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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekagya*

Summary

The Special Rapporteur on the situation of human rights defenders, Margaret Sekagya, presents her second report to the Human Rights Council, submitted pursuant to Human Rights Council resolution 7/8.

In chapter I of the report, the Special Rapporteur provides an account of her activities during the reporting year. She draws the attention of Member States to the 266 communications that have been sent under the mandate during the past year. More detailed information on these communications is contained in addendum I to the present report.

In chapter II, the Special Rapporteur focuses on the security and protection of human rights defenders. She further provides an overview of the trends and challenges that human rights defenders face regarding the security and the environment in which they carry out their activities for the promotion and protection of human rights, as well as situations of insecurity and physical protection programmes at the national, regional and global levels.

In chapter III, the Special Rapporteur outlines her recommendations to States, national human rights institutions, regional intergovernmental human rights organizations and non-governmental organizations (NGOs).

* Late submission.

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I. Introduction

1. The present report is the second submitted to the Human Rights Council by the Special Rapporteur, and the ninth thematic report submitted by the mandate holder on human rights defenders since 2000. The report is submitted pursuant to Human Rights Council resolution 7/8.
2. In the present report, the Special Rapporteur focuses on the security situation of human rights defenders and the various protection measures implemented at the national, regional and international level to guarantee their physical safety.
3. Some 11 years after the adoption 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 (the Declaration on Human Rights Defenders), which makes clear the commitments of Member States, relative progress has been achieved, but insecurity remains and defenders are still at risk. The daily lives of defenders are affected by threats, intimidation, arrests, detention and harassment because of their peaceful work for the promotion, protection and implementation of human rights.
4. The report contains an analysis of the security challenges faced by human rights defenders, an assessment of existing physical protection programmes and examples of good practices.
5. The Special Rapporteur has sent a questionnaire to States, NGOs and intergovernmental and regional organizations on the safety situation of human rights defenders and protection measures implemented. The Special Rapporteur would like to thank all States and organizations that have responded to this questionnaire. Much of this report is derived from the answers received. To accurately reflect the situation of human rights defenders in each region, a compilation of the replies appears in document A/HRC/13/22/Add.4.

II. Activities during the reporting period

A. Communications transmitted to States

6. Between 11 December 2008 and 10 December 2009, the Special Rapporteur sent 266 communications. Communications were sent to 75 States, and, at the time of writing, 90 responses had been received, which indicates a 34 per cent response rate. All communications sent during the period covered by this report, as well as responses received between 11 February 2009 and 10 February 2010, will be included in addendum 1 to the present report.

B. Country visits

7. During the reporting period, the Special Rapporteur visited the Democratic Republic of the Congo from 21 May to 3 June 2009. A separate report on this visit has been submitted to the thirteenth session of the Human Rights Council as addendum 2 to the present report.
8. The Special Rapporteur visited Colombia from 7 to 18 September 2009. A separate report on this visit has been submitted to the thirteenth session of the Human Rights Council as addendum 3 to the present report.

Pending requests

9. As of December 2009, the Special Rapporteur has the following outstanding visit requests: Belarus (2002, 2003, 2004), Bhutan (2001, 2002), Chad (2002, 2003, 2004), China (2008), Egypt (2003, 2008), Equatorial Guinea (2002), India (2002, 2003, 2004), Kenya (2003, 2004), Malaysia (2002), Mozambique (2003, 2004), Nepal (2003, 2004, 2005, 2008), Pakistan (2003, 2007, 2008), the Philippines (2008), the Russian Federation (2004), Singapore (2002, 2004), Sri Lanka (2008), the Syrian Arab Republic (2008), Tunisia (2002, 2004, 2008), Turkmenistan (2003, 2004), Uzbekistan (2001, 2004, 2007), the Bolivarian Republic of Venezuela (2007, 2008) and Zimbabwe (2002, 2004, 2008). The Special Rapporteur regrets that some of these requests are long-standing, and hopes that States will give due attention to all her requests.

C. Cooperation with the United Nations system and intergovernmental organizations

10. The Special Rapporteur has continued to place particular emphasis on cooperation with all bodies of the United Nations and other regional intergovernmental human rights organizations.

11. Pursuant to Human Rights Council resolution 10/33, the Special Rapporteur was mandated, along with six other thematic special procedure mandate holders, to report on the progress made with regard to technical assistance to the Government of the Democratic Republic of the Congo and the development of the situation in the east of the country.

12. From 29 June to 3 July 2009, the Special Rapporteur attended the 16th Annual Meeting of Special Procedures in Geneva.

13. On 21 and 22 October 2009, the Special Rapporteur participated in an inter-mechanisms meeting organized jointly by the International Federation for Human Rights and the World Organization against Torture and hosted by the Inter-American Commission on Human Rights. Additional participants to the meeting included the Special Rapporteur on human rights defenders in Africa of the African Commission on Human and Peoples' Rights, representatives of the Commissioner for Human Rights of the Council of Europe and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE).

14. On 23 October 2009, the Special Rapporteur presented her second report to the General Assembly.¹ The report focused on the right to freedom of association, the content of the right and its implementation in practice. In the report, the Special Rapporteur provided an analysis of the legal framework for the protection of the right to freedom of association at the international and regional levels. She described the scope and content of the right and analysed what constitutes permissible restrictions. The report depicted the case law and work of the monitoring mechanisms. It also illustrated cases presented to both international and regional mechanisms and showed how the different systems complement and reinforce each other. The Special Rapporteur highlighted the main trends in the implementation of the right to freedom of association, including the difficulties in forming and registering human rights associations and criminal sanctions for unregistered activities; the denial of registration and deregistration; and burdensome and lengthy registration procedures. She also provided examples of restriction on the registration of international NGOs, government supervision and monitoring, and administrative and judicial harassment. The report contained examples of restrictions relating to access to funding. The

¹ A/64/226.

report concluded with examples of good practices and recommendations addressing the concerns and gaps identified.

15. The Special Rapporteur regrets that she was unable to attend the regional round table on freedom of association of the OSCE Office for Democratic Institutions and Human Rights, held in Bishkek on 21 and 22 October 2009. On this occasion, a staff member from the Office of the United Nations High Commissioner for Human Rights (OHCHR) participated in the meeting.

D. Cooperation with non-governmental organizations

16. The Special Rapporteur continued the fruitful cooperation of the mandate with civil society at the national, regional and international levels. The Special Rapporteur regrets that, due to time constraints, she was unable to participate in all the conferences and seminars to which she was invited. On occasions where the Special Rapporteur could not be present herself, she endeavoured, to the extent possible, to have a staff member represent her.

17. From 16 to 20 January 2009, the Special Rapporteur participated at the Third Regional Human Rights Defenders Forum, organized by the Asian Forum for Human Rights and Development (Forum-Asia) in Bangkok.

18. From 26 to 30 January 2009, the Special Rapporteur attended a meeting of the International Human Rights Funders Group in San Francisco, United States of America.

19. From 20 to 23 April 2009, the Special Rapporteur attended the Johannesburg + 10 All Africa Human Rights Defenders Conference in Kampala.

20. On 29 and 30 April 2009, the Special Rapporteur participated in a conference organized jointly by London Metropolitan University and Peace Brigades International in London.

21. From 10 to 16 June 2009, the Special Rapporteur attended the annual International Human Rights Training Programme organized by Equitas, in Montreal.

22. On 18 June 2009, the Special Rapporteur attended consultations organized by the International Coalition on Women Human Rights Defenders in Geneva.

23. On 8 October 2009, the Special Rapporteur attended the nineteenth World Congress of Gynaecology and Obstetrics in Cape Town, where she participated at a round-table discussion on health providers as human rights defenders.

24. From 6 to 7 November 2009, the Special Rapporteur attended a workshop on national human rights institutions as human rights defenders in Rabat, Morocco. The workshop was organized as a parallel event of the Conference of African National Human Rights Institutions.

III. The security and protection of human rights defenders

A. Security of human rights defenders

25. Between 11 December 2008 and 10 December 2009, the Special Rapporteur sent 266 communications to States in relation to the situation of human rights defenders. The information received from various sources and the activities carried out during this year have confirmed the continuous insecurity faced by human rights defenders. The worrying

trends identified below call for urgent and effective solutions by not only States, but also defenders themselves.

1. Facts and trends

26. Since the beginning of her mandate, the Special Rapporteur has identified specific situations impeding the work of human rights defenders and leading to a highly insecure environment.

(a) Stigmatization

27. The growing characterization of human rights defenders as “terrorists”, “enemies of the State” or “political opponents” by State authorities and State-owned media is a particularly worrying trend, as it is regularly used to delegitimize the work of defenders and increase their vulnerability. The Special Rapporteur expresses serious concerns in relation to this phenomenon, since it contributes to the perception that defenders are legitimate targets for abuse by State and non-State actors.

28. On 9 October 2009, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on human rights defenders in Africa of the African Commission on Human and Peoples’ Rights issued a joint press release denouncing the stigmatization of human rights defenders by the Gambian authorities and the public threats to kill defenders working in the Gambia or those collaborating with them. This stigmatization was even more symbolic given that the statements in question were made in Banjul, at the headquarters of the African Commission on Human and Peoples’ Rights, only a few days before the Commission’s forty-sixth ordinary session. The Special Rapporteur is concerned that human rights defenders are frequently victims of campaigns of defamation by State-owned media and are often portrayed as traitors or enemies of the State, which puts their lives in danger.

29. States should refrain from portraying human rights defenders and their activities as dangerous, illegal or a threat to the security of the State. Their important role and efforts in the promotion, protection and the full enjoyment of human rights by all should instead be praised. The Special Rapporteur would like to recall the primary importance of acknowledging the work and role of groups, organs or individuals in the promotion and protection of human rights and fundamental freedoms. This is the first step towards a safe working environment for defenders. By adopting the Declaration on Human Rights Defenders, States have committed themselves to recognizing their valuable role in the elimination of human rights violations and should therefore act accordingly at the national level.

30. Certain countries have taken action in this regard, which should be commended. The Special Rapporteur notes with satisfaction the public statement by the President of Colombia on 17 September 2009 after his meeting with the Special Rapporteur to the effect that “the defence of human rights is a necessary and legitimate action for democracy in a country like Colombia which is proud to be completely open to international scrutiny in this field” and she calls upon the authorities to give effect to this statement.² In Belgium, both the Senate and the Chamber of Representatives adopted resolutions on the protection of human rights defenders, acknowledging the role of defenders and their need of protection. The resolutions also establish clear goals to be achieved by the Belgian authorities.

² Press statement of the Special Rapporteur on the situation of human rights defenders, at the conclusion of her visit to Colombia, on 18 September 2009.

Similarly, the Spanish Congress unanimously passed a resolution on human rights defenders in June 2007.

(b) *Prosecution of defenders and criminalization of their activities*

31. States increasingly resort to legal actions to violate the human rights of defenders denouncing human rights violations. Defenders are arrested and prosecuted on false charges. Many others are detained without charge, often without access to a lawyer, medical care or a judicial process, and without being informed of the reason for their arrest.

32. Communications issued by the Special Rapporteur indicate that the criminalization of human rights defenders' activities by States' authorities has not decreased. Some States tend to systematically invoke national security and public safety to restrict the scope of activities of defenders. In many countries, trade unionists, members of NGOs and social movements face repeated arrests and criminal proceedings for charges of "forming criminal gangs", "obstructing public roads", "inciting crime", "creating civil disobedience" or "threatening the State security, public safety or the protection of health or morals". Moreover, human rights defenders, including defence lawyers, providing legal assistance to other defenders or victims of human rights violations are threatened, denied access to courthouses and their clients, and arrested and charged under various criminal provisions. The multitude of arrests and detentions of defenders also contributes to their stigmatization, since they are depicted and perceived as troublemakers by the population.

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

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

35. In certain States, judges and lawyers are working under constant threat, which may jeopardize their independence. Prosecutors sometimes resort to inadmissible evidence to initiate proceedings against defenders, thus compromising their right to a fair trial. In several countries, the relevant authorities still resort to secret, incriminating evidence to arrest and administratively detain human rights defenders without charges for prolonged periods of time. Such evidence is reportedly often obtained by the security services and not shared with detainees or their lawyers. The Special Rapporteur would like to recall that,

although not prohibited under international law, administrative detention should be surrounded by judicial guarantees and used only in exceptional and specific circumstances, such as a public emergency threatening the life of a nation.

36. States should refrain from criminalizing the peaceful and legitimate activities of defenders and ensure that they can work in a safe environment without fear of being prosecuted for criticizing Government policy or Government officials. The Special Rapporteur also urges States to review and abolish all legislative and administrative provisions restricting the rights contained in the Declaration on Human Rights Defenders, including legislation on NGOs and freedom of expression. Security legislation should not be used inappropriately to restrict the work of defenders. States should respect defenders' right to a fair trial and appropriate redress and compensation should be provided to defenders whenever their right to a fair trial is denied.

37. The Special Rapporteur wishes to call upon NGOs and regional human rights organizations to continue supporting defenders by providing them with legal assistance and/or judicial trial observation. To avoid jeopardizing their own security, human rights defenders should try to liaise with intergovernmental organizations such as OSCE and the OHCHR field presences whenever they decide to engage on such trial observations. Some recommendations on the way defenders could try to enhance their own security are detailed below.

(c) *Role of non-State actors and responsibility of the State*

38. These past few years, the safety of defenders has been increasingly threatened by a growing number of non-State actors in a climate of impunity.

39. Individuals acting on their own or as part of groups, whether in collusion with States or not, have been increasingly involved in attacks on human rights defenders. Guerillas, private militias, vigilante groups and armed groups have been implicated in violence against defenders, including beatings, killings and various acts of intimidation. Private companies have also been directly or indirectly involved in acts of violence against defenders. In this regard, the Special Rapporteur would particularly like to underline the situation of defenders working on economic, social and cultural rights, who are increasingly vulnerable, since their work is not always recognized as human rights work.³

40. In some States, trade union leaders, community leaders and land-rights defenders, including indigenous groups, are targeted for their activities. Elsewhere, defenders denouncing corruption and working on environmental issues are systematically attacked and threatened. Defenders working on economic, social and cultural rights are also subject to threats and intimidation when they attempt to access information. In certain countries, defenders trying to gather information on violations of human rights or humanitarian law being committed in certain areas are prevented from doing so in an often violent manner, which includes the use of killings, harassment and threats. In countries where the control of natural resources is at stake, defenders have been particularly threatened while denouncing the lack of transparency regarding contracts between the State and private companies.

41. The Special Rapporteur recalls that, in relation to the access to information held by the State, the latter is under the obligation to take all necessary steps to fully discharge its obligations pursuant to article 22, paragraph 2, of the International Covenant on Civil and Political Rights. States should also ensure that information held by non-State actors — and in particular private companies — that can harm the public or is linked to public interest is made available to the public.

³ See A/HRC/4/37.

42. One way to ensure the safety of defenders is to put an end to impunity for non-State entities. The Special Rapporteur would like to reiterate that States bear the primary responsibility for protecting individuals, including defenders, under their jurisdiction, regardless of the status of the alleged perpetrators. In cases involving non-State actors — including private companies and illegal armed groups — it is paramount that prompt and full investigations be conducted and perpetrators brought to justice. Failure by States to prosecute and punish such perpetrators is a clear violation of article 12 of the Declaration on Human Rights Defenders. Addressing the issue of impunity is a key step to ensuring a safe environment for defenders.

43. State responsibility in relation to actions and omissions of non-State actors as provided in article 12, paragraph 3, of the Declaration has been reiterated by numerous human rights bodies, including the Human Rights Committee and the Inter-American Commission on Human Rights. The rights enshrined in the International Covenant on Civil and Political Rights, including the right to life and freedom of association and expression, should be protected from violations not only by State agents, but also private persons or entities.⁴

44. Finally, it must be recalled that the Declaration on Human Rights Defenders is addressed not only to States and human rights defenders, but to everyone. It is set forth in article 10 of the Declaration that, “no one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms”. Non-State actors and private entities should therefore also abide by the Declaration and refrain from endangering the safety of defenders and/or impeding their work.

(d) *Federalization of the responsibility to investigate and punish violations committed against human rights defenders*

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

46. The United Nations treaty bodies have repeatedly stated that the application of State obligations shall extend to all parts of federal States without any limitation or exception.⁵ The Special Rapporteur urges States with a federal structure to ensure that the Declaration on Human Rights Defenders is fully applicable throughout their territory. Whenever possible, unified provisions should be adopted and the rights contained in the Declaration should be directly enforceable by State courts.

(e) *Security challenges faced by women defenders and defenders of sexual minorities*

47. Women defenders are most likely to be subjected to certain forms of violence, especially since they frequently work on specific issues that challenge established customs or norms and are therefore often culturally sensitive.⁶ Such gender-based violence includes

⁴ See Human Rights Committee, general comment No. 31 on article 2 of the Covenant on the nature of the general legal obligation imposed on States parties to the Covenant, 26 May 2004.

⁵ See A/63/38, p. 156, para. 312; CCPR/CO/73/CH, para. 6; E/C.12/BEL/CO/3, para. 24; CCPR/C/BRA/CO/2, paras. 7 and 13.

⁶ See A/HRC/4/37, paras. 98–104.

verbal and sexual harassment and rape. Since January 2009, the Special Rapporteur has sent 86 communications concerning the situation of women defenders.

48. To enhance the security of women defenders, States should also ensure that those women's specific security needs are dealt with in a gender-sensitive manner and that their participation and collaboration is sought when protection mechanisms are designed. In particular, gender-sensitive training should be put in place for law enforcement officials, protection officers and those in charge of designing protection programmes. Universal and regional mechanisms granting interim measures to women defenders should also request that States take their specific needs into account and report on the exact measures taken.

49. The Special Rapporteur is deeply concerned about the continuing denigration campaigns and the violent threats against defenders of lesbian, gay, bisexual and transgender rights. The right to peaceful assembly is also often denied to defenders working on lesbian, gay, bisexual and transgender issues or, alternatively, the police does not provide adequate protection for such demonstrations. Complaints related to violence and attacks are often not taken seriously by the police and are not always investigated properly.

2. Maximizing the security of human rights defenders

50. Even though the obligation of protecting human rights defenders and ensuring their security rests primarily with the States, defenders themselves may also take some measures to enhance their own safety. In this regard, the Special Rapporteur has identified examples of situations of vulnerability which may help both States and defenders to anticipate imminent threats in order to minimize risks and prevent attacks.

(a) *Situations of insecurity and seasonal changes in the vulnerability of human rights defenders*

51. As noted by the former Special Representative of the Secretary-General on the situation of human rights defenders in all parts of the world and on possible means to enhance their protection in full compliance with 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, "certain categories of defender are more likely to be targeted during certain periods of time, for example according to the political agendas in their countries or provinces ... These 'seasonal' changes in the vulnerability of human rights defenders could be a basis for the adoption of strategies for protection that would be especially active on behalf of certain defenders precisely during periods of expected vulnerability".⁷ Information received by the Special Rapporteur and the types of violations encountered by defenders shed some light on the circumstances and situations where human rights defenders are most likely to be vulnerable and in greater need of State protection. States should take these situations into account while developing early warning systems to anticipate threats against defenders. The Special Rapporteur would like to differentiate between the types of situation triggering defenders' insecurity.

(i) Short-term triggers

52. Defenders are often threatened before and upon return to their home countries after travel abroad to talk about the human rights situation in their own country. Participation in conferences, workshops and meetings, and travel to and from these events provide occasions for targeting defenders. Defenders continue to be arrested and detained, thereby

⁷ E/CN.4/2003/104, para. 23.

preventing their travel. They are often subjected to humiliating body searches and excessive luggage screening, or have their travel documents confiscated.

53. Defenders often face threats, attacks, arrests and false charges before, during or just after publicizing violations of human rights allegedly committed or condoned by State authorities. They may similarly be subjected to violence by non-State actors whenever information is published on alleged violations by private actors. Attacks on defenders at the time of the publication of reports, articles, petitions and open letters or the launch of radio broadcasts and campaigns denouncing human rights violations are increasingly frequent.

54. Peaceful public demonstrations, rallies and strikes to denounce human rights violations continue to be moments of particular vulnerability. Defenders are increasingly targeted in the run-up to demonstrations and suffer from the use of excessive force by authorities during peaceful protests.

55. Members of human rights NGOs and journalists are often targeted during the investigation of human rights abuses. They are subject to threats, attacks and intimidation, and some of them have even been abducted and killed.

(ii) Long-term triggers

56. The electoral period is a time when defenders face heightened risks. Freedom of expression and assembly are often restricted before, during and after elections. In many cases, acts of intimidation start long before the beginning of election campaigns. Solutions to enhance the security of defenders during elections should therefore also take this preceding period into account.

57. Defenders testifying in judicial proceedings, assisting victims or observing public trials continue to be subjected to intimidation and are often denied access to courtrooms.

58. Defenders working in conflict situations or engaged in humanitarian activities in complex emergency situations are often the first targets of the parties to the conflict. States resort to security legislation to restrain and impede the activities of defenders. The Special Rapporteur would like to refer to the analysis of her predecessor on the impact of security legislation and of emergency situations on defenders.⁸

59. Defenders may be at risk after having assisted the United Nations, its representatives and mechanisms in the field of human rights. States should refer to the report of the Secretary-General on cooperation with representatives of United Nations human rights bodies, which describes situations in which defenders have been intimidated for their collaboration with United Nations human rights bodies and mechanisms.⁹ In this regard, the Special Rapporteur urges States to refrain from threatening defenders before, during and after the visits of United Nations independent experts or regional and intergovernmental mechanisms and organizations.¹⁰ States should comply with Human Rights Council resolution 12/2 on cooperation with the United Nations, its representatives and mechanisms in the field of human rights adopted by consensus during its twelfth session.

60. Certain events attracting international attention such as Olympic Games and major championships are often a period when defenders are under great pressure. Forced evictions

⁸ See A/58/380.

⁹ See E/CN.4/2005/31 and Add.1.

¹⁰ See the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions following his visit to Kenya (A/HRC/11/2/Add.6) and the press release issued upon the conclusion of the visit, available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/52DF4BE7194A7598C125756800539D79?opendocument>.

carried out so that new infrastructure can be built ahead of these events are sometimes, for example, an occasion to silence defenders' dissent. Certain sports events attracting wide media attention are also used by defenders to highlight the situation of human rights in a given country. During the run-up to and throughout such events, human rights defenders are at increased risk of intimidation, harassment and arbitrary detention.

61. These examples should constitute a basis for States to anticipate high-risk situations and develop or improve protection measures. In the situations mentioned above, the safety of defenders' families and relatives should also be assessed. Whenever possible, early warning systems should also be developed.

(b) *State obligations*

62. The obligations of the State are outlined in articles 2, 9, 12, 14 and 15 of the Declaration on Human Rights Defenders. In particular, pursuant to article 12 of the Declaration, States have the obligation to protect defenders. Article 12 of the Declaration provides that "the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration".

63. States should harmonize their domestic laws with the Declaration on Human Rights Defenders. To enhance the protection of defenders and ensure that the rights and freedoms referred to in the Declaration are guaranteed, it is paramount that States review their national laws and abolish legal or administrative provisions impeding the work and activities of defenders. The Special Rapporteur welcomes the resolutions adopted by several parliaments acknowledging the role and status of human rights defenders. At the end of her country visit to the Democratic Republic of the Congo in June 2009, she welcomed the recent attempt by the Parliament of the South Kivu province to adopt a law on the protection of human rights defenders, and called on provincial parliamentarians to adopt a revised text in the near future, in close consultation with civil society and the United Nations.

64. States should verify that their security legislation, including their intelligence and counter-intelligence legislation, is not used to impede the work of defenders.¹¹ States should also translate and disseminate the Declaration on Human Rights Defenders and organize training for law enforcement officials and judges on the rights contained in the Declaration.

65. The Special Rapporteur would like to indicate that the obligation to protect should be considered by States as a collective obligation. States should consider reminding their counterparts of their obligation to ensure the safety of defenders at risk and condition aid and business agreements on the guarantee that necessary measures are taken in this regard.

(c) *Basic precautions to be taken by human rights defenders*

66. One of the issues contributing to the lack of an adequately secure and enabling environment for defenders is the insufficient awareness of the Declaration on Human Rights Defenders. Too many defenders are still unaware that their activities constitute human rights work. This is particularly true of defenders working in the field of economic, social and cultural rights. It is therefore also important to foster the dissemination of the Declaration and ensure it becomes a working, reference tool. In that connection, the Special

¹¹ See A/58/380.

Rapporteur has decided to develop a commentary to the Declaration, which should be published in the course of 2010.

67. The Special Rapporteur would like to call upon defenders to contribute to enhancing their own safety in a systematic manner. The examples of situations of insecurity and seasonal changes mentioned earlier may be used to anticipate and adopt strategies to prevent and reduce attacks. Digital and online security measures should also be put in place whenever possible.

68. Furthermore, many excellent protection tools, such as the *Front Line Protection Handbook for Human Rights Defenders*,¹² have been developed by NGOs and NGO coalitions. Many NGOs have also developed security training. The Special Rapporteur calls upon human rights defenders to liaise with these NGOs and attend and organize training sessions. She also encourages wider dissemination of these tools among the community of human rights defenders.

B. Physical protection of human rights defenders: good practices and challenges

69. Since the adoption of the Declaration on Human Rights, many intergovernmental and non-governmental regional mechanisms for the protection of defenders have been created and declarations and resolutions adopted. Despite the increase in organizations and instruments specifically aiming at their protection, defenders continue to pay a high price for their human rights activities. Some 11 years after the adoption of the Declaration on Human Rights Defenders, the Special Rapporteur has found that there was a need to review and assess protection programmes put in place to ensure the physical and psychological integrity of defenders from attacks and threats. The Special Rapporteur hopes that this will shed light on the urgency of the situation and the need for States and non-State actors to move towards efficient responses to physically protect defenders.

1. National protection mechanisms

70. The acknowledgement of good practices and shortcomings of existing national protection programmes could pave the way to better protection and enable the Special Rapporteur to revisit her protection strategy. The Special Rapporteur believes that greater awareness of good practices in the area of protection will encourage replication. The protection mechanisms cited below are by no means perfect, but States should draw upon these examples to create, develop or improve strategies and programmes for the physical protection of defenders in their respective countries.

(a) Witness protection programmes versus defender protection programmes

71. States have approached the protection of human rights defenders in different ways. Some have enacted formal protection mechanisms through legislation, while others have developed more informal systems.¹³ Nevertheless, many States still use their witness protection programmes as the only mechanism to ensure the protection of defenders at risk and consider such programmes sufficient.

72. In Argentina, a witness protection programme was reportedly created by resolution 439/07 of the Ministry of Justice, Security and Human Rights, which is used upon request of judicial authorities in federal investigations into kidnapping, terrorist acts or drug-

¹² A. Tsunga, *Protection Handbook for Human Rights Defenders* (Front Line, 2007).

¹³ See A/HRC/12/19.

trafficking offences. In exceptional cases, the Ministry of Justice, Security and Human Rights can include other cases, for example, those related to organized crime. Up to 4,360 people in the country have reportedly benefited from this programme. The programme offers the possibility of relocation, change of identity and protection, inter alia.

73. Such initiatives are commendable. However, the Special Rapporteur wishes to stress that witness protection programmes are not sufficient to provide for the safety of defenders, since in most cases they have not been designed for that purpose. Such programmes should not be used as substitutes for defender protection programmes.

74. Moreover, according to the information received by the Special Rapporteur, many witness protection programmes do not take the specific needs of the human rights defenders at risk into account. These needs are diverse and may differ according to the situation of the defenders concerned. For example, it might be useful to differentiate defenders in need of short-term physical protection from those requiring long-term protection measures. Assessing the types of needs will have an impact on the protection measures to be taken, e.g., the type of protection programme or whether relocation to another country is needed.

75. The Special Rapporteur understands that, given the range of situations, designing flexible and sustainable protection programmes is a challenging task. However, she would like to recall States' obligation to protect defenders. To that end, cooperation and consultation with human rights defenders is crucial to the development of better protection strategies.

(b) *State protection programmes*

76. States have developed various specific programmes to ensure the protection of defenders at risk. Many good practices, some of which are analysed below, have to be commended. Nonetheless, the examples mentioned in this report could be improved. The Special Rapporteur strongly urges States which have not put such mechanisms into place to develop their own.

77. In Guatemala, several initiatives have been set up to ensure the protection of human rights defenders. A coordination department for the protection of human rights defenders, administrators, judicial officers, journalists and social communicators has been created. A human rights unit was also established within the police and includes specialized investigative units for crimes against justice officials, human rights activists, unionists and journalists. Another encouraging development was the creation of a unit to analyse attacks against human rights defenders. A national policy for the prevention and protection of human rights defenders and other vulnerable groups was drafted in 2007 by the Presidential Human Rights Commission, but has yet to be approved.

78. Although these are commendable initiatives, the Special Rapporteur regrets that the replies received from the Government of Guatemala to the questionnaire do not clarify the status and effective functioning of these various mechanisms and strategies. Given the high number of communications received in relation to the security of Guatemalan defenders, she urges the State to adopt the pending Government agreement and provide the various agencies mentioned with appropriate resources.

79. In Brazil, the National Programme for the Protection of Human Rights Defenders, developed by the National Special Secretariat for Human Rights (which has a ministerial status), was officially launched on 26 October 2004. The Brazilian states are in charge of its execution, under the coordination of a national steering committee at the federal level. Protection measures include police protection and a database to register defenders at risk.

80. Nonetheless, according to the information received, police and security forces are not being properly trained and many defenders, not confident that they would be properly

protected, refuse police protection. Furthermore, the protection programme is still not implemented equally throughout the country and many defenders at risk are not covered by it. The State should urgently review its methodology to ensure a coherent implementation at the national level. The Special Rapporteur believes that the federal authorities should remain primarily responsible for the implementation of such programmes or put in place the necessary mechanisms and funds to ensure their full implementation by States. The federal structure of a State should not impede the functioning of a programme. More generally, the Special Rapporteur calls upon the Government to increase its efforts to fully implement the recommendations formulated by the former Special Representative of the Secretary-General on the situation of human rights defenders after her visit to Brazil in 2005.¹⁴

81. In Colombia, innovative protection mechanisms have been put in place at the national level to contribute to the physical protection of human rights defenders. The Protection Programme for Human Rights Defenders, Trade Unionists, Journalists and Social Leaders, administered by the Ministry of Interior and Justice and launched in 1997, aims to safeguard the life, well-being and safety of journalists and social communicators, leaders or activists of political groups, social, civic, community, labour and rural organizations and ethnic groups, among others, who find themselves at certain, imminent and exceptional risk as a direct consequence and by reason of carrying out their political, public, social or humanitarian activities or duties.¹⁵ However, this programme is not without problems, which must be addressed by the Government.

82. An early warning system, which aims at preventing violations of international humanitarian law and human rights by alerting the Government of Colombia of potential violations, has also been set up. This system is administered by the Office of the National Ombudsman and operates in 22 regions, with a national office in Bogotá. More generally, on the situation of human rights defenders in Colombia, the Special Rapporteur would like to refer to her country mission report, which is presented as addendum 3 to this report.

83. The Special Rapporteur welcomes these initiatives and encourages other States that have not yet done so to consider developing similar measures and maximizing their efficiency. At the same time, she wishes to express her concerns about the efficiency and sustainability of the existing programmes. Among other issues of concern, the large number of Government entities and ministries in charge of implementation of the programmes often causes confusion and a lack of confidence within the community of defenders. The Special Rapporteur believes that they should be revised, in consultation with human rights defenders, so that the latter receive timely and efficient physical protection.

(c) *Protection programmes developed by non-governmental organizations*

84. Human rights defenders have also developed national and regional programmes to ensure their own safety and protection.

85. The Special Rapporteur would like to refer to the report of the Special Representative of the Secretary-General on the situation of human rights defenders on her follow-up mission to Guatemala.¹⁶ She calls on NGOs to draw upon the example of the NGO unit for the protection of human rights defenders, developed by the National Movement for Human Rights and other Guatemalan NGOs in 2003, which monitors attacks on defenders, including those working on environmental issues, freedom of expression and labour rights.

¹⁴ See A/HRC/4/37/Add.2.

¹⁵ See Decree No. 2816, *Official Gazette*, No. 46.368, 22 August 2006.

¹⁶ A/HRC/10/12/Add.3, paras. 17–19.

86. In Colombia, a campaign for the right to defend human rights in the country has recently been launched.

87. The training instruments for the protection of human rights defenders developed by the East and Horn of Africa Human Rights Defenders Project are also commendable initiatives. In particular, the project regularly organizes training for human rights organizations focusing on protection and security management for human rights defenders.

88. The South Caucasus Network of Human Rights Defenders, which unites 30 human rights NGOs in Armenia, Azerbaijan and Georgia, was set up in July 2009. The network seeks to facilitate the creation of a safer and enabling environment for human rights defenders in the South Caucasus, and strengthen their voices in the region and internationally. The Special Rapporteur welcomes the creation of the network and looks forward to engaging with it constructively.

89. The Asian Forum for Human Rights and Development (Forum-Asia) is a membership-based human rights organization, uniting 46 member organizations across Asia. Forum-Asia seeks to facilitate capacity-building and networking among human rights defenders, civil society actors and organizations in Asia. In November 2009, Forum-Asia launched the Protection Plan for Human Rights Defenders at Risk to strengthen protection and assistance for the defenders in Asia.

90. The Special Rapporteur also welcomes the recent creation of the Arab Human Rights Defenders Union and calls upon other human rights defender networks to share best practices with this new network, in particular on security training.

91. The Special Rapporteur greatly supports such initiatives and calls on civil society to continue to develop such tools, which are vital to maximize the protection of human rights defenders. Several NGOs with specific human rights defender programmes have also developed relocation packages and protection plans (including Front Line, Protection International and Forum-Asia protection plans).

2. Universal and regional protection mechanisms

(a) African Commission on Human and Peoples' Rights

92. The mandate of the Special Rapporteur on human rights defenders in Africa, set forth by the African Commission on Human and Peoples' Rights, includes seeking, receiving, examining and acting upon information on the situation of human rights defenders in Africa. The Special Rapporteur also submits reports to the African Commission at every ordinary session and develops and recommends effective strategies to better protect human rights defenders.

93. The African Commission has developed a mechanism for adopting provisional measures in its rules of procedure (rule 111): "Before making its final views known to the Assembly on the communication, the Commission may inform the State party concerned of its views on the appropriateness of taking provisional measures to avoid irreparable damage being caused to the victim of the alleged violation The Commission ... may indicate to the parties any interim measure, the adoption of which seems desirable in the interest of the parties or the proper conduct of the proceedings before it."

(b) Intergovernmental Commission on Human Rights of the Association of Southeast Asian Nations

94. The 42nd ministerial meeting of the Association of Southeast Asian Nations (ASEAN) on 20 July 2009 adopted the terms of reference for the ASEAN Intergovernmental Commission on Human Rights. The Commission was formally

established in October 2009 at the fifteenth ASEAN summit in Phuket, Thailand. A political declaration, laying down guidelines on how to further strengthen the mandate and functions of the Commission, will be drafted by a high-level panel.

95. The Special Rapporteur welcomes the establishment of the ASEAN Intergovernmental Commission on Human Rights and looks forward to the Commission functioning as a monitoring body, working effectively for the promotion and protection of the rights of human rights defenders and taking into account their security and protection needs.

(c) *Council of Europe*

96. On 6 February 2008, the Committee of Ministers adopted the Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities. The declaration details State obligations and lists some examples of protection measures that could be taken. It also strengthens the role of the Commissioner for Human Rights of the Council of Europe in protecting and supporting human rights defenders. The declaration reiterates the obligations of Council of Europe member States to “provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas”. Furthermore, the European Court of Human Rights can also grant provisional measures.¹⁷

97. The Special Rapporteur encourages the Council’s Commissioner for Human Rights to ensure that the declaration is fully implemented and that follow-up strategies are developed in this regard. In addition, coordination of efforts and action should be envisaged by the European Union and the Council and their respective member States to avoid duplication.

(d) *Inter-American Commission on Human Rights*

98. Article 25 of the rules of procedure of the Inter-American Commission on Human Rights enables the Commission, on its own initiative or at the request of a party, to request that a State adopt precautionary measures to prevent irreparable harm to persons. Many defenders in Latin America benefit from such measures and the Commission is publicizing the granting of such measures to raise awareness of the situation of a particular defender and therefore contribute to his/her protection. The Commission may also request that the Court order “provisional measures” in urgent cases which involve danger to persons, even where a case has not yet been submitted to the Court.

99. The Commission has also created a specific unit within the Office of the Executive Secretary to coordinate its activities in this field. The Human Rights Defenders Unit liaises with human rights organizations and members of civil society, as well as State bodies responsible for human rights policies in each member State. The unit can also encourage the Commission to adopt any precautionary measures or measures of any other kind that the Commission deems appropriate, in order to protect threatened human rights workers in the region.

(e) *European Union*

100. The revised European Union Guidelines on Human Rights Defenders, adopted by the European Council in 2008, suggest practical measures for European Union member States to support and protect human rights defenders. The guidelines give examples of

¹⁷ European Court of Human Rights, Rule 39 of the Rules of Court (2009).

practical measures that European Union missions could take to protect defenders at risk, such as swift assistance, issuance of temporary visas and the facilitation of temporary shelter in member States. The Special Rapporteur welcomes these very positive steps to ensure the safety of human rights defenders.

101. However, much more could be done in terms of preventing attacks against defenders and ensuring their safety. In particular, the Special Rapporteur believes that European Union missions should enhance their role in the physical protection of human rights defenders. In this regard, the Special Rapporteur urges European Union member States to provide defenders with a coordinated European response. States are to remain free to decide whether to issue visas and provide shelter on a case-by-case basis, but should try to facilitate visa issuance whenever possible. The swift assistance to be provided to defenders at risk needs to be further developed and clarified so that defenders can rely on more precise guidelines regarding the type of protective measures they can receive.

102. Furthermore, information received indicates that only a few European Union member States have developed and carried out strategies to efficiently implement the guidelines. Diplomatic staff members are not always specifically trained. Cooperation and contacts between defenders/human rights organizations and European Union representatives have not been systematized and are therefore often conducted on an ad hoc basis when a defender is already at risk. Finally, many European Union missions still have not designated a focal point on human rights defenders.

103. The Special Rapporteur believes that contact with civil society should be improved and systematized in order to ensure follow-up of their situations and develop early warning systems. Staff of European Union missions should be provided with training on the Declaration on Human Rights Defenders and specific challenges faced by certain groups of defenders in their country of assignment ahead of deployment. Coordinated efforts at the central level should be envisaged to foster the dissemination of the guidelines to defenders. The Special Rapporteur also calls upon the European Union to provide technical assistance to countries in the design and implementation of protective measures for human rights defenders.

(f) *Organization of Security and Co-operation in Europe (OSCE)*

104. Following recommendations from the 2006 Supplementary Human Dimension Meeting, the OSCE Office for Democratic Institutions and Human Rights in 2007 established a focal point for human rights defenders and national human rights institutions. The focal point closely monitors the situation of human rights defenders, identifies issues of concern and seeks to promote and protect their interests. The focal point also aims at increasing the capacity of human rights defenders, and improving their knowledge of human rights standards, advocacy, monitoring and strategy formulation skills.

(g) *United Nations treaty bodies*

105. Some United Nations treaty bodies also provide for interim measures, including rule 86 of the rules of procedure of the Human Rights Committee and rule 108, paragraph 1, of the rules of procedure of the Committee against Torture. Article 5 of the recently adopted Optional Protocol to the International Covenant on Economic, Social and Cultural Rights also provides for interim measures. The Committee on Economic, Social and Cultural Rights will be able to request that States parties take interim measures as may be necessary in exceptional circumstances to avoid possibly irreparable damage to the victim or victims of the alleged violations, once the Optional Protocol enters into force. In this regard, the Special Rapporteur urges States to ratify or accede to the Optional Protocol.

106. The Special Rapporteur believes that granting interim or precautionary measures plays an important role in the physical protection of human rights defenders at risk. Universal and regional human rights mechanisms including the Inter-American Commission of Human Rights, European Court of Human Rights and the Human Rights Committee have repeatedly reiterated the obligatory nature of such interim measures.¹⁸ In this regard, the Special Rapporteur wishes to recall the international obligations of States parties to the above-mentioned regional organizations to comply with these interim measures.

107. The Special Rapporteur also wishes to reiterate that she accords priority to establishing and strengthening solid relationships with regional mechanisms for the protection of human rights defenders. In accordance with this strategy, two meetings have been held with the participation of the Special Rapporteur on human rights defenders in Africa of the African Commission on Human and Peoples' Rights, the Human Rights Defenders Unit within the secretariat of the Inter-American Commission on Human Rights, the Office of the Commissioner for Human Rights of the Council of Europe and the focal point for human rights defenders and national human rights institutions within OSCE Office for Democratic Institutions and Human Rights and the European Commission.

(h) *National human rights institutions*

108. National human rights institutions, especially those mandated to receive complaints and follow individual cases, can be powerful allies of human rights defenders and contribute significantly to their security and protection. National human rights mechanisms that prioritize the protection of human rights defenders in their agenda and establish a focal point in this respect have an important role to play in creating an enabling environment for human rights defenders and facilitating their activities without any undue interference from outside.

C. Protection provided by peacekeeping missions

109. The Special Rapporteur commends the work of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo, in particular the Protection Unit, which ran the programme for the protection of victims, witnesses and human rights defenders, funded by the European Union, until its closure in March 2009. The programme was then absorbed by United Nations Organization Mission in the Democratic Republic of the Congo into the work of the Protection Unit. Since the inception of the programme in June 2007, the Protection Unit has assisted 487 victims, witnesses and defenders in 11 provinces. Other United Nations peacekeeping missions should draw upon this example, and the Special Rapporteur strongly encourages them to replicate this protection programme.

110. More generally on the situation of human rights defenders in the Democratic Republic of the Congo, the Special Rapporteur would like to refer to her country visit report submitted as addendum 2 to this report.

¹⁸ See European Court of Human Rights, *Öcalan v. Turkey*, indication of interim measures pursuant to Rule 39 of the Rules of the European Court of Human Rights, 30 November 1999; and Human Rights Committee, *Piandiong and others v. the Philippines*, communication No. 869/1999, 2000.

IV. Conclusions and recommendations

111. The Special Rapporteur commends countries that have developed protection programmes to enhance the security of human rights defenders and urges them to implement the recommendations contained in this report.

112. The Special Rapporteur is concerned about the paucity of practical initiatives to physically protect human rights defenders effectively. Only a few countries have adopted legislation or taken effective measures to put an end to the numerous and violent attacks against defenders. Impunity continues to prevail and no specific compensation mechanisms for human rights violations committed against human rights defenders have been created.

113. The Special Rapporteur would like to recommend to States the following minimum guidelines regarding protection programmes for human rights defenders:

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

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

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

(d) Protection programmes should include an early warning system in order to anticipate and trigger the launch of protective measures. Such a system should be managed centrally and risk assessment should involve different groups of human rights defenders. The seasonal changes and examples of insecure situations mentioned above should be taken into account when designing such systems;

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

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

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

114. Furthermore, the Special Rapporteur:

(a) Urges States to:

- Refrain from stigmatizing the work of human rights defenders. Recognition of the status and role of human rights defenders and the legitimacy of their activities in public statements is the first step to preventing or at least reducing threats and risks against them.
- Investigate complaints and allegations on threats or human rights violations perpetrated against human rights defenders in a prompt and effective manner, and initiate appropriate disciplinary, civil and criminal proceedings against the perpetrators to ensure that impunity for such

acts is eliminated and thereby greatly enhance the security of human rights defenders.

- Consider adopting the Declaration on Human Rights Defenders as a part of domestic legislation and establish focal points for human rights defenders within the office of the Head of State or Government, or other relevant ministries.
 - Enact legislation on defenders protection programmes.
 - Provide training on the Declaration to police, military and other security forces as well as judicial officials, and institute and enforce sanctions against those acting in violation of its principles and
 - Decriminalize defamation and libel.
- (b) Encourages donor States to increase their financial contribution to programmes aimed at the security and protection of human rights defenders;
- (c) Encourages national human rights institutions to:
- Prioritize the protection of human rights defenders on their agenda and establish focal points for human rights defenders
 - Play an important role in fostering the dissemination of the Declaration and
 - Investigate complaints made by human rights defenders
- (d) Encourages member States of the European Union to:
- Foster the dissemination of the European Union Guidelines on Human Rights Defenders to all European Union missions' staff, and organize trainings before staff deployment on the implementation of the guidelines
 - Ensure an effective implementation of the European Union guidelines and
 - Liaise with human rights defenders on the ground and organize regular meetings with human rights defenders
- (e) Suggests that human rights projects funded by the European Union should include security training of human rights defenders;
- (f) Encourages national and international NGOs to:
- Create and strengthen national, subregional and regional coalitions and networks to enhance the protection of defenders and
 - Disseminate training tools on the protection of human rights defenders
-