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Human Rights Monitor Series

**NEW YORK UPDATE
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Overview

Somewhat overshadowed by the focus on the 60th anniversary of the UDHR was the 10th anniversary of the *UN Declaration on Human Rights Defenders*,¹ which fell on 9 December 2008. Thanks in part to the remarks of the UN Secretary-General to the General Assembly (GA) on the joint anniversary, the important work and sacrifice of human rights defenders did not go unnoticed. The Secretary-General praised the contribution of defenders who were ‘ordinary people who find extraordinary courage and stand up for what is rightfully theirs, yours, mine and ours’.² His sentiments were echoed in subsequent remarks to the GA by the President of the Human Rights Council, the former High Commissioner for Human Rights, Ms Mary Robinson, and several group statements by States.³ Further, to mark the 10th anniversary, five UN and regional rights experts

¹ The full title of the Declaration is *The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms*.

² The Secretary-General’s video statement to the ceremony marking the 60th anniversary of the UDHR on 10 December 2008 is available at <http://www.un.org/apps/sg/sgstats.asp?nid=3606>

³ France (on behalf of the European Union), Israel (Western European and Others Group), Mexico (Rio Group), Iceland (Nordic Group). They paid tribute to human rights defenders for their role in bringing attention to human rights violations, demanding justice for the victims, and often sacrificing their own safety in the process. The UN press release covering all statements delivered

circulated a joint media statement to draw attention to the need for States and others to treat the activities of human rights defenders as legitimate human rights work, remove all obstacles in their path and take proactive measures to support their work.⁴

A number of new initiatives at the GA this year also drew attention to human rights defenders as a cross-cutting issue. For example, the statement on sexual orientation and gender identity delivered in the GA by Argentina made a point of urging States to ‘ensure adequate protection of human rights defenders, and remove obstacles which prevent them from carrying out their work on issues of human rights and sexual orientation and gender identity’.⁵ Similarly, the GA’s consensus declaration on the *Universal Declaration of Human Rights* included an oblique reference to the valuable work of men and women human rights defenders.⁶ These references were in addition to very specific details about the violations experienced by defenders that are now routinely included in GA resolutions on the human rights situation in Iran and Myanmar.⁷

The Third Committee’s attention was also brought to the work of human rights defenders through its interactive dialogue with the newly-appointed Special Rapporteur on this issue. Outlining her priorities, the Special Rapporteur emphasised the need to increase the focus on defenders who were exposed to specific violations as a result of the sensitive nature of their work. She flagged the need for States and others to take deliberate steps to create a ‘safer, more enabling and accepting environment’ for defenders working on the rights of women and gay, lesbian, bisexual and transgender people, amongst others. To further enhance the protection function of the mandate, the Special Rapporteur also advised of her intention to develop an ‘early-warning mechanism’ capable of anticipating systemic threats to defenders. The challenging nature of the questions posed by, and the instructions given to, the Special Rapporteur by Cuba, Iran and the Russian Federation indicated that not all States welcomed her intended approach to the mandate.

Interactive Dialogue with special procedures

Special Rapporteur on human rights defenders⁸

In her first report to the Committee since being appointed to the mandate, **Mrs. Margaret Sekaggya**, the Special Rapporteur on the situation of human rights defenders:

- Outlined her methods of work, highlighting the importance of follow-up on individual cases in communications to Member States; the value of country visits; and the need to explore new areas of analysis relating to the *UN Declaration on Human Rights Defenders* (the Declaration).
- Pointed out that vulnerable groups of defenders, such as women, activists working on the rights of minorities, defenders working on lesbian, gay, bisexual and transgender (LGBT) issues, among others, needed specific and enhanced protection as well as deliberate efforts to provide a safer, more enabling and accepting environment.

during the ceremony to mark the 60th anniversary of the UDHR is available at <http://www.un.org/News/Press/docs/2008/ga10795.doc.htm>

⁴ The joint statement is available at http://www.osce.org/documents/odhr/2008/12/35607_en.pdf

⁵ For further information on the joint statement, see ISHR’s *New York Alert* on the end of the General Assembly’s 63rd session, available at http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192

⁶ Para. 4 of the Declaration (*Resolution 63/116*) stated: ‘We laud the courage and commitment of all women and men around the world who have devoted their lives to promoting and protecting human rights’.

⁷ Para. 2(d) and (f) and para. 3(h) of *Resolution 63/191* on the human rights situation in Iran, and para. 2(a) of *Resolution 63/245* on the human rights situation in Myanmar.

⁸ More information on this special procedure and their mandate is available at <http://www2.ohchr.org/english/issues/defenders/index.htm> .

- Called attention to the need to continue the analysis of the challenges and obstacles that human rights defenders faced in enjoying their rights to freedom of assembly and peaceful association, in order to develop recommendations that will remove these obstacles.
- Advised States that the mandate would engage in activities to disseminate and popularise the Declaration by improving governments' understanding of their obligations and need for greater accountability, and reminding human rights defenders of their rights under the Declaration. The mandate would also encourage sharing good practices.
- Explained that the mandate will develop an early warning mechanism for the protection of defenders, with the objective of anticipating systematic threats against them by activating appropriate sectors of the national protection system.
- Highlighted the need to foster and continue collaboration with stakeholders, particularly at the regional international levels (including her counterparts at the African Commission on Human and Peoples' Rights, Inter-American Commission, Council of Europe, Organisation for Security and Cooperation in Europe, as well as other UN special procedures).
- Referred to the Council's universal periodic review (UPR) as a 'mechanism of strategic value' that could be used to improve the situation of human rights defenders.

Interactive dialogue⁹

Following the Special Rapporteur's statement, several States took part in the dialogue. Most expressed strong support for the mandate and welcomed the Special Rapporteur's intended approach. Several sought more detailed information about how to improve State implementation of the Declaration, and how to enhance protection for the most vulnerable human rights defenders. However, Cuba, Iran and the Russian Federation posed more challenging questions or gave the Special Rapporteur direct instructions on specific tasks she should undertake, or certain matters she should avoid. The Special Rapporteur provided detailed responses to most questions, but there was insufficient time for her to respond to some issues raised in the second round of questions. The main points of discussion were:

- Ghana and France (on behalf of the EU) asked about the implementation gaps in relation to the protective standards in the Declaration. Thailand and the US (respectively) asked how enforcement of the Declaration could be achieved given it was non-binding and some States refused to implement it. Ghana was also interested in best practice examples of its implementation. *The Special Rapporteur highlighted that the gaps in the implementation of the Declaration were evident around the world and included the restriction of association (or denial of registration of NGOs) and peaceful assembly; lack of police protection; and States' failure to fight impunity. She suggested States could address implementation gaps using the following best practice examples:*
 - a) *provide non-cumbersome registration procedures for NGOs;*
 - b) *provide the right of appeal when registration was denied;*
 - c) *require only that authorities were notified in advance of a demonstration (rather than requiring authorisation of the demonstration);*
 - d) *provide adequate protection for demonstrators;*
 - e) *grant (emergency) travel visas for defenders who needed to leave the country for their own protection;*
 - f) *repeal of sedition and libel laws (to ensure freedom of expression for journalists);*
 - g) *provide direct financial assistance to defenders and/or authorisation of their access to foreign funding sources;*
 - h) *involve defenders in drafting legislation and developing government policy;*
 - i) *end impunity;*
 - j) *enact freedom of information legislation to facilitate access to government records; and*

⁹ The UN press release that covers the interactive dialogue is available at <http://www.un.org/News/Press/docs/2008/gashc3927.doc.htm>

k) *invite special procedures to conduct country visits.*

- The US reacted positively to the Special Rapporteur's intention to review the trends and challenges faced by defenders, and looked forward to her analysis of which countries were the worst offenders. *Referring to the trends, the Special Rapporteur remarked that attacks were most evident before and after elections, and were usually carried out by State (security) agents. Thus States needed to train and educate these agents about human rights and how to protect defenders. Among the most vulnerable to attack from State agents and the general public were defenders working on sensitive issues like women's rights and LGBT issues. Defenders working on land issues were being targeted for displacement and other violations. In addition, impunity remained an issue especially as a result of its adverse impacts on people's physical and mental integrity. States also needed to adopt a stronger gender dimension in their approach to better protect women human rights defenders. Greater efforts were needed to raise awareness amongst police, military, judiciary and legislature about how to protect women defenders.*
- Thailand asked the Special Rapporteur how to define a 'human rights defender', and Iran told her that she should develop an 'unambiguous' definition. *The Special Rapporteur pointed out that although the Declaration did not include a definition, the previous mandate holder had developed one. It stated that a defender was someone who promoted human rights through their work, and she undertook to continue investigating who was a defender.*
- The Russian Federation asked whether belonging to a sexual minority was enough to make a person a human rights defender. It also asked the Special Rapporteur to explain what Council documents she used to justify her intention to defend sexual minorities, and whether such people were as vulnerable as other groups, like children, who were at risk of paedophilia. Iran warned that it was 'not advisable or helpful' to group people working on LGBT issues together with others working on economic, social and cultural rights, implying there were different categories of defenders. In contrast, France (on behalf of the EU) and the UK asked how the Special Rapporteur could address the particular challenges faced by defenders working with LGBT people. *The Special Rapporteur referred States to the Declaration, which invoked the right of each person to live free from abuse and harassment, and with dignity and justice. She would continue to defend these rights consistent with the principle of non-discrimination.*
- Canada, France (on behalf of the EU) and Norway picked up on the Special Rapporteur's remarks about using the UPR process to draw attention to the work of defenders, and asked her to elaborate. Ghana asked whether other Council mechanisms, such as treaty bodies and pledges could also assist in this respect. In contrast, the Russian Federation appeared to reject this approach, pointing out that UPR process already had a clear framework regarding input from the special procedures. *The Special Rapporteur advised that the UPR should be used as mechanism to persuade States to cooperate with the mandate and ensure it operated successfully. More specifically, she suggested: States should involve defenders in consultations at the national level when preparing their State reports for the UPR; State reports should include a separate section to outline how the Declaration was being implemented at the national level; and defenders should participate in debates at the Council when State UPR reports were presented. The Special Rapporteur also remarked that the UPR was a very comprehensive system able to deal with a broad range of issues and intended to promote government action on their human rights obligations. Treaty bodies tended to focus on thematic issues, whereas the UPR provided a comprehensive assessment of the implementation of all human rights, and could be used to target the situation of human rights defenders.*
- Ghana, the US and Norway asked which countries the Special Rapporteur wanted to visit. *She advised she had requested visits to many countries, but was still waiting for responses. She noted that almost all regions posed obstacles to defenders. However, if any State rejected cooperation, the Declaration called for constructive dialogue and regional cooperation with the mandate.*
- On a critical note, Cuba reminded the Special Rapporteur that the mandate required her to focus on 'people, groups and institutions', as well as their 'rights and duties' vis a vis the constitution and national legislation. Cuba expected to see this reflected in her future reports, along with the correct use of the full title of the Declaration. As required by the resolution establishing her mandate, she should

take a ‘comprehensive’ approach and seek to ‘strengthen peace and dialogue’. Any interpretation that her mandate was to protect human rights defenders was incorrect – this was the responsibility of States. *The Special Rapporteur agreed that the Declaration required that human rights defenders and governments used ‘peaceful means’ to defend their rights. She was aware that it also placed duties and responsibilities on both parties, including the requirement that defenders conducted their work in a peaceful manner. Further, she understood that her role was to promote the rights of human rights defenders and not to protect those rights.*

- Iran asked the Special Rapporteur to provide greater clarity about appropriate sources of funding for human rights defenders. Cuba asserted that ‘so-called’ human rights defenders in its jurisdiction were ‘mercenaries’ because they were in receipt of funds from ‘a foreign power that was intent on overthrowing our sovereign government’. Time constraints did not allow the Special Rapporteur to respond.

In closing, the Special Rapporteur thanked all delegations for their questions, which she said had given her an indication of how to proceed with the mandate.

General discussion on human rights defenders

During the Third Committee's general discussion under its agenda items on the promotion and protection of human rights, a number of States referred to the critical role played by human rights defenders and the need for States to support them in their work. In particular:

- Norway reflected that the endorsement of the Declaration ten years ago by all Member States of the UN was a 'monumental achievement', but the promise of the Declaration was yet to be realised as States had not lived up to their responsibilities to implement it. 'Dedicated individuals and dynamic human rights defenders' were the 'essential partners' needed to hold governments accountable and ensure the overall human rights framework was implemented. Through their work, defenders were an 'indicator of democratisation'. Further, it was 'simply not acceptable' that women and girls were exposed more than men to violations of their rights when they sought to carry out their work as defenders. Norway also expressed concern about the increasing restrictions imposed by States on the freedom of association, opinion and expression, including freedom of the media, all of which it regarded as the 'essential tools for human rights defenders'. It pointed to the need for 'constructive and peaceful dialogue' between States to 'find ways to manage fundamental differences' and understand the intersection of the right of freedom of expression with other rights, such as freedom of religion. These were not conflicting rights, rather States needed to balance freedom of expression while respecting cultural and religious diversity.
- France (on behalf of the EU) expressed similar concerns about increasing restrictions on freedom of expression and how this had affected the ability of human rights defenders to carry out their work. To show its support for their work and celebrate the anniversary of the Declaration, the European Commission, the European Parliament and the UN had jointly organised a conference to provide a platform for human rights defenders. During the general discussion on country situations, France also drew attention to the following States and actions they should take to protect defenders:
 - a) Myanmar: NGOs needed to be able to work freely to assist the victims of Cyclone Nargis, and all political prisoners should be freed to enable inclusive political dialogue, democratic reforms and national reconciliation;
 - b) Sri Lanka: restrictions on freedom of expression needed to be lifted, and the intimidation of and attacks on journalists stopped;
 - c) Democratic Republic of the Congo: the situation for defenders remained 'particularly problematic';
 - d) Iran: the EU was concerned by the 'severe restrictions on the freedom of expression and the press', imprisonment of students and trade union leaders, and 'organised persecution' of human rights defenders;

- e) Somalia: the EU was concerned that journalists were increasingly becoming targets for violence and kidnappings; and
- f) Uzbekistan: all human rights defenders needed to be released from prison.

Side event on human rights defenders

Human Rights First, the International Service for Human Rights and the Norwegian Mission to the United Nations hosted a panel discussion following the Third Committee's interactive dialogue with the Special Rapporteur. To mark the ten year anniversary of the Declaration, the theme of the event was 'The UN Human Rights Defenders' Declaration after Ten Years: Protecting Rights in a Changing World.' It provided an opportunity to hear from human rights defenders from diverse regions about the daily challenges they faced.

In addition to the Special Rapporteur and the Norwegian Ambassador, the panel included Mr. Oscar Pedraza, joint founder of Sons and Daughters for Memory and Against Impunity (Colombia), and Ms. Nora Younis, a new media activist from Egypt and recipient of Human Rights First's 2008 Human Rights Award. Mr Andrew Hudson of Human Rights First moderated the discussion. The main points included:

- The Special Rapporteur remarked that 10 years after the adoption of the Declaration, violations against defenders were occurring all over the world. She called for more innovative means of holding States accountable, which could include more use of the communications procedure, the UPR process, regional mechanisms to follow-up on individual cases, and more use of information from NGOs. She appealed to the participants to encourage States to respond to communications as this was an effective means of pressuring States to provide protection and improve their accountability.
- Mr. Pedraza drew attention to the continuing stigma associated with being a human rights defender and the importance of domestic implementation of the Declaration to counter this prejudice and safeguard the lives of defenders. In particular, States needed to exercise their responsibility to protect their citizens, and it was not acceptable for them to class human rights violations as 'family' or 'social problems' that were beyond State intervention. Nor should States be allowed to continue the practice of labelling defenders as 'terrorists' or characterising them as 'unpatriotic'.
- Ms. Younis emphasised that State violence against defenders was becoming more sophisticated, and threats and intimidation were increasingly being delivered by non-State actors, who were almost impossible to identify or bring to justice. She compared the situation faced by many defenders as similar to trying to 'fight a ghost regime'.
- Participants drew attention to the particular kinds of violations experienced by women human rights defenders and defenders working on LGBT issues. Several participants suggested States needed to take very particular measures to prevent these violations and where they did occur, to ensure the perpetrators were brought to justice.
- Participants also stressed the need for all States, including democracies and developed countries, to domesticate the Declaration so it could be enforced.

Looking forward

The Special Rapporteur will report to the next session of the Council in March 2009, at which time she may be in a position to provide more detail on her initial areas of focus and upcoming country visits. The next session of the GA is expected to consider a resolution on human rights defenders, which is traditionally sponsored by the Norwegian Government. In the intervening period it will be interesting to see whether and how the Special Rapporteur and other stakeholders in the UPR process take up the challenge to use it as a reporting mechanism for the Declaration.

Background

The General Assembly is the main deliberative organ of the UN. It is composed of representatives of all Member States and has a general mandate to discuss and make recommendations on any matters within the scope of the *United Nations Charter*. Under Article 13 of the Charter, the General Assembly is specifically mandated to ‘initiate studies and make recommendations for the purpose of ...assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’. The regular session of the General Assembly runs from the beginning of September to the end of December. Each year the GA addresses over 150 agenda items, which are considered either in the plenary or in one of its six committees.¹⁰ The Third Committee (Social, Cultural, and Humanitarian) addresses most agenda items relevant to human rights defenders, including advancement of women, children’s rights, the rights of indigenous peoples, the elimination of racism, and human rights questions. Numerous special procedures also report to the Third Committee on a number of these issues and engage in an interactive dialogue with States. The Fifth Committee (Administrative and Budgetary) is also particularly relevant to human rights defenders since it evaluates and approves the budgetary requirements arising out of the work of the other five committees. After completing their work, the Third and the Fifth Committee, as well as the other four main committees, submit draft resolutions to the General Assembly for final adoption.

¹⁰ For further information on the main committees of the GA, refer to ISHR’s General Assembly Fact Sheet: the General Assembly’s main committees, available at http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192

Technical Annex

Reports

- Note by the Secretary-General transmitting the report of the Special Rapporteur on the situation of human rights defenders (A/63/288).

Special procedures

| Special procedure | Date for renewal of mandate | GA report number | Date of presentation of report | Date of last presentation of report/s to Human Rights Council | Next report to Human Rights Council due |
|--|-----------------------------|------------------|--------------------------------|---|---|
| Special Rapporteur, human rights defenders | 2011 | A/63/288 | 24 October 2008 | 7th session, 12 March 2008 ¹¹ (A/HRC/7/28) | 10 th session, March 2009 |

¹¹ Ms. Hina Jilani, the former Special Representative of the Secretary-General on human rights defenders, presented her annual report and mission reports to the Human Rights Council. A report on the interactive dialogue of the Council with the SRSG is available at http://www.ishr.ch/hrm/council/dailyupdates/session_007/12_march_2008.pdf.

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