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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 Sekaggya***

* Late submission.

Summary

The Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, presents her first report to the Human Rights Council, submitted pursuant to Human Rights Council resolution 7/8. The mandate on the situation of human rights defenders was reviewed by the Human Rights Council at its seventh session in March 2008, and Ms. Sekaggya was appointed as the new Special Rapporteur on the situation of human rights defenders.

Chapter I of the report gives an account of the activities of the new Special Rapporteur and the Special Representative of the Secretary-General during the reporting year. It draws the attention of member States to the 493 communications that have been sent under the mandate during the past year. More detailed information on these communications is contained in addendum 1 to the present report.

Chapter II focuses on the potential of the universal periodic review (UPR) mechanism of the Human Rights Council in enhancing the protection of human rights defenders. It gives an overview of the strategic value of the UPR in reviewing and potentially improving the situation of human rights defenders. It provides an assessment after three rounds of the various stages of the review process, with a view as to how the UPR can potentially contribute to improving the environment in which human rights defenders operate.

In Chapter III, the Special Rapporteur outlines her recommendations to the United Nations, States, non-governmental organizations and defenders, regarding the enhancement of the potential of the universal periodic review in improving the situation of human rights defenders.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 10	4
I. ACTIVITIES DURING THE REPORTING PERIOD	11 - 31	5
A. Communications transmitted to Governments	11	5
B. Country visits	12 - 14	6
C. Cooperation with the United Nations system and intergovernmental organizations	15 - 24	6
D. Cooperation with non-governmental organizations	25 - 27	8
E. Cooperation with Member States	28 - 31	8
II. UNIVERSAL PERIODIC REVIEW: ENHANCING THE PROTECTION OF HUMAN RIGHTS DEFENDERS	32 - 96	9
A. The strategic value of the universal periodic review in reviewing and potentially improving the situation of human rights defenders	32 - 40	9
B. Assessment after three rounds	41 - 96	11
III. CONCLUSIONS AND RECOMMENDATIONS	97 - 114	20

Introduction

1. The present report is the first one submitted to the Human Rights Council by the Special Rapporteur on the situation of human rights defenders, and the eighth submitted by the mandate holder on human rights defenders since its establishment in 2000. The report is submitted pursuant to Human Rights Council resolution 7/8.
2. The mandate on the situation of human rights defenders was reviewed by the Human Rights Council at its seventh session in March 2008, and Margaret Sekaggya was appointed as the new Special Rapporteur on the situation of human rights defenders. She took up her functions on 1 May 2008.
3. The Special Rapporteur inherits the remarkable achievements over the past eight years of the previous mandate holder, the Special Representative of the Secretary-General on the situation of human rights defenders (the Special Representative). These included: (a) the presentation of 34 reports, of which 21 were to the Commission on Human Rights, 7 to the General Assembly and 6 to the Human Rights Council; (b) 14 country visits to 12 countries, namely Angola, Brazil, Colombia, Guatemala (visited twice), Indonesia, Israel and the Occupied Palestinian Territories, Kyrgyzstan, the former Yugoslav Republic of Macedonia (visited twice), Nigeria, Serbia including Kosovo, Thailand, and Turkey; (c) over 2,100 communications to some 120 countries on the situation of over 3,600 defenders, 22 per cent of whom were women; (d) over 40 press releases issued raising concerns about the situation of human rights defenders in some 30 countries; and (e) a country-by-country compilation of the situation of human rights defenders covering 118 countries (E/CN.4/2006/95/Add.5).
4. These figures alone highlight these achievements in terms of: (a) giving visibility to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on human rights defenders) and to the situation of human rights defenders, the importance of their work and the recognition and protection it deserves; (b) contributing to the protection of thousands of human rights defenders worldwide; (c) developing a knowledge base on the human rights issues and concerns that affect defenders, which has contributed to better understanding the interlinkages between the situation of human rights defenders and the broader human rights context; (d) supporting the establishment of regional mechanisms and the adoption of instruments for the protection of human rights defenders; (e) encouraging the development of networks and coalitions of human rights defenders; (f) including a gender perspective in the work of the mandate; and (g) raising awareness on the situation of defenders who are more exposed to the risk of attacks and violations, and giving recognition to their human rights work.
5. Aware of the accomplishments already achieved by the previous mandate holder and with the intention to build and capitalize on them, the Special Rapporteur devoted her first report to the General Assembly to an overview of her vision and priorities for the mandate (A/63/288).
6. The present report to the Council contains a preliminary overview of the universal periodic review (UPR) mechanism, with special attention given to how the review could contribute to the better protection of, and create an enabling environment for, human rights

defenders. Since the UPR started less than a year ago, in April 2008, and since the observations are based on only three sessions, the present analysis cannot be complete. It can, however, contribute to better highlighting the situation of human rights defenders in all stages of the process, and to further serving as a tool regarding human rights defenders in national follow-up activities.

7. In her last report to the Human Rights Council, the Special Representative noted that the UPR could be an “opportunity to monitor the situation of human rights defenders in States reviewed by the Human Rights Council”.¹ She therefore encouraged Governments and other stakeholders to report on the situation of human rights defenders in national reports or in contributions submitted for the preparation of the reports on which the UPR is based.²

8. The Special Rapporteur also considers the UPR a mechanism of strategic value in reviewing and hopefully improving the situation of human rights defenders in States under review. As the Declaration on human rights defenders is not a legally binding instrument and does not have a reporting mechanism - unlike core international human rights instruments - the UPR can add to the protection of human rights defenders.

9. In view of its strategic value, the Special Rapporteur will pay particular attention to how this newly created mechanism evolves, with a view to making recommendations to contribute to improving its effectiveness in relation to the situation of human rights defenders.

10. In her future reports, the Special Rapporteur intends to share some good practices that might emerge in this area, in terms of: (a) consistent analysis of the situation of human rights defenders in UPR reports; (b) precise and measurable recommendations on human rights defenders; (c) consultations with and participation of civil society at the national level; (d) a proactive attitude of delegations in addressing human rights defenders; (e) implementation of UPR recommendations on human rights defenders; and (f) other elements of analysis that might emerge.

I. ACTIVITIES DURING THE REPORTING PERIOD

A. Communications transmitted to Governments

11. Between 11 December 2007 and 10 December 2008, the Special Representative and the Special Rapporteur sent 493 communications. Communications were sent to 79 States, and at the time of writing, 48 of them had provided responses to one or more communications. All communications sent during the period covered by this report, as well as responses received between 11 February 2008 and 10 February 2009, will be included in addendum 1 to the present report.

¹ A/HRC/7/28, para. 86.

² A/HRC/7/28, paras. 86-88.

B. Country visits

12. During the reporting period, the Special Representative visited Guatemala from 18 to 20 February 2008, as a follow-up to the visit undertaken in May 2002. A separate report on this visit has been submitted to the tenth session of the Human Rights Council as addendum 3 to the present report.

13. The Special Rapporteur visited Togo, jointly with the Special Rapporteur on human rights defenders of the African Commission on Human and Peoples' Rights from 28 July to 4 August 2008. The joint visit between United Nations and regional human rights mandate holders was the first of its kind for special procedures. A separate report on this visit has been submitted to the tenth session of the Council as addendum 2 to the present report.

Pending requests

14. In November 2008, the Special Rapporteur renewed previous requests for country visits made by her predecessor, and submitted new requests for visits to the following countries: Armenia, China, the Democratic Republic of the Congo (2002, 2004, 2005), Egypt (2003), Honduras, Ireland, Nepal (2003, 2004, 2005), Pakistan (2003, 2007), the Philippines, Sri Lanka, the Syrian Arab Republic, Tunisia (2002, 2004), Venezuela (2007) and Zimbabwe (2002, 2004). The full list of country visits requested by the mandate holder may be found in the special procedures section of the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR).³ She regrets that some of these requests are long-standing, and hopes that Governments will give due attention to all her requests.

C. Cooperation with the United Nations system and intergovernmental organizations

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

16. Pursuant to Human Rights Council resolution 7/20, the Special Rapporteur was mandated, as a member of a group of seven experts, "to make recommendations, within their respective mandates, on how best to assist technically the Democratic Republic of the Congo in addressing the situation of human rights, with a view to obtaining tangible improvements on the ground, taking also into account the needs formulated by the Government of the Democratic Republic of the Congo".⁴ Human Rights Council resolution S-8/1 further mandated the Group of Experts to "urgently examine the current situation in the east of the Democratic Republic of the Congo, with a view to providing a comprehensive report to the Council at its tenth session, on how best to assist technically the Democratic Republic of the Congo in addressing the situation of human rights, with a view to obtaining tangible improvements on the ground, taking also into account the needs formulated by the Government of the Democratic Republic of the Congo".⁵

³ <http://www2.ohchr.org/english/issues/defenders/visits.htm>.

⁴ Resolution 7/20, para. 2.

⁵ Resolution S-8/1, para. 11.

17. The Special Rapporteur undertook a visit between 11 and 14 May 2008 to Swaziland to participate in the forty-third session of the African Commission on Human and Peoples' Rights.
18. From 23 to 27 June 2008, the Special Rapporteur attended the Annual Meeting of Special Procedures in Geneva.
19. On 6 October 2008, the Special Rapporteur participated in a brainstorming organized by the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), with the participation of representatives of regional mechanisms working on the situation of human rights defenders. The Special Rapporteur on human rights defenders of the African Commission, the Executive Secretary of the Inter-American Commission on Human Rights, and representatives of the Council of Europe Commissioner for Human Rights and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE) were present at the brainstorming.
20. On 7 and 8 October 2008, the Special Rapporteur participated at the conference organized jointly by the United Nations and the European Union in Brussels entitled "The 60th anniversary of the Universal Declaration of Human Rights: the defenders take the floor".
21. On 24 October 2008, the Special Rapporteur presented her first report (A/63/288) to the General Assembly, in which she presented her vision and defined her priorities for the mandate. In her report, the Special Rapporteur outlined her methods of work, which build on those developed by the Special Representative, including communications and country visits. The priorities outlined by the Special Rapporteur are: the analysis of trends and challenges, and the reinforcement of scrutiny of defenders exposed to specific violations and attacks, including women defenders; defenders working on economic, social and cultural rights; defenders working on the rights of minorities, indigenous peoples and lesbian, gay, bisexual and transgender people; defenders working on past abuses; and defenders engaged in student protests. The Special Rapporteur expressed her intention to continue the analysis of the challenges and obstacles that defenders face in the enjoyment of their rights to the core freedoms of association and peaceful assembly. She is also particularly interested in studying the facts that are necessary to devise an early-warning mechanism for the protection of defenders with a view to anticipating systematic threats against them by activating appropriate sectors of the national protection system. The Special Rapporteur also intends to intensify efforts on follow-up, collaborate with various stakeholders, popularize the Declaration on human rights defenders, and share good practices. Her report to the General Assembly included as an annex "Key messages on human rights defenders ten years after the adoption of the Declaration on human rights defenders, ten messages to raise awareness about defenders".
22. On 27 October 2008, the Special Rapporteur met with the unit for human rights defenders within the Executive Secretariat of the Inter-American Commission on Human Rights in Washington DC. They discussed thematic and country priorities within the region, and how to strengthen the collaboration between the mandate and the unit.
23. The Special Rapporteur regrets that she was unable to attend a round-table event on human rights defenders at the Council of Europe, in Strasbourg on 3 and 4 November 2008. On this occasion, an OHCHR staff member supporting the mandate participated in the meeting.

24. On 9 December 2008, on the tenth anniversary of the adoption of the Declaration on human rights defenders, the Special Rapporteur, together with the Special Rapporteur on human rights defenders of the African Commission on Human and Peoples' Rights, the Commissioner for Human Rights of the Council of Europe, the Director of the OSCE Office for Democratic Institutions and Human Rights, and the Executive Secretary of the Inter-American Commission on Human Rights, issued a joint statement in which they warned about the persistent challenges facing human rights defenders.⁶ This important joint initiative was the first of its kind, and illustrates the willingness of the Special Rapporteur to enhance her collaboration with regional mechanisms.

D. Cooperation with non-governmental organizations

25. 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 and budgetary restrictions, she was not able 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 tried, as far as possible, to have a staff member represent her.

26. During the reporting period, the Special Rapporteur interacted on numerous occasions with members of non-governmental organizations, for instance in Geneva when taking up her functions, and during events in Brussels, Budapest, New York and Washington DC. She further attended, from 4 to 6 December 2008, together with the Special Rapporteur on violence against women, a regional consultation on violence against women and women human rights defenders, held in Nairobi.

27. The Special Rapporteur wishes to further stress the importance she attaches to engaging with human rights defenders from all regions. In this regard, she intends to make additional efforts to conduct consultations with defenders from the Middle East and Asia in the coming months.

E. Cooperation with Member States

28. On 28 and 29 August 2008, the Special Rapporteur participated in the First Budapest Human Rights Forum held in Hungary. The theme of the Forum was the situation of human rights defenders in Central and Eastern Europe.

29. On 3 September 2008, echoing repeated calls from the General Assembly,⁷ the Special Rapporteur sent to all Member States a letter in which she called on them to "contribute to efforts for a better implementation of the Declaration by translating this instrument into the principal languages of your country, and by disseminating it widely among the State apparatus and the civil society, if such measures have not yet been implemented". At the time of writing,

⁶ Available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/8378D3F377DEF832C125751A0051034F?opendocument>

⁷ The call was last reiterated in General Assembly resolution 62/152, para. 10.

the Special Rapporteur had received contributions from Bosnia and Herzegovina (Bosnian and Croatian translations), Greece, Indonesia, Italy, Montenegro, Serbia, and Thailand.⁸ The Government of Iraq replied advising the Special Rapporteur that it will provide a Kurdish translation of the Declaration in the near future. The Special Rapporteur thanks these States for their contributions, and reiterates her call to other Member States to share with her the translation of the Declaration on human rights defenders into the principal languages of their countries.

30. On 17 October 2008, a staff member supporting the mandate attended, on behalf of the Special Rapporteur, a workshop in Berlin organized by the Federal Ministry for Economic Cooperation and Development. The purpose of the workshop was to share ideas and approaches with national civil society actors on how to support the work of human rights defenders, as laid down in the 2008-2010 Development Policy Action Plan of the Ministry.

31. From 26 to 28 November 2008, a representative of OHCHR attended, on behalf of the Special Rapporteur, the 3rd National Seminar on the Program of Protection of Human Rights Defenders in Recife, Brazil. The OHCHR representative delivered a speech on “the criminalization and the international protection of human rights defenders”.

II. UNIVERSAL PERIODIC REVIEW: ENHANCING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

A. The strategic value of the universal periodic review in reviewing and potentially improving the situation of human rights defenders

1. Presentation of the universal periodic review

32. The UPR is a State-driven mechanism of the Human Rights Council which reviews on a yearly basis the human rights records of 48 United Nations Member States. Thus, each of the 192 Member States is reviewed once every four years. The UPR Working Group, composed of Council members, carries out the reviews, by holding three two-week sessions per year. Each review is facilitated by a group of three States, drawn by lot and known as the troika.

33. Reviews are based on three reports. The first report is presented by the State under review; the second report is a compilation prepared by OHCHR of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents; and the third report is presented by stakeholders such as non-governmental organizations, human rights defenders, academic institutions and research institutes, regional organizations, and national human rights institutions.

34. The review of each State lasts three hours and consists of an interactive dialogue between the State under review and the Council, in which all member States and Observers are able to participate. Stakeholders such as NGOs and national human rights institutions may also attend.

⁸ The translations of the Declaration on human rights defenders are available at <http://www2.ohchr.org/english/issues/defenders/translation.htm>.

Following the review, the troika presents a report to be adopted by the UPR Working Group. At the next regular session of the Human Rights Council, up to one hour per State is allocated for the consideration of the outcome of each review. The final outcome of the review is adopted by the entire membership of the Human Rights Council at a plenary session in which member States, Observers, NGOs and other stakeholders can participate.

35. The present report is based on a full analysis of the first two UPR sessions, including the documentation submitted in advance (national reports, compilation of United Nations information and summary of stakeholder information), as well as the discussions in the Working Group, and the contents of the outcome document.

36. Due to the proximity of the cut-off date for submitting the present report, the third session of the UPR could be examined only partially. While the documents forming the basis of the review were thoroughly analysed, the same could not be done with regard to the interactive dialogue in the Working Group and the outcome report.

2. A catalyst for change on the ground

37. The Secretary-General has described the UPR as a mechanism which has “great potential to promote and protect human rights in the darkest corners of the world”.⁹ The ultimate aim of this new mechanism is to improve the human rights situation on the ground in all States and address human rights violations wherever they occur. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country in the evaluation of their human rights situation. It provides a forum in which each Member State can be assessed in terms of the actions it has taken to improve its human rights situation, and the challenges it faces with respect to the human rights obligations contained in the Charter of the United Nations, the Universal Declaration of Human Rights, human rights instruments (covenants, conventions and other treaties) to which the State is party, voluntary pledges and commitments made by the State, applicable international humanitarian law and the Declaration on human rights defenders. The UPR reminds States of their responsibility to fully respect, promote and protect all human rights and fundamental freedoms. It provides an opportunity to enhance the capacity of States to ensure the universal enjoyment of human rights, providing technical assistance to States when necessary. Finally, it provides a way of sharing best practices.

38. Civil society is given a voice in the UPR to discuss issues related to human rights defenders in that States are encouraged to prepare the information they present through a broad consultation process at the national level with all relevant stakeholders. Information submitted by NGOs appearing in the stakeholder report, which allows for NGOs to make joint submissions, can also be referred to by States taking part in the interactive discussion during the review at the Working Group meeting. Moreover, NGOs can attend the UPR Working Group sessions and can make statements at the regular sessions of the Human Rights Council when the outcomes of the State reviews are considered.

⁹ Video message from the Secretary-General for the opening of the fourth session of the Human Rights Council, 12 March 2007.

39. The outcome of the UPR should be implemented primarily by the State concerned and, as appropriate, by other stakeholders. However, the Council will address, as appropriate, any cases of persistent non-cooperation with the UPR mechanism after exhausting all efforts to encourage a State to cooperate. The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance in consultation with, and with the consent of, the country concerned. In considering the outcomes of the UPR, the Council will decide if and when any specific follow-up is necessary. The follow-up review which takes place during the second cycle (2012-2015) should focus on the implementation of the recommendations of the previous review.

40. Therefore, the UPR can potentially contribute significantly to improving the environment in which human rights defenders operate, making it a more enabling and accepted one. Such potential is even stronger given that the Declaration on human rights defenders does not have a monitoring body. Furthermore, it should be stressed that the objective of the UPR is to complement, and not duplicate, the work of special procedures and treaty bodies. Indeed, the concerns of these human rights mechanisms are raised during the UPR through the compilation of United Nations information. Currently, no other universal mechanism of this kind exists, and therefore it should also be used to enhance the protection of human rights defenders.

B. Assessment after three rounds

41. Overall, human rights defenders have emerged as one of the areas of review of the UPR. However, this seems to be done unevenly from one review to the next, and from one report to the next. Some national reports include information on human rights defenders, but several do not. The compilation of United Nations information and the summary of stakeholder information refer to the situation of human rights defenders more frequently, although without a specific section on them. References to human rights defenders are generally found in sections of the reports related to the right to life, liberty and security of the person and those on freedom of expression, association and peaceful assembly. Some references are also made in sections on the administration of justice and the rule of law, and the constitutional, legal and institutional human rights framework.

42. In the compilations of United Nations information, most references to defenders are taken from the reports of the Special Representative. The situation of human rights defenders appears to emerge more forcefully and consistently in countries which she visited.

43. When the situation of human rights defenders is addressed in all three reports which form the basis of the review, references to defenders are normally made in the report of the Working Group. While NGOs which submitted information on defenders for the UPR, and were consulted by the Special Rapporteur on their participation in the process, generally indicated that the information they submitted was reflected in the summary of stakeholder information prepared by OHCHR, the subsequent discussion and the report of the Working Group did not capture many of the issues raised. In other words, it appears that, while the submission of information on defenders from NGOs is a first step in the process and is normally fairly, although briefly, reflected in the summary of stakeholder information, the situation of defenders is not thoroughly reviewed by the process and, most importantly, is not comprehensively dealt with in the recommendations of the Working Group. It is more likely for the situation of defenders to be

orally reviewed throughout the process, and in the recommendations of the Working Group when defenders are referred to in all the reports related to a country, and in the cases of countries which have received a recent visit by the Special Representative.

44. The Special Rapporteur also noted a certain degree of disparity in the recommendations of the Working Group. The Working Group addressed many recommendations to some States, and just a few to others. Some recommendations are very broad while others are more precise. This applies to all recommendations, not only those related to human rights defenders, and is probably partly due to the incipient functioning of the mechanism. More detail and specificity in recommendations will assist Governments to implement them and future reviews to monitor them, making the UPR a more effective mechanism not only for improving the situation of human rights defenders, but for the overall human rights records of States.

45. The Special Rapporteur observed that some delegations consistently raised the situation of defenders during the discussions of the Working Group. While respecting the nature of the UPR as a State-driven process, the Special Rapporteur encourages participating States and regional groups to coordinate their participation within the Working Group in order to consistently prepare questions and points for discussion that include, among the range of human rights issues to be raised, the situation of human rights defenders.

46. In addition to the documents-based outputs of the UPR, part of the potential of the mechanism lies in the process it can generate at the national level, both at the preparatory stage and in its follow-up. The preparation of the national report should be undertaken through a consultative process involving all interested and relevant stakeholders, including civil society organizations and human rights defenders. The Special Rapporteur encourages human rights communities at the national level to seek participation in the preparation of the national report of the UPR, and recommends that Governments create the space to engage in related consultations. In addition to the report itself, the consultation process can have a value on its own and be an additional opportunity for Governments and human rights defenders to engage in a constructive dialogue on issues pertinent to the situation of defenders.

47. Similarly, human rights defenders can play an important role in monitoring the implementation of recommendations resulting from the UPR. These recommendations are not to be regarded in isolation from the other recommendations stemming from the international and regional human rights mechanisms, but as part of them.

1. National report

48. The national report is one of the three main pillars the review is based upon. It is prepared by the State under review, and can be presented either orally or in writing, provided that the written presentation summarizing the information does not exceed 20 pages. It should include achievements, best practices, challenges and constraints, key priorities and shortcomings. States are encouraged to prepare the information through a broad consultation process at the national level with all relevant stakeholders.¹⁰

¹⁰ Human Rights Council resolution 5/1, annex, para. 15 (a).

(a) Analysis of references to human rights defenders

49. The majority of national reports submitted in the first three cycles of the UPR did not contain any reference to human rights defenders, or to the Declaration on human rights defenders. Out of the 48 States examined in the first three sessions, 13 national reports contained references to human rights defenders.

50. On a positive note, however, it has to be highlighted that in a majority of the national reports of those countries visited by the mandate holder the situation of human rights defenders was referred to in one way or another. This demonstrates that a recent visit by the mandate holder does make a real difference in lending visibility to defenders in the UPR process. It is also a further indication of the impact, and the contribution to raising the profiles of defenders within their societies, which a visit by the mandate holder can have.

51. Of note is that the national reports of Guatemala and Colombia either contained a separate section dedicated to human rights defenders (Colombia), or included various initiatives concerning defenders (Guatemala). The national report of Colombia recognized the differences between the perceptions of the Government and of certain NGOs regarding the work of the Government in the protection of human rights.

52. Several national reports admit difficulties faced by human rights defenders, violations committed against them and measures taken to remedy the situation. The national report of the Philippines refers to a major reduction in killings of activists and members of the media. The report also mentioned the recent formation of a task force to investigate these killings. Other national reports contained references to recent, or in principle agreed upon, visits of the mandate holder.

53. As a whole, detailed references to, or separate sections on, human rights defenders in the national reports seem to be still the exception, rather than the rule.

(b) National consultations with civil society: good practices, areas for improvement

54. According to Human Rights Council resolution 5/1 on institution-building of the United Nations Human Rights Council, “States are encouraged to prepare the information through a broad consultation process at the national level, with all relevant stakeholders.”¹¹

55. Broad consultations at the national level, with all relevant stakeholders, should always include NGOs working on human rights issues, and in particular human rights defenders. The Special Rapporteur observes that some States examined in the first three rounds of the UPR did not follow the recommendation of the institution-building package of the Human Rights Council, and failed to convene national consultations prior to finishing the national report. In other cases such consultations were convened, but were reportedly either not meaningful, or did not include human rights defenders. Another problem was that these consultations were limited only to registered NGOs, something which can pose serious problems in States which apply strict

¹¹ Ibid.

criteria for the registration of NGOs. In certain cases participation of representatives of unregistered NGOs in the national consultation process was denied even when such representatives asked to be considered and included as individual human rights defenders.

56. At the positive end of the spectrum, Guatemala could be mentioned as an example of best practice. The Government of Guatemala worked together with the OHCHR country office in consulting members of civil society and training them on how they could participate in the UPR process. This practice should be replicated in other States.

57. Another positive example is Tonga, where the national report was publicly endorsed by its civil society as a whole.

58. The Special Rapporteur also wishes to mention the practice adopted by Switzerland, which published the draft national report on the website of the foreign ministry and invited civil society and citizens as a whole to comment on it. This practice should also be encouraged.

2. Compilation of United Nations information

59. Under the provisions of resolution 5/1, the review is also based on “a compilation prepared by the Office of the High Commissioner for Human Rights of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents, which shall not exceed 10 pages”.¹²

60. For the first three sessions of the UPR, the compilations of United Nations information for 17 States made no direct reference to human rights defenders, due to the fact that special procedures and treaty bodies made no specific recommendations on defenders. In the compilations of United Nations information for the 31 other States under review during those sessions, references were made to harassment, violence, freedoms, legal matters, targeting of specific groups, national infrastructure for human rights defenders, and certain other matters in relation to human rights defenders.

61. Forms of harassment of human rights defenders which were mentioned included general harassment and repression in all regions of the world; threats and intimidation particularly in South American States such as Argentina, Brazil, Colombia, and Ecuador, and in Asian States such as Pakistan, the Philippines, Sri Lanka, and Uzbekistan; hate speech, defamation, stigmatization, and lack of recognition of the work of human rights defenders in Colombia, Guatemala, Indonesia, and Serbia; and raids on NGOs in Pakistan.

62. Forms of violence mentioned in terms of human rights defenders included killings, particularly in South American States such as Argentina, Brazil, Colombia and Guatemala, and Asian States such as India, Indonesia, Pakistan, the Philippines and Sri Lanka; assaults, particularly in South American States such as Guatemala and Peru, and north African States such as Algeria and Tunisia; and torture and ill-treatment in Indonesia, Montenegro, Morocco, Pakistan, and Tunisia.

¹² Ibid., para. 15 (b).

63. Restrictions on freedoms of human rights defenders which were addressed included freedom of expression, particularly in African States such as Algeria, Tunisia, and Zambia, in Asian States such as India, Indonesia, the Philippines and Uzbekistan, and in the United Arab Emirates; freedom of assembly and association, particularly in north African States such as Algeria, Morocco and Tunisia, but also in all regions of the world; and freedom of movement in Israel, Indonesia, Morocco and Tunisia.

64. Administrative and judicial matters mentioned in relation to human rights defenders included arrest and detention, particularly in Asian States such as Pakistan, the Republic of Korea, Turkmenistan and Uzbekistan, and Middle Eastern States such as Bahrain, and the United Arab Emirates; impunity, particularly in South American States such as Colombia and Guatemala, and Asian States such as India, Indonesia, Pakistan, and the Philippines; judicial reform, judicial harassment, and the erosion of the rule of law in Indonesia, Morocco and Pakistan; closure, registration, and close monitoring of funding in relation to NGOs, particularly in Asian States such as Pakistan, Sri Lanka, Turkmenistan and Uzbekistan; and Bahrain; and rejection of applications for asylum in the United Kingdom.

65. Targeting of specific groups was mentioned in relation to women human rights defenders in Bahrain, Serbia and Zambia; indigenous groups particularly in South American States such as Ecuador and Peru, and Asian States such as India and the Philippines; rural groups in Serbia; lesbian, gay, bisexual, transgender and intersex groups in Eastern European States such as Poland and Serbia, and South American States such as Argentina and Ecuador; witnesses in Peru; and persons belonging to minorities in Israel.

66. Issues raised in relation to the infrastructure in place for human rights defenders included the inefficiency of institutions for human rights defenders, particularly regarding African States such as Botswana and Zambia; security and protection in Colombia, Indonesia, Serbia and Tuvalu; and Government involvement in NGOs in Pakistan and Turkmenistan.

67. Other matters raised in relation to human rights defenders included land rights (Brazil and India), environmental rights (Peru), and enforced disappearances (Indonesia). Positive action taken by States was also commended in many compilations of United Nations information, while recommendations and requests for action by States to fulfil their human rights obligations were made as well.

3. Summary of stakeholder information: overview and analysis

68. According to the provisions of resolution 5/1, the review shall also be based on “Additional, credible and reliable information provided by other relevant stakeholders to the universal periodic review which should also be taken into consideration by the Council in the review. The Office of the High Commissioner for Human Rights will prepare a summary of such information which shall not exceed 10 pages.”¹³

¹³ Ibid., para. 15 (c).

69. For the first three sessions of the UPR, similar to the compilation of United Nations information, the stakeholder information for 17 States made no direct reference to human rights defenders. In the information submitted by stakeholders for the other 31 States, references were made to harassment, killings, intimidation, restriction of freedoms of expression, association and peaceful assembly, defamation and media slander, disappearances, impunity, targeting of specific groups, and issues related to the infrastructure of human rights defenders.

70. Various forms of harassment, including intimidation and a generally hostile environment towards defenders and repression, were mentioned with regard to all regions of the world. Such information was prevalent in stakeholder information on African States such as Algeria, Morocco, Tunisia; Asian States such as Indonesia, Turkmenistan and Uzbekistan; and Bahrain. Threats and intimidation of human rights defenders were mentioned with regard to Bahrain, Brazil, Colombia, Israel, Morocco, Pakistan, Sri Lanka, Tunisia, and Uzbekistan. Hate speech, defamation and media slander were included in the information on Colombia, Serbia, Tunisia, and Uzbekistan.

71. Forms of violence included in the information submitted by stakeholders regarding human rights defenders included killing of defenders in Colombia, India, Indonesia and the Philippines. Assaults and attacks on human rights defenders were reported by stakeholders with regard to Brazil, Colombia, Guatemala, Montenegro, Pakistan and Tunisia. Torture and ill-treatment of defenders were mentioned in connection with Bahrain, India, Romania, Turkmenistan and Uzbekistan.

72. Restrictions on the exercise of rights to freedom of human rights defenders included freedom of expression with regard to Bahrain, Morocco, Tunisia and the United Arab Emirates. Problems and restrictions relating to freedoms of peaceful assembly and association were mentioned in connection with Ecuador (criminalization of social protest), Morocco, Poland (assembly, campaigns for equality and relating to sexual orientation), Turkmenistan and the United Arab Emirates. Restrictions on the exercise of rights to freedom of movement of human rights defenders, in particular travel restrictions and the denial of exit and entry visas were highlighted in connection with Israel, Morocco, Tunisia and Uzbekistan.

73. Arrests and detention of defenders were mentioned in the stakeholder information submitted on Ecuador, Indonesia, Pakistan, Tonga and Turkmenistan. Impunity and lack of investigations into cases of violence against human rights defenders figured prominently in submissions on Bahrain, Brazil, Indonesia, Israel, Montenegro, Peru, Romania and the United Arab Emirates. Unfair trials were mentioned with regard to Ecuador and Turkmenistan; while unfounded criminal prosecutions and false accusations of defenders were mentioned in the stakeholder information on Bahrain, Colombia, Indonesia and Uzbekistan. Closure of NGOs, excessive or overly burdensome registration requirements and banning of unregistered NGOs were mentioned in the reports on Israel, Turkmenistan, the United Arab Emirates and Uzbekistan. Close monitoring by security agents and the police and surveillance by plainclothes policemen were included in the stakeholder information on Bahrain, Colombia, India, Indonesia, Tunisia and Uzbekistan.

74. Targeting of specific groups was mentioned in relation to women human rights defenders in Bahrain, Israel and Serbia; indigenous groups in Ecuador; defenders working on issues related to persons belonging to minorities in the Czech Republic (Roma), India (Dalits) and

Turkmenistan; defenders working on lesbian, gay, bisexual and transgender issues in Israel, Montenegro, the Republic of Korea, Serbia and Sri Lanka. Problems faced by defenders working on issues related to migrants were mentioned with regard to South Africa.

75. Regarding the institutional framework for human rights defenders, the weaknesses of the Ombudsman were highlighted in connection with Ukraine.

4. Interactive dialogue in the Working Group

76. According to the provisions of resolution 5/1, NGOs may only attend and observe the proceedings of the Working Group but cannot intervene during this phase of the review.¹⁴ Civil society representatives have the opportunity to make general comments before the adoption of the outcome by the plenary. At this stage, however, the report of the Working Group is already finalized, therefore interventions by NGOs, including by or on behalf of human rights defenders, has a rather limited impact.

(a) Questions raised by delegations: references to human rights defenders

77. During the first two rounds of discussions, the Special Rapporteur observed that States showed a relatively strong interest in the situation of human rights defenders in the States under review. It is notable that certain States decided to pose questions with regard to human rights defenders across the board, to all or most of the States under review.

78. The Special Rapporteur regrets, however, that the questions and recommendations in connection with the situation of human rights defenders in some cases did not go beyond an expression of general concern about their situation, and the recommendations were rather vague. Although such interventions are welcome in that they draw the attention of other States and relevant stakeholders to the plight of human rights defenders in a given State, the Special Rapporteur is of the opinion that they need to be formulated in a more concrete manner in order to be implementable, and in order for them to be used as benchmarks against which real progress can be measured.

79. The situation of human rights defenders figures prominently in the review of the following States: Brazil, Guatemala, Indonesia, the Philippines, and Sri Lanka. For example, during the UPR process on Guatemala, almost all the States that submitted questions to the troika in advance asked questions about human rights defenders. Furthermore, 10 States provided Guatemala with different recommendations on how better to protect human rights defenders. These recommendations were reflected in the Working Group report.

80. During the first two rounds of the review process in the course of the interactive dialogue, the following issues were highlighted with regard to the situation of human rights defenders. The general working environment of NGOs and their treatment was mentioned in connection with Peru and the Philippines. Better protection of human rights defenders was recommended for Argentina, Bahrain, Brazil, Czech Republic, Guatemala, Indonesia, Pakistan, Peru, the Philippines and Sri Lanka.

¹⁴ Ibid., para. 18 (c).

81. Threats, harassment and intimidation of human rights defenders were referred to during the interactive dialogue on Brazil, Guatemala, Indonesia, Sri Lanka, Tunisia and the United Kingdom. Extrajudicial killings of defenders were mentioned in connection with Brazil, the Philippines and Sri Lanka. Impunity and/or the need for investigation and prosecution into violations committed against human rights defenders were highlighted with regard to Guatemala, Pakistan, Romania, and Sri Lanka. Concerns on registration of NGOs came up in connection with Sri Lanka and Tunisia. The effect of anti-terrorism laws on defenders, and the monitoring of civil society was reflected in the questions posed and recommendations made with regard to Pakistan.

82. As for groups of defenders, the situation of women human rights defenders was mentioned in Zambia; the situation of and problems faced by activists working on lesbian, gay, bisexual and transgender rights in Poland and Romania, and on marginalized groups in the Czech Republic was also mentioned.

(b) NGO comments: is there enough space?

83. As mentioned above, stakeholders, including representatives of NGOs and human rights defenders, are not permitted under the provisions of resolution 5/1 to take the floor during the proceedings of the Working Group, when the interactive dialogue with the State under review takes place.

84. Stakeholders have the opportunity to intervene in the plenary, before the adoption of the outcome of the review. At this stage, however, the Working Group has already met and the report has been published, so the scope for human rights defenders to influence the outcome is very limited.

85. The Special Rapporteur is of the opinion that the provisions of resolution 5/1 regarding the participation of NGOs in the UPR process could be greatly enhanced, providing for more space and visibility for all stakeholders. Such a revision could possibly be undertaken during the review foreseen for 2011, five years after the adoption of General Assembly resolution 60/251 establishing the Human Rights Council. In the meantime additional efforts should be made in favour of reflecting the views of civil society by, among other things, organizing training for human rights defenders at the national level on the submission of information to the UPR process and by systematically organizing consultations at the national level, including in relation to follow-up, in which defenders are also included.

5. Report of the Working Group - the outcome of the review

86. The format of the outcome of the review is a report consisting of a summary of the proceedings of the review process, conclusions and/or recommendations, and the voluntary commitments of the State concerned.¹⁵ The outcome may also include, inter alia, an assessment undertaken of the human rights situation in the State under review; sharing of best practices; the provision of technical assistance and capacity-building and voluntary pledges and commitments

¹⁵ Ibid., para. 26.

made by the State under review.¹⁶ The report of the Council contains not only the summary of views expressed by the State under review, but also the views expressed on the outcome by member States and Observers of the Council, and the summary of general comments made by other relevant stakeholders.

(a) Analysis of references to human rights defenders

87. References to human rights defenders that were made during the interactive dialogue in the Working Group session, as well as in questions submitted to the troika in advance, were generally faithfully reflected in the report of the Working Group and the outcome of the review. As the outcome of the review mirrors the discussion in the Working Group, and the recommendations put forward there, the Special Rapporteur observes that in about 30 per cent of the outcome reports, there was no reference at all to the situation of human rights defenders in the State under review.

88. For States during whose review references and recommendations were made concerning human rights defenders, these references and recommendations were generally well reflected in the outcome document.

(b) Content of recommendations

89. As mentioned above, the overview of the three UPR sessions shows that the situation of human rights defenders is not adequately addressed at all stages of the review. References to defenders were lacking in some instances, even in States where their situation is far from ideal. And in many cases where recommendations were made, they proved to be rather general in nature and difficult to apply in practice, both for the Government of the State under review, and for civil society in general in that country.

90. Since the compilation of United Nations information and the summary of stakeholder information is not reflected or analysed in the outcome report in any form, the information contained in them will be lost in the outcome document unless another State participating in the interactive dialogue decides to refer to them and formulate recommendations with regard to them.

91. The interactive dialogue proved to be quite useful in drawing attention to the recommendations of the special procedures, encouraging States to meet their obligations, inter alia, regarding unimplemented recommendations by mandate holders and outstanding visit requests.

92. Another issue that needs to be considered is the status of those recommendations that the State under review decides to reject. While the rejected recommendations are also noted in the report of the Council, they may pose a problem in cases where the same or similar recommendations were previously made by treaty bodies or special procedures mandate holders.

¹⁶ Ibid, para. 27.

An example in this regard is Sri Lanka, which rejected, without explanation, recommendations referring to the need to avoid unduly constraining civil society, including through registering human rights defenders.¹⁷

6. Follow-up: instances of impact on the ground

93. The Special Rapporteur considers that, after only three rounds of the UPR process, it is probably too early to draw conclusions about its impact and the follow-up to the review, given the limited number of States that have undergone the process, and also the short time that has elapsed since they were examined.

94. The follow-up to the UPR is crucially important for several reasons. Ideally, the outcome of the UPR process should generate a policy debate at the national level, involving human rights defenders. After the conclusion of the UPR process, follow-up consultations should be organized with a view to identifying appropriate policy measures in order to comply with recommendations. This is all the more important, given that the subsequent review should focus, *inter alia*, on the implementation of the preceding outcome.

95. The outcome of the UPR, as a cooperative mechanism, should be implemented primarily by the State concerned and, as appropriate, by other relevant stakeholders.¹⁸ Civil society should see it as an ongoing opportunity to highlight aspects of human rights advocacy. Additionally, recommendations which enjoy the support of the State concerned are important tools for prompting change in national legislation and practices, as well as a useful benchmark to measure developments against.

96. One good example for follow-up is Colombia, where national NGOs have used the UPR process as an opportunity to engage in various forms of human rights advocacy, including by obtaining media attention and sending out e-mail bulletins.

III. CONCLUSIONS AND RECOMMENDATIONS

97. The Special Rapporteur is convinced that the UPR process has the potential to provide an important tool for civil society, and human rights defenders in particular, to trigger a genuine dialogue with their respective Governments before, throughout and after the review. The UPR can generate a genuine platform to enhance the protection of human rights defenders, and to strengthen the cooperation between national stakeholders. The UPR is also a challenge for civil society stakeholders to appreciate and fully use this opportunity for human rights defenders on the ground.

¹⁷ A/HRC/8/46, para. 26 and para. 32.

¹⁸ Human Rights Council resolution 5/1, annex, para. 36.

98. **The Special Rapporteur considers national consultations crucially important for human rights defenders, in order for their views and concerns to be properly reflected in the national report which forms one of the bases of the UPR process. The Special Rapporteur therefore recommends that States observe the following guidelines when organizing such national consultations.**

99. **The national consultations, as encouraged by the institution-building package adopted by the Human Rights Council:**

(a) **Should be organized prior to the finalization of the national report;**

(b) **Should be inclusive and all-encompassing;**

(c) **Should be more than merely nominal: the views of civil society should be reflected adequately in the national report.**

Unregistered organizations should also be invited to the national consultations and restrictive NGO registration laws should not be used as an excuse to exclude human rights defenders from the consultation process.

100. **The Special Rapporteur suggests that OHCHR, subject to the availability of resources for this purpose, should give more guidance and training, preferably in the form of technical assistance or information notes, on how best to structure UPR submissions. A model questionnaire could also be developed. This would ensure that OHCHR receives information in a way that can be best processed, and would improve the quality of the summary of stakeholder information.**

101. **The Special Rapporteur also reminds Governments that the UPR Voluntary Trust Fund, foreseen in the institution-building package to facilitate the participation of developing countries, particularly the least developed countries in the UPR mechanism, could potentially also be used for the training of human rights defenders on the UPR.**

102. **Raising awareness and capacity-building is necessary in order to bring the UPR mechanism closer to human rights defenders on the ground. The Special Rapporteur therefore urges Governments that are scheduled to be examined by the UPR, to share information about the UPR mechanism within their civil society and encourage the participation of human rights defenders in it.**

103. **The Special Rapporteur further urges States under review to include information in their national reports on the implementation of the Declaration on human rights defenders, the steps taken to ensure an enabling environment for human rights defenders in their country, and any relevant issues pertaining to the situation of human rights defenders.**

104. **The Special Rapporteur urges stakeholders to systematically include information about the situation of human rights defenders and about the implementation of the Declaration on human rights defenders, in their submissions to the UPR.**

105. **During the interactive dialogue conducted in the Working Group, the Special Rapporteur encourages States to put pertinent, topical questions regarding the situation of human rights defenders in the State under review, and to provide concrete, actionable recommendations on them. Recommendations on human rights defenders should be specific and detailed, not only mere mission statements. The UPR should be an opportunity to distil best practices with respect to specific problems faced by human rights defenders and should recommend concrete and detailed policy outcomes.**

106. **The Special Rapporteur suggests that States allow in all cases, without the need for express consent, the possibility of side events/parallel events during UPR sessions, following the example of the lunchtime briefings of the treaty bodies. So far such parallel events have only been allowed if the State under review has agreed.**

107. **The Special Rapporteur considers that NGOs should be allowed to speak during the interactive dialogue at the Working Group stage of the UPR. An amendment to the institution-building provisions regarding participation by NGOs could be undertaken during the five-year review foreseen for 2011.**

108. **The scope for general comments before the adoption of the outcome by the plenary should be broadly interpreted. The raising of issues not discussed during the examination is important in showing whether the examination has been comprehensive and meaningful.**

109. **The Special Rapporteur calls on States to ensure effective follow-up on the national level by consulting civil society and human rights defenders about the problems identified and the recommendations put forward during the UPR process. The organization of the follow-up consultation process should be similarly inclusive and meaningful as the consultations prior to the finalization of the national report. An effective follow-up also requires inter alia, the wide dissemination of the report and outcomes of the UPR; the design of a national action plan on human rights defenders if it does not already exist; and the organization of annual meetings to assess the status of implementation.**

110. **Recommendations stemming from the UPR should be regarded holistically, together with the recommendations of other human rights mechanisms, namely the treaty bodies, special procedures and regional mechanisms. UPR recommendations should not be looked at in isolation, but as part of the broader assessment made by other human rights mechanisms.**

111. **The Special Rapporteur recommends that treaty bodies and special procedures mandate holders make use of the recommendations stemming from the UPR process with regard to human rights defenders, and raise them with countries concerned during country visits or examinations of reports. The Special Rapporteur further suggests that treaty bodies especially follow up on recommendations rejected by the State under review, in cases where such rejected recommendations run counter to previous recommendations issued by treaty bodies, or the treaty obligations of the State.**

112. **The outcome report could potentially include an analysis of the compilations of United Nations information and the summaries of stakeholder information. Without such content, valuable information goes completely unmentioned in the outcome of the review.**

In the absence of such a change, the Special Rapporteur recommends that the outcome of the review should always be considered in conjunction with the other documents forming the basis of the review, including the compilation of United Nations information and the summary of stakeholder information.

113. The Special Rapporteur recommends that States seeking election to the Human Rights Council systematically include among their voluntary pledges and commitments the implementation of the Declaration on human rights defenders.

114. The Special Rapporteur will systematically send letters to States coming up for review to recommend the inclusion of human rights defenders in national consultations, and the inclusion of information about the implementation of the provisions of the Declaration on human rights defenders.
