rights, as well as the invitation sent to her by the Governments of the Democratic Republic of Congo, Iraq, Mali, Mexico, Senegal and Venezuela, where she was unfortunately not able to conduct visits during her mandate. She regrets, however, that such support and collaboration has been uneven and that not all States have complied with the Commission's resolutions related to this mandate. Reticence of Governments in extending invitations for country visits is one of the main impediments to an effective implementation of the mandate. In particular, she regrets that, despite repeated requests, the Governments of Albania, Belarus, Bhutan, Chad, Egypt, Equatorial Guinea, India, Indonesia, Kenya, Malaysia, Mozambique, Nepal, Pakistan, the Russian Federation, Singapore, Togo, Tunisia, Turkmenistan, Uzbekistan, Zambia and Zimbabwe have not extended invitations to carry out a visit. She reminds States that the main purpose of country visits is to provide her with the opportunity to examine objectively and first-hand the role and situation of human rights defenders in the country, to identify good practices as well as particular obstacles to the full implementation of the Declaration at national level and to make specific recommendations on how these problems could be overcome.

41. Concerning communications, while many States have made efforts to provide the Special Representative with responses, the Special Representative regrets that others have failed to respond in an accurate and satisfactory way. Among the responses received, the Special Representative has identified the following trends: denial of human rights defender status or of a link to human rights work; the invocation of national law; denial of facts; the contention that national remedies were not sought; public order; questioning the legitimacy of the mandate; and, most rarely, recognition of wrongdoing of officials. She regrets that, in some cases, Government responses fail to address the issues at stake and that in many cases Governments have not taken the appropriate action to end the violation, to remedy it and prevent its reoccurrence.

42. A number of countries have never responded to any of her communications. As previously mentioned, silence on the part of Governments regarding the communications addressed to them precludes the possibility of a dialogue, limits her capacity to gather information and denies the Commission on Human Rights its prerogative of contributing to the protection of international human rights standards.

43. The Special Representative also wishes to refer to the situation of individuals and groups that reported human rights violations to her and other international human rights mechanisms. The fact that, in many countries, they continue to be under serious threat represents a lack of regard for the mandate itself. The Special Representative has intervened on several occasions in cases where human rights activists have not been granted permission to leave their countries to participate in international human rights events, including the Commission, or have been molested or subjected to serious reprisals upon return to their homes from these events. She has also intervened in cases of individuals who have been targeted after they have submitted information or complaints to international human rights mechanisms, in particular to her mandate and other special procedures of the Commission on Human Rights. She remains extremely concerned by the murders of human rights defenders who collaborated with international mechanism. Reports of the Secretary-General entitled "Cooperation with

representatives of United Nations human rights bodies” (see E/CN.4/2005/31 and Add.1) contain descriptions of situations in which persons have reportedly been intimidated or suffered reprisals for having cooperated with United Nations human rights bodies, for having availed themselves of international procedures, for having provided legal assistance for this purpose, and/or for being relatives of victims of human rights violations.

III. KEY DEVELOPMENTS AND MAJOR CONSTRAINTS IN THE IMPLEMENTATION OF THE DECLARATION

44. The Special Representative wishes to draw the attention of the Commission to the main positive and negative trends observed over the past six years in the implementation of the Declaration, both in connection with the establishment of an enabling environment and the adoption of protection measures. While these responsibilities primarily rest with the State, the existence of aware, strong, active and credible national civil society contributes to the creation of adequate conditions for human rights defenders and represents effective channels for protection for defenders at risk.

A. States

45. The Special Representative has received with interest information on measures and protection programmes to ensure the personal safety of human rights defenders at imminent risk. These measures range from increased police surveillance and bodyguards to programmes for emergency placement of defenders in another region or country. The Special Representative notes, however, that such measures can only represent a temporary fix to an imminent danger. Adequate protection requires a comprehensive and transversal policy from Governments to establish an appropriate environment where the legitimacy of the work of human rights defenders is respected, the legal framework is in line with the Declaration’s provisions, and those taking adverse actions against defenders can be brought to justice.

Recognition of the status and role of human rights defenders

46. Recognition of the legitimacy of human rights defenders is the first step to prevent or at least reduce threats and risks against them. Several Governments have publicly recognized the status and role of human rights defenders in official statements. At the international level, their public statements in international human rights forums and votes in favour of the adoption of the Declaration by the General Assembly are examples of this formal acknowledgement. At the national level, some States have also taken practical measures to reaffirm their support to human rights defenders and placed the issue at the top of their agenda. For instance, some Governments have established focal points for human rights defenders within the office of the head of State or other relevant ministries. While this is a very positive measure, attention should be paid to the fact that the efficiency of such focal points is correlative to the resources and competence they have as well as to their openness to the participation of civil society in general and human rights defenders in particular. In this regard, the Special Representative welcomes the creation of regular spaces for consultation between the government apparatus and the human rights defenders community, with a view to strengthening dialogue on issues of common interest. In some cases, Ministries of Foreign Affairs have also included on their foreign policy agenda the issue of human rights defenders and reflected this in bilateral dialogues as well as by facilitated temporary asylum for human rights defenders fleeing persecution.

47. However, in a number of countries, despite international commitments, State authorities have favoured confusion about the role and status of human rights defenders by delivering defamatory and denigrating statements about them and their work or even by orchestrating smear campaigns against them. Enmity against human rights defenders has also impregnated the public opinion of certain countries, where human rights defenders are labelled as criminals, terrorists, unpatriotic, seditious and sacrilegious on grounds of national security, ideology, religious belief or cultural specificity. The role of the media in the dissemination of negative images of human rights defenders has a strong weight in many countries, and has led to creating negative perceptions of defenders, which has put them at further risk.

48. Stigmatizing human rights defenders and denying them official recognition renders their work less effective. It also contributes to creating a climate of misunderstanding and hostility that has led to attacks by segments of the population against human rights defenders and organizations. In contrast, in countries where defenders have benefited from popular support, barriers against their targeting are stronger.

Positive and negative trends in the adoption and implementation of legislation

49. The Special Representative notes that some Governments have made efforts to ensure that domestic legislation reflect State obligations contained in the Declaration and other international human rights standards. In this respect, the Special Representative has repeatedly recommended the adoption of the Declaration as part of domestic legislation. Parliaments of at least two European countries (Germany and Belgium) have passed resolutions that made express reference to the situation of human rights defenders and to the mandate itself. In others, national laws have been amended to remove or reduce legislative obstacles limiting defenders' freedoms of expression, association, assembly and access to information as well as NGOs' access to funding. Secondary laws and internal directives have also been issued for this purpose (Turkey).

50. Notwithstanding these positive developments, the information received by the Special Representative suggests that the current trend in many countries is to pass laws and regulations restricting the space for human rights activities. Numerous national laws continue to be or have recently become incompatible with international standards and with the Declaration in particular. While most national Constitutions formally guarantee human rights, secondary laws have subsequently restricted rights that are pivotal for the full implementation of the Declaration, such as the rights to freedom of expression, access to information, freedom of association and freedom of assembly. In many cases, States have used these domestic laws to legitimate violations of human rights and to seriously impair the work of human rights defenders. In addition, even where efforts are made to adopt laws that are in line with international standards, their inefficient implementation in practice remains a recurrent problem.

51. In a great number of countries, national laws regulating the functioning of NGOs impose severe restrictions on their registration, funding, management and operation. Far from being used to give legal basis to NGOs and guarantee their rights, domestic legislation has been enforced to keep them under strict control and have been arbitrarily used to legitimize taking legal action against human rights NGOs for activities protected and promoted by the Declaration. In other countries, where legislation on freedom of association appears to be in accordance with international law, registration requirements have been used arbitrarily or restrictively to void

legal protection for those human rights NGOs that are most critical against the Government. The Special Representative wishes to refer to her fourth report to the General Assembly, in which she examined the standards of the right to association contained in the Declaration (A/59/401).

52. So-called security or counter-terrorism measures have also been used to restrict human rights activities. Human rights defenders and groups have been targeted and subjected to arbitrary actions with the introduction of exceptions to the rule of law and human rights derogations adopted through special security legislation. The Special Representative examined the impact of security legislation on the capacity of work of human rights defenders in her third report to the General Assembly (A/58/380).

Dissemination of and training on the Declaration

53. Together with the recognition of the role and status of human rights defenders and the implementation of the Declaration in national legislation, initiatives to disseminate information and increase awareness of the Declaration constitute another effective step to create a more amiable environment and to foster protection. The Special Representative has received with appreciation information according to which some Governments have taken measures to disseminate the Declaration through information and training programmes addressed to law-enforcement officials, military personnel, State officials, judges, lawyers, human rights defenders and other interested actors. Translation of the Declaration into national languages, including minority languages, has proven to be very useful. The Special Representative notes with satisfaction that at least one Government (Norway) is currently making a booklet for its embassies on how to support and protect human rights defenders internationally based on the European Union Guidelines for the protection of human rights defenders (see paragraph 63 below).

54. Despite these positive initiatives, sources of various kinds have highlighted an alarmingly weak knowledge of the Declaration in a majority of countries, both among State authorities and the human rights activists community, particularly but not only in remote areas.

Specific protection strategies

55. International law and national Constitutions in virtually all countries provide guarantees for the protection of the right to life, liberty and physical integrity. These guarantees are not conditional on the behaviour of individuals, but form a part of State responsibility to respect the limits of its authority and to fulfil its obligations in consonance with the recognized norms of human rights and the rule of law. Article 9 of the Declaration emphasizes the duty of States to protect defenders. However, the Special Representative has not received much information about concrete measures aimed at the protection of human rights defenders as a group, which is particularly vulnerable to threats and attacks.

56. Some Governments have reported that protection measures are granted to those human rights defenders who face imminent risk. Protection is granted at the request of the person at risk, or in some countries by the judicial authorities or the NHRIs. Most of the protection policies adopted by States consist of witness protection programmes and are not designed for the

specific needs of human rights defenders. In general, the few protection measures and mechanisms adopted at national level have received some criticism with regard to their sustainability and have not inspired any significant level of confidence in the defenders about their security in the long term.

57. The Special Representative is aware of initiatives to assist defenders in leaving their regions or their countries and find a safe haven elsewhere. She welcomes such initiatives but wishes to recall that relocation of defenders at risk can only be a temporary solution. As previously mentioned, measures to ensure the safe return of defenders to their homes and work also need to be considered. Such measures can only succeed with the fuller engagement of the diplomatic community, United Nations human rights mechanisms and regional human rights systems, where they exist (see A/57/182, para. 97).

58. While a set of protection mechanisms must be put in place in order to prevent violations against human rights defenders, the Special Representative wishes to recall that other factors, including democracy, an independent and efficient judiciary, respect for the rule of law and general commitment to human rights principles are requisite to create a framework where the implementation of the Declaration is possible. The Special Representative is concerned that in some instances protection programmes have been set up by Governments to guarantee the personal security of individual defenders, while other State policies and practices continue to be threatening for the work and activities of the rest of the human rights community.

Ending impunity

59. The responsibility to protect human rights defenders bears a related duty to call to account those responsible for harm and harassment against them. In their responses to the communications on individual cases transmitted by the Special Representative, many Governments indicate that, when threats or human rights violations are perpetrated against human rights defenders, an investigation is initiated by competent authorities and that defenders benefit from the full protection of the judiciary. The Special Representative is very encouraged by cases brought to her attention where appropriate measures have been taken against those responsible for these violations and effective and adequate reparation has been provided to the victims. However, she notes with deep regret and concern that these successful cases are still extremely limited in number and that, in an overwhelming majority of violations against human rights defenders, impunity prevails. Non-State actors, who are increasingly attacking and harassing human rights defenders, are greatly encouraged in a climate of impunity. Addressing the issue of impunity, in line with article 12 of the Declaration, is a key step to ensuring a safe environment for defenders. The degree of security enjoyed by human rights defenders will determine the capacity to expose human rights violations and to seek redress for the victims.

B. Regional intergovernmental organizations

60. The Special Representative has followed with interest efforts deployed by regional intergovernmental organizations to create special mechanisms to deal with the question of human rights defenders. These efforts certainly reflect commitment by the international community to act regionally on this issue. She has reported on the main developments made by intergovernmental organizations as well as the mandate interaction with them in previous

reports. While these new mechanisms have contributed to raising awareness about the situation of defenders in regional forums, it is the opinion of the Special Representative that they should be afforded more resources and stronger protection mandates in order to enhance the impact of their work.

61. She welcomes the creation in December 2001 of the Unit for Human Rights Defenders within the secretariat of the Inter-American Commission for Human Rights. Through its resolution AG/RES.2067 (XXXV-O/05) entitled "Human rights defenders: support for the individuals, groups, and organizations of civil society working to promote and protect human rights in the Americas", adopted on 7 June 2005, the General Assembly of the Organization of American States invited the Inter-American Commission on Human Rights to conclude as soon as possible its comprehensive report on the situation of human rights defenders in the Americas in 2004, in keeping with resolution AG/RES.1842 (XXXII-O/02). She also notes that the inter-American system has developed a practice of issuing temporary protection measures which have proved useful for the immediate protection needs of defenders, but more importantly have alerted Governments about defenders at risk and have been instrumental in enforcing State responsibility to protect.

62. The Special Representative was also encouraged by the establishment in November 2003 of a focal point on the situation of human rights defenders within the African Commission on Human and Peoples' Rights and the subsequent appointment of a Special Rapporteur of the Commission on Human Rights Defenders.

63. Efforts to enhance the work of human rights defenders and offer them better protection have also been made in the European region. The Special Representative was encouraged by the adoption of the European Union Guidelines for the protection of human rights defenders in 2004. She encourages the European Union to foster the dissemination of these Guidelines and invites its representatives to make effective use of them in their negotiations.

64. The creation of the Unit on Freedom of Association within the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) is another regional initiative specially welcomed by the Special Representative. This unit gathers information on existing legal frameworks and implementation practices on freedom of assembly and association in OSCE participating States, with a special focus on human rights defenders and NGOs. It also provides legislative assistance to OSCE participating countries and OSCE field missions on freedom of association and assembly. For this purpose, it has elaborated the OSCE/ODIHR Guidelines for Drafting Laws Pertaining to the Freedom of Assembly. OSCE has also set up an education and training programme in this sphere. The Special Representative also notes with appreciation that one of the working sessions of the OSCE annual Human Dimension Implementation Meeting was devoted to these freedoms. While the work of OSCE/ODIHR does not encompass the whole spectrum of rights and principles enshrined in the Declaration, enhancing the right to freedom of association and assembly is pivotal for its effective implementation. The Special Representative further notes that OSCE has recognized the vital role of NGOs in the promotion of human rights, democracy and the rule of law on many occasions (see for instance the 1999 Istanbul Charter for European Security) and has emphasized the need for protection of human rights defenders (1994 Budapest Document).

65. The Special Representative is also aware of the steps taken by the Council of Europe in the implementation of the Declaration. The adoption of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations and the adoption of the Fundamental Principles on the Status of Non-Governmental Organizations in Europe. Giving NGOs a proper legal basis may contribute to the creation of an enabling environment for NGOs and to giving effect to freedom of association and freedom of expression.

66. In addition, in its decisions, the European Court on Human Rights has upheld rights which are essential for human rights defenders. It has for instance recognized the importance of associations to the proper functioning of democracy (*Gorzelik and Others v. Poland*, 17 February 2004, para. 92) and given its opinion on issues such as the proportionate response to the prohibition to hold a demonstration (*Rai, Almond and "Negotiate Now" v. UK*).

C. The United Nations system

67. Human rights defenders represent key partners of the United Nations system in fulfilling the goals laid out by the Charter, in particular at the country level. With respect to human rights, defenders are key to ensuring the implementation of human rights norms and helping the Office of the High Commissioner for Human Rights to discharge its mandate. At the same time, United Nations agencies, departments, programmes and offices can play a very significant role in the implementation of the Declaration and the protection of human rights defenders. The Special Representative welcomes actions taken by parts of the United Nations to strengthen the capacity of human rights defenders, promote the Declaration, focus on national legislation, and to provide for human rights education for governmental and non-governmental actors. Some United Nations entities based in the field have raised issues related to the situation of human rights defenders in their negotiations with Governments and even taken direct measures to ensure their protection.

68. The Special Representative is very pleased that 24 field offices of the United Nations, essentially through the UNCTs, have submitted valuable information to her upon her request and for the preparation of the country reviews contained in addendum 5. In order to respond to the questionnaire, some UNCTs have organized national consultations with local civil society and have based their contributions on these exchanges of views (notably Mongolia and Nepal). She hopes that stronger ties can be established in the future between the mandate and UNCTs in order to ensure the effective implementation of the Declaration at the country level.

69. In countries where human rights defenders cannot operate and are largely silent, United Nations agencies become the only bodies which can raise human rights concerns. By the nature of their work and their commitment, many United Nations staff are themselves human rights defenders. Throughout her mandate, the Special Representative has raised an increasing number of cases of United Nations staff who have suffered serious harm in the fulfilment of their functions related to the promotion or protection of human rights. (including in Afghanistan, Côte d'Ivoire and Palestine).

70. On the other hand, the Special Representative has been informed by non-governmental sources that, in some countries, United Nations entities supported initiatives or agreements with Governments that ultimately may create unfavourable conditions for human rights defenders. In particular, in certain countries some of these agreements provide that only those NGOs with

official recognition are allowed to receive funds from the United Nations and other international donors. As a result, independent NGOs critical of a Government's policies, which are often denied such recognition, are prevented from receiving funds or even capacity-building assistance. The Special Representative is fully aware of the sensitivities surrounding United Nations operations at the country level, nevertheless, she believes that human rights should remain at the core of all discussions. In this regard, it is her considered opinion that the United Nations Secretariat and other agencies should strengthen their cooperation and coordination with the Commission's human rights mechanisms to avoid situations that are detrimental to human rights and to those individuals and groups that spare no effort to promote and protect them.

71. In the light of the reform process the United Nations has engaged in, in particular with regard to the reform of the Commission, the Special Representative urges States to ensure that in recognition of the important role played by human rights defenders, their participation, through NGOs, will be guaranteed in all relevant organs.

D. The Office of the High Commissioner for Human Rights

72. Cooperation by OHCHR has been particularly important in broadening the impact of the Special Representative's work. She warmly welcomes the publication and distribution of OHCHR Fact Sheet No. 20 entitled "Human rights defenders: protecting the right to defend human rights", which is a practical tool both for human rights defenders in conducting their advocacy and training activities and for Governments and other interested actors who need a rapid understanding of what a human rights defender is, an overview of the mandate of the Special Representative and a brief analysis of the Declaration.

73. The Special Representative notes that her work has been facilitated where there is a field presence of the OHCHR. She has frequently consulted with them on individual cases of violations and they have provided her with valuable information and help in preparation and follow-up to her country visits and in the implementation of her mandate. She invites OHCHR, in the elaboration of its technical cooperation programmes, to take into account her recommendations on the countries concerned. She also urges OHCHR to negotiate comprehensive protection mandates with Governments and to take note of her reports and those of other special mechanisms of the Commission in designing protection strategies for its field offices.

74. The Special Representative sees the establishment of a task force to strengthen partnership with civil society within the OHCHR as an important initiative. The task force is mandated to make recommendations to ensure that adequate attention and support are given within the policy, programmes and activities of the Office to civil society actors, in particular human rights defenders, who are natural partners for the implementation of the Office's mandate. She looks forward to its recommendations being implemented.

E. United Nations treaty bodies

75. Findings of treaty bodies have always been a valuable source of information and reference for the Special Representative. She notes, with appreciation, that they have raised concerns about the situation of human rights defenders on many occasions, in particular the

Human Rights Committee. It is her opinion that explicit references by the treaty bodies to the Declaration would strengthen their arguments on human rights defenders and would contribute to increasing awareness about this international instrument, which, although not legally binding, does articulate international consensus on protection of activities for the defence of human rights.

F. National human rights institutions

76. National human rights institutions, such as commissions or ombudsmen, can play a critical role in the protection of human rights defenders. However, in a large number of countries examined by the Special Representative, these institutions lack either the requisite level of independence or the power and capacity to offer effective relief to defenders.

77. Members and staff of those national institutions that operate in full compliance with the Paris Principles often fulfil a role as human rights defenders. The Special Representative regrets that in a number of countries these persons face threats and attacks because of their human rights commitment. In this context, the Special Representative has expressed concern about reported cases of human rights violations against members of national human rights institutions on a number of occasions (including Argentina, Colombia, Mexico, Nepal and Thailand).

78. She welcomes the recent initiative of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to adopt general guidelines for national institutions to follow when they or their members or staff are under threat. She recalls her recommendation on closer working relations between the NHRIs and the defenders' community both as a measure of facilitation of human rights work and of protection of defenders (see E/CN.4/2002/106). She urges the Committee to add appropriate guidelines in this regard.

G. Civil society

79. Civil society, in most parts of the world, is gaining in maturity and continues to mobilize for the defence of human rights. In many countries the human rights community has developed strong and coordinated national, regional, and international initiatives for the defence of human rights. The Special Representative is impressed by the commendable efforts being made by local and international NGOs to render their work more effective and to devise and implement protection strategies, such as solidarity networks.

80. At the national level, human rights defenders have engaged in dialogue with Governments and offered their expertise for designing training programmes and for review of proposed legislation. They have also reviewed policies to assess their impact on enjoyment of human rights and to raise awareness about human rights. They continue to monitor places of detention and other sensitive situations, and to report on human rights violations and assist victims. In response to the harassment of human rights defenders, local activists have devised protection strategies including raising national, regional and international awareness about cases and making use of the available human rights mechanisms. The level of cooperation extended by Governments and their response to the concerns and demands of the human rights community

vary in every country. However, there are situations where Governments have actively obstructed human rights defenders from carrying out their advocacy, monitoring and reporting functions. It is also noted that, where Governments have claimed interaction with and participation of civil society in State initiatives on human rights, these initiatives have seldom resulted in civil society recommendations being reflected in any policy or legislative outcome.

81. Human rights defenders have also successfully carried out initiatives at the regional and international level. They have created geographic and thematic networks and regularly hold meetings and consultations. Their positive value is unquestionable. They create a forum for exchange of experiences where coordinated strategies can be discussed and joint recommendations issued. They give greater visibility to the situation of human rights defenders at risk by establishing strong solidarity links, which give human rights defenders themselves a sense of security. It is the opinion of the Special Representative that building ties and alliances with others at the local level can help human rights defenders to increase their capacity as well as their respective security. Linking with regional and international networks can provide additional support and protection. This is particularly true for small and less-known NGOs based in remote areas.

82. The Special Representative takes note of numerous human rights defenders programmes launched by larger human rights organizations in the past six years and of special units on human rights defenders created within some human rights organizations. These initiatives have contributed to improvement in the protection of defenders as well as in strengthening strategies for the defence of human rights. Her work under the mandate has also greatly benefited from these initiatives.

IV. RECOMMENDATIONS

83. **The Special Representative has made comprehensive recommendations in her previous reports to the Commission and the General Assembly, including reports of her country visits. She draws attention of the Commission to these recommendations and lists the following for special emphasis.**

84. **The absence of adequate legal frameworks for the enforcement of economic, social and cultural rights results in difficulties in protection of activities for the promotion and protection of these rights. The Special Representative, therefore, recommends adoption of laws as well as security and public order policies that recognize the legitimacy of peaceful action to attain these rights, including resistance to threatened violations.**

85. **The Special Representative urges more involvement of the judiciary in ensuring a safe environment for the work of human rights defenders, as it has a critical role in alleviating the pressures on human rights defenders resulting from wrongful or malicious prosecution and criminalization of their legitimate activity through national security or public order legislation. Human rights-sensitive interpretations and application of constitutional principles and the law by the judiciary can be a decisive factor in securing their protection from harassment by the use and abuse of judicial procedures.**

86. The Special Representative recalls her finding that many States have been restricting defenders' access to information and to sites of alleged violations. Such restrictions are limiting the capacity of defenders to monitor and report violations and are affecting the transparency and openness with which human rights defenders can carry out completely legitimate activities. Such circumstances increase the risks for defenders and can undermine the credibility of their work. She recommends, therefore, that Governments ensure that laws and policies reflect the right of defenders to this access and that the relevant authorities are trained to give full effect to this right.

87. The Special Representative has observed that the situation of human rights defenders is largely determined by the level of commitment to human rights at local and provincial levels. She has, therefore, always emphasized that every tier of government must share a common commitment to uphold human rights and the rule of law. Governments must, therefore, demonstrate this common purpose by the adoption of uniformity in implementation of initiatives for the furtherance of the work of human rights defenders and their protection.

88. While fully subscribing to the principle of State responsibility to guarantee the enjoyment of human rights, the Special Representative remains concerned about the targeting of human rights defenders by non-State entities. She asserts that the obligation to respect the rights recognized in the Declaration is universal. She urges that her recommendation for development of legal and normative frameworks for accountability of non-State entities and creation of appropriate mechanisms in this regard, be an essential part of the agenda of OHCHR in the context of its protection mandate.

89. The contribution of human rights defenders to establishing and restoring peace and security should be recognized by ascribing a role to them in peace negotiations and agreements. Such a trend in national reconciliation efforts, international diplomacy and multilateral peace initiatives would strengthen the correlation between security, development and human rights as elucidated by the Secretary-General in his report "In larger freedom: towards development, security and human rights for all".

90. In order to take timely action and to prevent harm to defenders at risk, States must establish a methodology for the prompt investigation of complaints and allegations brought to their attention by the Special Representative and other special procedure mechanisms of the Commission.

91. The reform of the Commission should ensure induction of procedures that use the evaluation of the situation of human rights defenders as an essential indicator for assessment of compliance with human rights standards and the respect of the rule of law by States. Lack of response by Governments to the concerns expressed by the Commission or its special mechanisms must be used as another such indicator.

92. **States must ensure prompt and effective accountability of those who have committed human rights violations, especially against human rights defenders, through appropriate disciplinary, civil and criminal proceedings, thereby ending impunity for attacks against human rights defenders, where it is prevalent. They should also consider the application of legal penalties for false prosecution of defenders and any other actions against those acting in violation of its principles.**

93. **The Special Representative urges civil society organizations such as bar associations, trade unions and other professional associations to support the activities of human rights defenders and to combine their weight and influence for the protection of defenders. She particularly emphasizes the role of the media in making ineffective any attempts to discredit, defame or stigmatize human rights defenders as tools of harassment.**
