

# **LST REVIEW**

Volume 19 Issue 253 November 2008



## **DEFENDING HUMAN RIGHTS DEFENDERS**

**LAW & SOCIETY TRUST**

## CONTENTS

LST Review Volume 19 Issue 253 November 2008

<b>Editor's Note</b>	<b>i - iii</b>
<b>'The Enemy Within': Human Rights Defenders in Sri Lanka</b>	<b>1 - 15</b>
<i>- B. Skanthakumar -</i>	
<b>Ensuring Protection – European Union Guidelines on Human Rights Defenders</b>	<b>16 - 21</b>
<b>Recommendations for Gender-Specific Implementation of the EU Guidelines on Human Rights Defenders</b>	<b>22 - 36</b>
<b>Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, to the UN General Assembly, A/63/288, 14 August 2008 (EXTRACTS)</b>	<b>37 - 47</b>

Law & Society Trust  
3 Kynsey Terrace, Colombo 8, Sri Lanka  
(+94)11-2691228, 2684845 | fax: 2686843  
lst@eureka.lk  
www.lawandsocietytrust.org

ISSN 1391 – 5770

*Editor's Note* ... ..

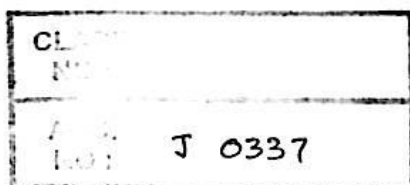
Undoubtedly, the dangers currently faced by human rights defenders in Sri Lanka are great and this Issue takes as its focal point, the difficult question of their protection and promotion in an environment of extreme conflict. Regional and international standards setting norms are also examined as part of this focus.

The first paper by *B. Skanthakumar* examines the deterioration in the working environment of human rights defenders and the pervasive killings, threats and intimidation of activists, journalists, lawyers and religious workers. Human rights defenders are categorized as the 'enemy within.' Consequently, there is no public demand for accountability when their lives are lost or destroyed. Indeed, this is the one response that is common to extremism on both sides of the racial divide; both are very much agreed on the need to dispose of or destroy dissenters. Thus, human rights defenders have become the immediate targets of Sinhala extremism (whether of the government or of forces allied to the government) in the South and Tamil extremism (primarily of the Liberation Tigers of Tamil Eelam) in the North.

Even more worryingly, large sections of the citizenry are muted in their response to this targeting of human rights defenders. The writer's view is that such muted responses are due to the public perception that these defenders are suspect, regarded either as outright terrorists or supportive of terrorism and therefore, deserving of their fate. This may perhaps be an unfair characterization of the citizenry who may be more discerning than is wont to be attributed to them. Silence in this respect may be attributable to an understandable individual reluctance to court danger against forces that are swift to crush opposition, rather than a universal perception that human rights defenders are somehow terrorists or terrorist sympathizers.

In this context, we must mourn the absence of strong civic voices that collectively speak out against extremism but which are not tainted by political or personal motivations in so doing. Sri Lanka has lacked such movements in the past; regretfully, this appears to be the case even at a time when the need for such collective action is pressing.

It is from this point that inherent weaknesses in defending human rights defenders become more accentuated. As is illustrated in this very paper that we publish, the strains and tensions prevalent within the activist movement itself deprives its interventions of much of their effectiveness. Discussing



activism in the area of Economic, Social and Cultural (ESC) rights, the writer observes as follows:

*The majority of those engaged in activism in this area would probably not describe themselves as human rights defenders but often as environmentalists or community activists. This is for several reasons including the narrowness of the contemporary human rights agenda in Sri Lanka; an antipathy to the pro-federalist and minority rights perspectives of Colombo civil society organisations; class and social differences such that Colombo-based organisations in particular are perceived as indifferent to livelihood issues and concerns, as well as supportive of 'Open Economy' (economic liberalisation) and globalisation policies in sharp contrast to those preoccupied with ESC issues. Some professional human rights defenders enjoy relationships with western diplomats and heads of multilateral financial institutions in Sri Lanka, that enrage ESC rights activists resisting development or economic policies promoted by those self-same actors.*

Here again, the downplaying of violations committed by the LTTE by some has had tremendous negative impact, 'repelling people at large' from engaging in the discourse of human rights and its defenders.

The picture painted is therefore bleak, aggravated as it is by the extreme violence practiced against human rights defenders on the one hand and the general ineffectiveness of protective interventions on the other, including human rights monitors such as the Human Rights Commission of Sri Lanka and Presidential Commissions to probe grave human rights violations, all of which is underscored by the continuing negation of the 17<sup>th</sup> Amendment to the Constitution.

There is little optimism that the bleakness of this picture may change in the future. Instead, this writer's warning that "for society to identify with human rights defenders, human rights defenders must also identify with society" is pertinent. His concluding caution is equally relevant:

*So long as human rights defenders in their practice reinforce the idea that there is a hierarchy of human rights in which civil and political rights are pre-eminent to the exclusion of economic, social and cultural rights that are central to everyday livelihood issues of the majority, the estrangement will continue.*

This Issue of the Review also publishes relevant regional and international interventions that frame the in-country analysis. In this regard, it is relevant

to refer to a proposal by two regional networks, namely, *FORUM-ASIA* (Asian Forum for Human Rights and Development) and *APWLD* (Asia Pacific Forum on Women, Law and Development), on the role of national human rights institutions (NHRIs) in defending human rights defenders in Asia. Published in the *LST Review*, Volume 16, Issue 225, July 2006, this proposal is important for its emphasis on the interplay between NHRIs and human rights defenders and for its call on NHRIs to put in to place systematic mechanisms that protect defenders; such as, establishing special desks/task forces and creating fast track interventions with state authorities to protect defenders whose lives may be in danger. Further, it is proposed that NHRIs actively advocate the incorporation of international standards protecting defenders in to national law.

Towards this end, we publish two standard setting documents, namely, the *European Union Guidelines on the Protection of Human Rights Defenders* as well as recommendations for gender-specific implementation of these guidelines proposed by a collection of regional and international non-governmental organisations. The latter document is of special importance to women human rights defenders.

Lastly, we publish extracts from a recent Report by the United Nations Special Rapporteur on the situation of human rights defenders, which identifies primary challenges for human rights defenders throughout the world to include violations of the right to freedom of association and the right to peaceful assembly. The Report's particular mention of journalists who report on human rights being entitled to protections and the Special Rapporteur's key messages concerning human rights defenders ten years after the adoption of the Declaration on Human Rights Defenders, are of special note.

*Kishali Pinto-Jayawardena*



# 'THE ENEMY WITHIN': HUMAN RIGHTS DEFENDERS IN SRI LANKA\*

*B. Skanthakumar\**

## 1 Introduction

The 10<sup>th</sup> anniversary of the *United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms* (better known as the 'UN Declaration on Human Rights Defenders')<sup>1</sup> in December 2008 is an opportunity to reflect on the status of, and environment for, human rights defenders in Sri Lanka, and in particular their current risks and challenges.

There has been a sharp deterioration in the security, rights and freedoms of human rights defenders<sup>2</sup> in Sri Lanka since the resumption of war in 2006. In this respect their condition is representative of all citizens, especially those living in conflict areas and the Tamil minority in particular. However, human rights defenders are at particular risk because they are visible and therefore easily identifiable, accessible and often isolated. The space for human rights defenders is narrow and rapidly shrinking.

Threats and attacks on civilians and human rights defenders are made by agencies of the Government of Sri Lanka such as the security forces including police and military intelligence operatives, the separatist Liberation Tigers of Tamil Eelam (LTTE), and Tamil paramilitaries associated with the pro-government *Tamil Makkal Viduthalai Puligal* (TMVP) and the Eelam Peoples Democratic Party (EPDP).

Between 1 January and 31 August 2007 alone there were an estimated 662 killings and 540 disappearances; or an average of 5 such serious violations of human rights each day.<sup>3</sup> The majority of victims are Tamils, male and youth between the ages of 18 and 35. Their numbers include human rights defenders such as journalists, parliamentarians, religious and humanitarian workers (between January 2006 and December 2007 there has been a killing or

---

\* This paper was prepared for the 3rd Regional Human Rights Defenders Forum, 29 November-01 December 2008 (subsequently postponed to 18-20 January 2009), organised by the Asian Forum for Human Rights and Development (FORUM-Asia) and finalised on 07 November 2008. I am grateful to Nimalka Fernando for comments and Ruki Fernando in particular for helpful suggestions. The views expressed are mine own.

\* Economic, Social & Cultural Rights (ESCR) programme, Law & Society Trust, Colombo.

<sup>1</sup> The Declaration has been translated and published in Sinhala and Tamil by the Law & Society Trust in collaboration with FORUM-Asia.

<sup>2</sup> The term 'Human Rights Defenders' is undefined in the UN Declaration. For present purposes I shall adopt the following: "People who act in many different ways and in different capacities to promote and protect human rights", as defined by Amnesty International in *Defending Human Rights in a Changing World*, August 2008, ACT 30/006/2008, p.10, <http://www.amnesty.org/en/library/info/ACT30/006/2008/en>.

<sup>3</sup> Law & Society Trust, Civil Monitoring Commission & Free Media Movement, 'Second Submission to the Presidential Commission of Inquiry on Human Rights Violations in Sri Lanka: January-August 2007', *LST Review*, Vol.18, No.239 & 240 (September & October 2007), pp.29-41 at p.29.

enforced disappearance of at least 1 humanitarian worker each month with the exception of March and October 2006<sup>4</sup>).

Extra-judicial killings, abductions and 'disappearances' are routinely reported in the newspapers with no official response from the Government, though a telephone hotline administered by the Ministry of Disaster Management and Human Rights has been installed for complaints to be lodged. Following pressure from family members, on 01 June 2007 a Presidential Committee to monitor Abductions, Disappearances and Human Rights Violations was formed to receive complaints and conduct enquiries. It presently comprises of three pro-Government politicians and the Inspector-General of Police. In October 2007, the Committee disclosed that 1,130 complaints of abductions and disappearances had been reported island-wide.<sup>5</sup> In September 2008 the Committee reported that it had been able to locate 86 of 238 individuals reported as missing and sought further information from the police on the outstanding 152 complaints.<sup>6</sup>

In addition to the overall deterioration in the working environment of HR defenders, there has recently been increased use of law enforcement agencies and the legal system to criminalise human rights activities and activists.

The detention of journalist and human rights defender J.S. Tissainayagam since 07 March 2008, apparently for expressing opinions critical of government policy on the war and for obtaining funds to publish a magazine titled the North Eastern Monthly in which these opinions were published; the continuing detention of two of his colleagues Vettivel and Valarmathi Jasikaran, apparently for publishing the outreachsl.com website (Vettivel Jasikaran has also alleged repeated custodial torture<sup>7</sup>); the 8-hour Colombo Crime Division interrogation of Law & Society Trust staffer Ruki Fernando on 13 July 2008, regarding the contents of a joint leaflet marking the International Day against 'Disappearances'; and the 7-hour Criminal Investigation Department interrogation on 26 August 2008 of Mano Ganesan, prominent human rights defender, opposition parliamentarian and convenor of the multi-party Civil Monitoring Commission; are instances in point.

Media workers reporting on the conflict have become high profile targets, several journalists, especially in the northern town of Jaffna, have been murdered, while others have fled abroad.<sup>8</sup>

---

<sup>4</sup> Law & Society Trust, *Under Fire – Persons in Humanitarian Service*, Colombo, 07 March 2008, [http://www.lawsocietytrust.org/PDF/UnderFire\\_PersonsInHumanitarianService\\_FullReport\\_WEB.pdf](http://www.lawsocietytrust.org/PDF/UnderFire_PersonsInHumanitarianService_FullReport_WEB.pdf).

<sup>5</sup> "Jaffna Abductions probe begins next week", *Ceylon Daily News*, 10 October 2007, <http://www.dailynews.lk/2007/10/10/news01.asp>.

<sup>6</sup> "Disappearances probe Comm. hands back 152 cases to IGP Unable to proceed without more information", *The Island*, 24 September 2008, <http://www.island.lk/2008/09/24/news5.html>.

<sup>7</sup> Amnesty International, *Sri Lanka: Ill Treatment/Fear of Torture/Medical Concern/Arbitrary Detention*, ASA 37/026/2008, 04 July 2008, <http://www.amnesty.org/en/library/asset/ASA37/026/2008/en/10385780-49e1-11dd-9394-c975c4bd488d/asa370262008eng.pdf>.

<sup>8</sup> Amnesty International, *Sri Lanka: Silencing Dissent*, February 2008, ASA 37/001/2008, <http://www.amnesty.org/fr/library/asset/ASA37/001/2008/en/6211f6a9-e097-11dc-9be0-7f629491fc8b/asa370012008eng.pdf>. For regular updates on media repression, see the Free Media Movement website, <http://www.freemedia.srilanka.org>.



According to the Free Media Movement, 16 media workers have been killed between January 2006 and May 2008.<sup>9</sup> Self-censorship is routine in media organisations as any negative references to military strategy or even questions on the procurement of military equipment invites open verbal threats from senior government officials and physical attack by unidentified goons and thugs for “demoralising the war heroes”. In 2008, Sri Lanka was ranked 165<sup>th</sup> of 173 countries, in the World Press Freedom Index.<sup>10</sup>

Dissenting Tamils who are critical of the LTTE too have been murdered (for example, Maheswary Velautham on 13 May 2008 and Kethesh Loganathan on 12 August 2006); or they live under conditions of extreme danger even in government controlled areas; or have been hounded into exile (for example, former Jaffna University Vice-Chancellor, Prof Ratnajeewan Hoole, and separately Rajan Hoole and K. Sritharan of the University Teachers for Human Rights–Jaffna), by the self-selected “sole, legitimate representatives of the Tamil people”.

The ideology of “national security” is all pervasive. Human rights talk is suspect because it privileges the rights of troublesome minorities and of alienated groups and individuals. It is constructed as a distraction from the “war against terrorism” and its association with a pro-peace, pro-federalism platform is denounced as throwing a lifeline to cornered, soon to be exterminated terrorists. In short, according to this ideology, human rights defenders are considered ‘the enemy within’.

This view is not confined to state authorities, Sinhala nationalists, the LTTE and racist elements, but also shared by large sections of the citizenry. Even if not all of our society is equally well informed of the range and scale of serious violations of human rights, few can claim to deny knowledge of their occurrence. Yet, there is no outcry, no revulsion, and no demands for their end by the majority of the citizens. Partly, because abductions, ‘disappearances’ and killings are targeted rather than generalised, many are unmoved. In the public imagination the victims are regarded as suspect, believed to be terrorists or their supporters, and therefore deserving of their fate. Society is desensitised to violence and suffering. The intolerable has become tolerable.

Battlefield victories described as “humanitarian operations” to “liberate” the North and East from the grip of “LTTE terrorists”, and the Government’s own strategy of subordinating any political process to military objectives of territorial conquest, have whipped up war hysteria among the Sinhala polity and hardened their support for the Government. Even the burdens of fuel and food price increase, high rate of inflation, misuse of public funds and rampant abuse of public office for private gain are met with acquiescence or mute resignation.

---

<sup>9</sup> Free Media Movement, *Sri Lanka: List of media workers killed, abducted and arrested*, <http://www.freemediasrilanka.org/English/files/2157media%20workers%20kiled.pdf>.

<sup>10</sup> Reporters Without Borders, *World Press Freedom Index 2008 – The Rankings*, [http://www.rsf.org/IMG/pdf/cl\\_en\\_2008.pdf](http://www.rsf.org/IMG/pdf/cl_en_2008.pdf).

## 2 Economic, Social and Cultural Rights

Economic, Social and Cultural (ESC) rights have been marginalised in the context of 25 years of war that have diverted HR defenders, institutions and funding agencies to prioritising civil and political rights particularly those of minority communities and those affected by the conflict. The idea of interdependence and indivisibility of all human rights is empty rhetoric in this context, and the gravity of the situation is underlined by silence in place of even a token affirmation.

The demobilisation of social movements is such that traditional mass-based organisations such as trade unions have become less representative of their own constituencies, less capable of mounting and sustaining actions, and therefore also, less capable of being a countervailing force to state power. This has not created conditions for greater prominence of socio-economic rights issues. The majority of those engaged in activism in this area would probably not describe themselves as human rights defenders but often as environmentalists or community activists.

This is for several reasons including the narrowness of the contemporary human rights agenda in Sri Lanka; an antipathy to the pro-federalist and minority rights perspectives of Colombo civil society organisations; class and social differences such that Colombo-based organisations in particular are perceived as indifferent to livelihood issues and concerns, as well as supportive of 'Open Economy' (economic liberalisation) and globalisation policies in sharp contrast to those preoccupied with ESC issues. Some professional human rights defenders enjoy relationships with western diplomats and heads of multilateral financial institutions in Sri Lanka, that enrage ESC rights activists resisting development or economic policies promoted by those self-same actors.

Even human rights defenders working on ESC rights would tend to see the violation of ESC rights as a secondary issue, consequent to the denial of civil and political rights especially where the minority Tamil and Muslim communities are concerned.

Some recent and/or ongoing violations of economic, social and cultural rights,<sup>11</sup> largely through acts and omissions of state authorities during successive regimes, include:

- Forced evictions of slum-dwellers from Slave Island in central Colombo in July 2008, prior to the South Asian Association for Regional Cooperation (SAARC) heads of government summit in Sri Lanka;
- Disputes over permanent housing for forcibly evicted Northern Muslims in Puttalam who have been in temporary shelter since 1990;
- Preventable shortcomings in the quantity and distribution of food rations and medical supplies for recently displaced persons in the Northern and Eastern provinces;

---

<sup>11</sup> The political economy context is sketched in B. Skanthakumar, 'Mahindanomics: Economic Policy Trends in Sri Lanka', 12 November 2007, <http://www.europc-solidaire.org/spip.php?article9627>.

- Compulsory acquisition of 600 acres of agricultural land initially for setting up a military High Security Zone, and the displacement of 16,000 people in the Eastern province (Sampur),<sup>12</sup> but later earmarked for an exclusively Indian economic processing zone;
- Development induced displacement of local communities through the implementation of massive infrastructure projects (hydro-power, coal-power, irrigation, etc.); for example, the Upper Kotmale Dam (Nuwara Eliya district) and the Norochcholai power plant (Puttalam district).
- Chronic and poor quality health care provision in the estate sector resulting in higher than average levels of anaemia among pregnant mothers and lower life expectancy levels for men and women from the Up-Country Tamil ethnic minority community;
- Alleged involuntary sterilisation and violation of reproductive health rights of Up-Country Tamil women estate workers;
- Intimidation of health sector and other trade unionists for exercising their right to strike in the 05 July 2008 'token' strike;
- Unfair labour practices by employers doing business in the export processing zones, preventing employee rights of forming unions, freedom of association and collective bargaining;
- Non-implementation of the UN Convention on Migrant Workers, though ratified by Sri Lanka in 1996;
- Denying access by the *Wanniyaletto/Veddah* (indigenous Sri Lankans) to protected forest areas and to public services such as schools and health care and so on, as well as cultural discrimination against them.

### 3 Risks and Challenges

Drawing on indicators<sup>13</sup> recommended by the former UN Special Representative on Human Rights Defenders, the section below reviews risks and challenges faced by human rights defenders, albeit non-exhaustively and constrained by the availability of, and access to, relevant information.

#### 3.1 Legislation

Fundamental rights relevant to human rights defenders are protected in the Constitution while Sri Lanka has ratified core UN human rights conventions. In practice, the realisation and enjoyment of these rights is severely qualified by Emergency Regulations (made under the

<sup>12</sup> University Teachers for Human Rights–Jaffna, *Can the East be won through Human Culling? Special Economic Zones – An Ideological Journey Back to 1983*, 03 August 2007, <http://www.uthr.org/Special Reports/spreport26.htm>.

<sup>13</sup> Report submitted by the Special Representative of the Secretary General on Human Rights Defenders, Hina Jilani, A/HRC/7/28, 31 January 2008, para.78 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/7session/A-HRC-7-28.doc>.

Public Security Ordinance) that have been in operation for most of Sri Lanka's 60 years since independence; as well as repressive legislation such as the Prevention of Terrorism Act. Other laws such as those particularly related to labour rights are selectively applied or not enforced.

Witness protection legislation was drafted and presented to Parliament in June 2008 but yet remains at the stage of a Bill. Provisions in the Victim and Witness Protection Bill have been criticised, and one such instance is the concern over the independence of the proposed Witness Protection Unit, which will be a part of the police service that may itself be the alleged source of threat to witnesses, including human rights defenders (as witnesses become human rights defenders in the process of challenging impunity). Further, witnesses who testify *in camera* must have a public officer present with them for admissibility of testimony, without compromising the witness' sense of security and the quality of evidence.<sup>14</sup>

There is yet no Right to Information law in Sri Lanka and public authorities are generally unwilling to share data and information with human rights defenders, particularly in matters concerning conflict-related violations or conflict-affected communities, because of political sensitivities to local and particularly international publicity.

It was announced in September 2008 that a "Bill to monitor NGO activities and take action against errant NGOs is to be presented in parliament soon".<sup>15</sup> Its proposed scope and substantive provisions remain to be disclosed but NGO-bashing is a favourite sport of state functionaries.

On 10 October 2008 the Government announced that all private television stations will have to renew their broadcasting licences annually and that the licence can be revoked for among other reasons, for broadcasts that are "detrimental to national security". The overly broad nature of this phrase, the vesting of sole discretion in the Minister of Mass Media and Information, and the sense of insecurity instilled in media outlets, is a matter for extreme concern as it will encourage even greater self-censorship and restrict the airing of dissenting and critical viewpoints.<sup>16</sup>

### **3.2 Enabling Environment**

Within limits and dependent upon their geographical and issue context, human rights defenders continue to exercise their rights of expression, association, and assembly in varying degrees. Access to places of detention and police stations is often dependent upon the whims of local officials but is generally not denied.

---

<sup>14</sup> Dulani Kulasinghe, "Objections to the Assistance and Protection to Victims of Crime and Witnesses Bill", *LST Review*, Vol.18, No.246 & 247 (April & May 2008), pp.37-40.

<sup>15</sup> "Bill to monitor NGO operations", *Daily Mirror*, 12 September 2008, [http://www.dailymirror.lk/DM\\_BLOG/Sections/frmNewsDetailView.aspx?ARTID=26072](http://www.dailymirror.lk/DM_BLOG/Sections/frmNewsDetailView.aspx?ARTID=26072).

<sup>16</sup> Free Media Movement, *Statement on the new Private Television Broadcasting Station Regulations*, 30 October 2008, <http://www.freemediasrilanka.org/English/news.php?id=1089&section=news>.

The National Human Rights Commission (HRC) has been lethargic and part of the problem even in the wake of the human rights crisis.<sup>17</sup> It behaves as part of the state bureaucracy rather than the community of human rights defenders. It is non-responsive to human rights organisations and refused in 2008 to share its data on reported cases of ‘disappearances’ and abductions with the Law & Society Trust. Its field offices have been instructed not to collaborate with human rights groups and not to share data with the latter.

The present Commission has been appointed extra-constitutionally and has not publicly—nor to our knowledge even privately—engaged the Government on human rights violations and the culture of impunity. It has not even protected its own staff from harassment and threat by security agencies.

Following determined lobbying by local organisations, the HRC was downgraded from ‘A’ to ‘B’ status in 2007 by the International Coordination Committee of National Human Rights Institutions, confirming its non-conformity to the Paris Principles on minimum standards for human rights institutions.

Attempts by human rights defenders at systematic collaboration with state authorities have been frustrated by aggression and sometimes personalised attacks by government and relevant officials. The ineffectiveness of dialogue and representations in halting and correcting abuses of human rights, led a group of internationally recognised human rights defenders to resign in protest, from an Advisory Panel to the Minister of Disaster Management and Human Rights on 09 October 2007.<sup>18</sup>

Government administrative procedures have been used on non-governmental organisations who are active on human rights issues, such as collection of information on the organisation’s activities ostensibly for taxation purposes; tightening up of visas for foreign nationals and so on. A Parliamentary Select Committee on Non-Government Organisations has been a vehicle to witch-hunt international and local organisations that attract the Committee’s attention or are the subject of media controversy.

A National Action Plan on Human Rights is currently being prepared at the ministerial level. However, no information has been shared as to whether the Action Plan will include provisions on human rights defenders. Nor have human rights defenders been invited to-date to make submissions or be part of the drafting process.

Human rights education is not part of the school curriculum and there are no systematic efforts towards public education on rights and remedies. Short courses on human rights and humanitarian law have for many years been organised for the police and the armed forces but there is scant evidence that this is directly responsible for changed practices in the field.

---

<sup>17</sup> Amal de Chickera, “The Human Rights Commission of Sri Lanka: Sombre Reflections and a Critical Evaluation”, *LST Review*, Vol.18, Nos.239 & 240 (September & October 2007), pp.56-69.

<sup>18</sup> ‘Letter of Resignation from Civil Society Advisory Committee to Minister for Human Rights’, [http://www.cpalanka.org/Statements/Letter\\_of\\_Resignation\\_from\\_the\\_Civil\\_Society.pdf](http://www.cpalanka.org/Statements/Letter_of_Resignation_from_the_Civil_Society.pdf).

Instead, it is more likely that directives from commanding officers and authoritative public officials and the prevailing political environment influence modes of conduct and operation.

The very discourse of human rights and therefore its advocates are regarded as “anti-patriotic”, who are weakening the morale of the armed forces, inviting unwanted international attention and unpleasant questions from the diplomatic and donor community, and a threat to ‘national sovereignty’. It is therefore not “open support” but “open hostility” that characterises the relationship between public authorities and the political establishment with human rights defenders.

### *3.3 Community of Human Rights Defenders*

The community of human rights defenders is plural and diverse and present at grassroots and national level. Some community based organisations as well as most national level organisations are part of regional and international networks.

Through inequalities of funding, human resources, geographical location, and access to power and influence, a handful of organisations are more visible and regarded as leading actors both by the human rights community and in the wider civil society.

Networking and solidarity among human rights defenders has improved greatly. There is regular interaction and Colombo-based defenders travel regularly to conflict-affected areas and are in regular contact with defenders there, even if at present more as individuals rather than in large groups, since the breakdown of the Cease-Fire Agreement.

However, networking across civil society has been less prevalent because of mutual suspicion, political support for the government’s military strategy within professional associations, mass media, and some trade unions and, narrow sectoral interests and agendas.

All ethnic communities, age groups and social/class profiles are represented among human rights defenders. However, as mentioned above, economic, social and cultural rights activism is neglected even within the human rights community.

Human rights organisations are routinely engaged in a range of activities from awareness-raising and outreach; to monitoring and reporting; to capacity-building and training. A few are able to offer legal advice and even legal representation, but it is insufficient to the demand for such services.

Even fewer have been able to use public interest litigation to arrest ongoing or imminent violations of human rights, and in any case there has been mixed results from a judiciary that has not historically demonstrated a rights consciousness despite a rash of recent judgements against the State invoking the ‘public trust’ doctrine.

The Supreme Court has taken a regressive and rigid approach towards the implementation of international human rights law in Sri Lanka, and under the leadership of the incumbent Chief Justice, has been dismissive of 'Geneva-based' international human rights institutions and mechanisms.

In the recent *Singarasa* case, the Supreme Court found that Communications of the UN Human Rights Committee on individual complaints (Sri Lanka having acceded to the 1<sup>st</sup> Optional Protocol to the International Covenant on Civil and Political Rights) have no domestic legal effect.<sup>19</sup> As of July 2008 there have been 11 Communications of Views on Sri Lanka but none of its recommendations have been acted upon by the Government of Sri Lanka.

Local human rights mechanisms have been gutted because of political interference, timidity before the Executive, and lack of legitimacy. There is awareness of the judicial system which however, does not translate to actual utilising of the remedies that it offers largely due to prohibitive cost, inordinate delays, and non-identification with human rights defenders. There is less awareness of other national mechanisms such as the Human Rights Commission and the Public Ombudsman, but in any case these have disappointed in their performance and discharge of duties.

Labour rights activists have long been familiar and actively engaged with the International Labour Organisation (ILO) and submit complaints to its Committee on Freedom of Association, as well as communicate with the Committee of Experts on the Application of Conventions and Recommendations in its periodic scrutiny of labour law and state practice in Sri Lanka.<sup>20</sup>

The UN human rights machinery has also been utilised by Sri Lankan defenders at least since after 1987, including through submission of shadow reports to expert committees of the Convention on the Elimination of Discrimination against Women (CEDAW), the Convention against Torture (CAT) and the International Covenant on Civil and Political Rights (ICCPR). Regular advocacy and lobbying takes place during UN Human Rights Council sessions and with Special Rapporteurs.

However, utilisation of the special procedures is very limited. There is ongoing training among grassroots defenders to encourage them to use the Special Procedures, and this has extended to arranging exposure visits and interaction with the UN human rights system during Human Rights Council sessions in Geneva.

New human rights ideas have not been generated from the local human rights community. Many would consider their energies better spent on seeking compliance with established norms. However, internal weaknesses of the community including linguistic barriers to ideas

---

<sup>19</sup> *Singarasa v The Attorney General*, S.C.M. 15.09.2006, *LST Review*, Vol.17, Issue No.227 & 228 (September & October 2006), pp.9-18.

<sup>20</sup> B. Skanthakumar, "Workers Rights" in *Sri Lanka: State of Human Rights 2008*, Law & Society Trust, Colombo (forthcoming).

and information in English; low level of intellectual debate and discussion; the dominance of lawyers within the movement whose frame of reference are legal concepts and resources; and the fracturing of civil society leading to little interaction and few campaigns in common, are also contributory factors.

Some individual women human rights defenders are recognised leaders of the human rights community including at regional and international level. Nevertheless, women's rights are not mainstreamed on the agenda of human rights organisations. Grassroots women defenders in particular face obstacles within their communities and even within human rights organisations in assuming leadership roles and in focusing attention on gender-based human rights violations.

On occasion women human rights defenders have made the strategic choice not to confront gender discriminatory laws and practices in minority communities for fear of being tarred with the brush of Sinhala majoritarianism, or of compounding the existing alienation of minorities, in the seeming absence of movements for gender justice within those communities.<sup>21</sup>

While members of minority communities are represented among human rights defenders, other groups remain marginal to the human rights movement, particularly persons with disabilities, former migrant workers, indigenous people, and those affected by caste-based discrimination.

One positive development has been closer relations between one organisation working on lesbian, gay, bisexual, transgender, intersex and questioning (LGBTIQ) issues and longer established human rights groups, leading to the inclusion of rights of sexual minorities in the civil society submission to Sri Lanka's Universal Periodic Review before the UN Human Rights Council in 2008. One reason for the lack of integration has been strategic choices by some lesbian and gay organisations not to use rights based language and/or not to identify with human rights groups, eschewing confrontation with the State in return for tolerance of their existence and campaigns. Homophobic attitudes within society are mirrored among human rights defenders too and there is a long way to go before the universality of human rights is internalised within the human rights community itself.

There are other problems in the assimilation of the universality of rights among human rights defenders. Foremost is the downplaying of violations perpetrated by the Liberation Tigers of Tamil Eelam (LTTE). It is true that state actors are primarily accountable under national and international law. It is also true that equating the enormous power and responsibility of the state with that of non-state actors is to compare papayas to pineapples. Nevertheless, it stinks to high heaven when the brutalities of the LTTE whether in areas under their control or in government controlled areas are met by embarrassed silence or quiet resignation by human

---

<sup>21</sup> B. Skanthakumar, "The Duty to Protect: Muslim Family Law in Sri Lanka" in *Yearbook of Islamic and Middle Eastern Law*, Vol. 10, Cotran, Eugene and Martin Lau (eds.), Leiden, 2006, pp.125-157.



rights defenders. The stench also reaches people at large, repelling them from the discourse of human rights and its defenders.

Agenda-setting is the privilege of Colombo based and better resourced organisations whereas human rights defenders elsewhere may find their agenda is determined for them by other actors. The thematic priorities of donors (greater focus on conflict-related issues and not on economic, social and cultural rights, etc.), their impatience in the absence of quantifiable “results” and “outcomes”, their own insecurities and articles of faith (good governance, liberal institutions, rule-of-law), shape priorities among professional human rights defenders in subtle but also sometimes direct ways.

### 3.4 Security of Human Rights Defenders

Human rights defenders particularly those working in conflict-affected areas live in insecurity. Even religious workers engaged in humanitarian service have not been spared. Father Nihal Jim Brown and a companion ‘disappeared’ on 20 August 2006 in close proximity to a Sri Lanka Navy checkpoint. A Buddhist priest and promoter of interethnic harmony, Ven. Nandarathna Thero, was shot dead on 13 May 2007. Father Packiaranjith was killed in a claymore mine attack on 27 September 2007. The head of the LTTE-affiliated North East Secretariat on Human Rights, Father Xavier Karunaratnam, was killed in an alleged targeted killing on 20 April 2008. A Hindu priest and human rights defender, Sivakugarajah Kurukkal, was shot dead on 21 September 2008.

Three prominent ethnic Tamil parliamentarians, Joseph Pararajasingham, N. Raviraj and T. Maheshwaran, were assassinated on 25 December 2005, 10 November 2006, and 01 January 2008, respectively. All three were vigorous human rights defenders.

On 20 September 2008, Sugath Nishanta Fernando was murdered.<sup>22</sup> The previous year he had filed a fundamental rights application citing 12 police officers for bribery and torture. Subsequently he had been threatened with death by some of the respondents if he did not discontinue proceedings against them. Since the death of her husband, his widow who was a witness to the brutal assault on her late husband has herself been threatened. Mr. Fernando’s legal counsel has also received threats instructing them to withdraw from this case. There are no leads in the murder investigation which may be related to the fact that some of the investigating officers were themselves named in Mr. Fernando’s application.

On 27 September 2008 the family and home of J.C. Weliamuna came under a grenade attack that they fortunately survived.<sup>23</sup> Mr. Weliamuna is a leading human rights lawyer and Executive Director of the Sri Lanka chapter of Transparency International that highlights

<sup>22</sup> Asian Human Rights Commission, *Sri Lanka: Another complainant in a torture case shot dead*, 20 September 2008, <http://www.ahrchk.net/statements/mainfile.php/2008statements/1697/>.

<sup>23</sup> Amnesty International, *Sri Lanka: Fear for Safety*, ASA 37/028/2008, 02 October 2008, <http://www.amnesty.org/en/library/asset/ASA37/028/2008/cn/1dd73876-909a-11dd-b16f-6118895def38/asa370282008en.pdf>.

issues of bribery and corruption. His home is located near a police station and army camp but the perpetrators were not apprehended and to date no leads have been disclosed.

There have been vituperative attacks on individual human rights defenders on government web-pages and in the state media, including imputing association between human rights defenders and the LTTE, thereby physically endangering the former. There is barely any attempt by the Government of Sri Lanka to address the substance of claims made by human rights defenders, as it seeks instead to ridicule and defame them, in the full knowledge that the label of “traitor” or “terrorist sympathiser” is tantamount to a sentence of death executed by unnamed actors believed to enjoy patronage at the highest levels of the state and military hierarchy.

On 21 November 2008, a number of lawyers and court registrars received an open letter of threat from a previously unknown organisation identifying itself as the *Mahasen Balakaya* (Mahasen Battalion or Force). The statement described lawyers representing alleged terrorist suspects as “traitors”, informing them that their names and addresses were known, and warning them that “all those who represent the interests of and speak on behalf of the terrorists who kill our innocent civilians will be meted out the punishment that they deserve.”<sup>24</sup>

There has been no official condemnation of this group and its vile intimidation, no official inquiries into these threats and no assurances of support or protection to lawyers performing their professional duty and providing legal representation to the accused, which is a legal and democratic norm long enjoyed in Sri Lanka.

On 12 October 2008, a Government parliamentarian who is also a deputy minister verbally threatened Father Sarath Iddamalgodha and the Christian Solidarity Movement that has been conducting awareness raising campaigns on the humanitarian situation in the Vanni, as well as collecting supplies for the internally displaced from among congregations. The same individual identified Father Iddamalgodha by name at a public meeting the following day that was broadcast on state television and promised to report his activities to Church and state authorities.<sup>25</sup>

### 3.5 Impunity

Impunity for human rights violations has been endemic in Sri Lanka. This is illustrated by the low level of arrests, even lower level of criminal indictments and miniscule number of

---

<sup>24</sup> Asian Human Rights Commission, *Sri Lanka: A death squad formation against human rights lawyers needs to be investigated urgently*, 22 October 2008, <http://www.ahrchk.net/statements/mainfile.php/2008statements/1735/>.

<sup>25</sup> OMCT [World Organisation against Torture], *Threats against the Christian Solidarity Movement and Father Sarath Iddamalgodha*, LKA 004/1008/OBS 165, 17 October 2008, <http://www.omct.org/index.php?id=&lang=eng&actualPageNumber=1&articleId=8078&itemAdmin=article>.

convictions relative to the sheer volume and quality of gross violations of human rights since the onset of war in 1983.<sup>26</sup>

The most recent intensification of human rights violations since 2006 has been no exception to the general trend. Following the parliamentary intervention of an opposition legislator, four arrests including that of three serving and one former security forces personnel were made, on suspicion of the abduction and murder of two Sri Lanka Red Cross staff of Eastern Tamil origin. Subsequently all were bailed although investigation into the activities of the ring-leader is claimed to be ongoing.

To deflect demands for a field presence in Sri Lanka of the UN High Commissioner for Human Rights, the Government created two separate Commissions of Inquiry; one looking into killings and the other, abductions and 'disappearances'. These Commissions continue to sit but at the same time killings, abductions and 'disappearances' continue unabated.

The Udalgama Commission of Inquiry into Serious Violations of Human Rights has been ham-strung by tactics of legal counsel to the Sri Lanka Armed Forces, the dual role of the Attorney-General's department as counsel to the State while also counsel to the Commission, and concerns over witness tampering and safety of witnesses.

The Tillekeratne Commission has not publicly released any of its reports into abductions and 'disappearances' and in its public pronouncements has sought to deny the scale of 'disappearances' and the complicity of state actors.

There is no confidence in oversight mechanisms because of the Government's refusal to implement and abide by the 17<sup>th</sup> Amendment to the Constitution which sought to depoliticise important statutory institutions such as the Constitutional Council, National Police Commission, Human Rights Commission, Election Commission and Bribery Commission. The Police Commission has been more preoccupied with arbitrating disputes over appointments and promotions within the police service than in adjudicating complaints from the public on abuses committed by the police. Likewise the Human Rights Commission caseload appears to consist of claims by public servants regarding transfers and benefits rather than gross human rights violations.

### **3.6 Government collaboration with international mechanisms**

The Special Representative (and now Special Rapporteur) on Human Rights Defenders has not received an official invitation to visit Sri Lanka, although requests to the Government

---

<sup>26</sup> Human Rights Watch, *Recurring Nightmare: State Responsibility for 'Disappearances' and Abductions in Sri Lanka*, March 2008, [http://www.hrw.org/sites/default/files/reports/srilanka\\_0308\\_1.pdf](http://www.hrw.org/sites/default/files/reports/srilanka_0308_1.pdf).

have apparently been made since 2001, and a request from the new mandate holder in 2008 had not been granted at time of writing in November 2008.<sup>27</sup>

The UN Working Group on Involuntary and Enforced Disappearances has requested invitations in 2006, 2007 and 2008 but with no success. Additionally, the Independent Expert on Minority Rights and the Special Rapporteur on Independence of Judges and Lawyers have also requested invitations for which there has also been no response.

The Government of Sri Lanka seeks to present itself abroad as a responsible member of the international community through reference to its impressive number of ratifications of conventions and treaties (with the signal exceptions of the 2006 Convention for the Protection of All Persons from Enforced Disappearances and the 1998 Rome Statute of the International Criminal Court); its election in 2006 to the newly created UN Human Rights Council; and its engagement with the UN human rights machinery. At the same time, it has invoked the rhetoric of the 'war on terror' and drawn attention to the hypocrisy of western powers in seeking to mitigate its human rights record at home.

Although the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) was ratified in 1997, the Government of Sri Lanka has not sought to remedy the defect in law that according to the Supreme Court of Sri Lanka (in the 2006 *Singarasa* case) renders the Views of the Human Rights Committee on communications from individuals, of no effect within the domestic legal system.

The Government has collaborated with the UN High Commissioner for Human Rights (OHCHR) through acceding to a country visit by Louise Arbour in October 2007 and drawing on its technical assistance. However, this engagement was in mitigation of its refusal to permit a field presence of the OHCHR that has been a persistent demand of local human rights organisations, national parliamentarians, international non-governmental organisations and others frustrated by the weakness of domestic protection mechanisms.

UN Special Rapporteurs Manfred Nowak (on Torture) and Walter Kälin (on Internally Displaced Persons) were permitted to visit Sri Lanka in October and December 2007, respectively. The Ministry of Human Rights and Disaster Management claims to be acting upon their recommendations in concert with other relevant government agencies, but it is business as usual so far as the conditions and rights of internally displaced persons, suspects and detainees in custody are concerned.

While the Under-Secretary General for Humanitarian Affairs Sir John Holmes was permitted to visit Sri Lanka in August 2007, when he stated the obvious by observing that Sri Lanka was one of the most dangerous places in the world for humanitarian workers, he was labelled

---

<sup>27</sup> Office of the United Nations High Commissioner for Human Rights [OHCHR], *Country Visits by Special Procedures Mandate Holders since 1998*, [http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm#sri\\_lanka](http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm#sri_lanka).

as a “terrorist in the pay of the LTTE” and a “yaka” (devil), by the late Government Chief Whip and Prime Minister, respectively.<sup>28</sup>

None of the above was allowed by the Government to visit LTTE controlled areas in the North and East, although internally displaced persons are used by the LTTE as means of securing and diverting to themselves humanitarian relief, while the LTTE also maintain a network of detention centres.

While as required by members of the UN Human Rights Council the Government of Sri Lanka submitted itself to a Universal Periodic Review, it did not seriously engage with human rights defenders in that process and nor did its report to the Human Rights Council convey any recognition of the seriousness and scale of violations that take place. Sri Lanka’s failure to retain its seat on the Council in 2008 was therefore expected and appropriate.<sup>29</sup>

#### 4 Conclusion

The increased vulnerability of human rights defenders is directly linked to the resumption of war. Therefore it follows that improvement to their position is contingent on the cessation of hostilities and the opening of political space for dissent.

Some preconditions for an enabling environment for the realisation of the rights of human rights defenders are: countering the impunity of state actors; ensuring that the justice system identifies and punishes violators; entrenching independent human rights institutions; and ensuring safety and freedom for human rights defenders, among others.

Human rights defenders require local constituencies to shelter and to support them and to mobilise in defence of human rights. To this end, society must regard human rights defenders as part of its own communities and its own struggles.

For society to identify with human rights defenders, human rights defenders must also identify with society. So long as human rights defenders in their practice reinforce the idea that there is a hierarchy of human rights in which civil and political rights are pre-eminent to the exclusion of economic, social and cultural rights that are central to everyday livelihood issues of the majority, the estrangement will continue.

----

---

<sup>28</sup> *The Sunday Times*, “Mariakadey diplomacy to combat the world”, 19 August 2007, <http://sundaytimes.lk/070819/Columns/political.html>.

<sup>29</sup> Human Rights Watch, *UN: Sri Lanka’s defeat a victory for Human Rights Council*, 21 May 2008, <http://www.hrw.org/english/docs/2008/05/21/slanka18912.htm>.

## ENSURING PROTECTION – EUROPEAN UNION GUIDELINES ON HUMAN RIGHTS DEFENDERS<sup>+</sup>

### I Purpose

1. Support for human rights defenders is already a long established element of the European Union's (EU) human rights external relations policy. The purpose of these Guidelines is to provide practical suggestions for enhancing EU action in relation to this issue. The Guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the Union to promote and encourage respect for the right to defend human rights. The Guidelines also provide for interventions by the Union for human rights defenders at risk and suggest practical means to support and assist human rights defenders. An important element of the Guidelines is support for the Special Procedures of the UN Commission on Human Rights, including the UN Special Representative on Human Rights Defenders and appropriate regional mechanisms to protect human rights defenders. The Guidelines will assist EU Missions (Embassies and Consulates of EU Member States and European Commission Delegations) in their approach to human rights defenders. While addressing specific concerns regarding human rights defenders is their primary purpose, the Guidelines also contribute to reinforcing the EU's human rights policy in general.

### II Definition

2. For the purpose of defining human rights defenders for these Guidelines, operative Paragraph 1 of 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 (see Annex I), which states that, "*Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels*" is drawn upon.

3. Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights (CPR) as well as the promotion, protection and realisation of economic, social and cultural rights (ESCR). Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.

---

<sup>+</sup> European Union, *Ensuring Protection – European Union Guidelines on Human Rights Defenders*, 14 June 2004, 10056/1/04. Adopted by the Council of the European Union on 14 June 2004. Online: <http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf>.

### **III Introduction**

4. The EU supports the principles contained in the Declaration on the Right and responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. Although the primary responsibility for the promotion and protection of human rights lies with states, the EU recognises that individuals, groups and organs of society all play important parts in furthering the cause of human rights. The activities of human rights defenders include:

- documenting violations;
- seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support; and
- combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms.

5. The work of human rights defenders often involves criticism of government's policies and actions. However, governments should not see this as a negative. The principle of allowing room for independence of mind and free debate on a government's policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights defenders can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognised and supported.

6. The EU acknowledges that the activities of Human Rights Defenders have over the years become more recognised. They have increasingly come to ensure greater protection for the victims of violations. However, this progress has been achieved at a high price: the defenders themselves have increasingly become targets of attacks and their rights are violated in many countries. The EU believes it is important to ensure the safety and protect the rights of human rights defenders. In this regard it is important to apply a gender perspective when approaching the issue of human rights defenders.

### **IV Operational Guidelines**

7. The operational part of the Guideline is meant to identify ways and means to effectively work towards the promotion and protection of human rights defenders in third countries, within the context of the Common Foreign and Security Policy.

#### **Monitoring, reporting and assessment**

8. EU Heads of Mission (HoMs) are already requested to provide periodic reports on the human rights situation in their countries of accreditation. The Council Working Party on Human Rights (COHOM) has recently approved the outline of fact sheets to facilitate this task. In line with these fact sheets Missions should address the situation of human rights defenders in their reporting, noting in particular the occurrence of any threats or attacks

against human rights defenders. In this context HoMs should be aware that the institutional framework can have a major impact on the ability of human rights defenders to undertake their work in safety. Issues such as legislative, judicial, administrative or other appropriate measures, undertaken by States to protect persons 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 any of the rights referred to the UN Declaration on Human Rights Defenders, are all relevant in this regard. Where it is called for, HoMs should make recommendations to COHOM for possible EU actions, including condemnation of threats and attacks against human rights defenders, as well as for *demarches* and public statements where human rights defenders are at immediate or serious risk. HoMs should also report on the effectiveness of EU actions in their reports.

9. The HoMs reports and other relevant information, such as reports and recommendations from the Special Representative of the Secretary General for Human Rights Defenders, UN Special Rapporteurs and Treaty Bodies as well as non-governmental organisations, will enable COHOM and other relevant working parties, to identify situations where EU actions are called upon and decide actions to be taken or, where appropriate, make recommendations for such action to the Political and Security Committee (PSC)/Council of the European Union.

#### **Role of EU Missions in supporting and protecting human rights defenders**

10. In many third countries EU Missions (Embassies of EU Member States and European Commission Delegations) are the primary interface between the Union and its Member States and human rights defenders on the ground. They therefore have an important role to play in putting in to practice the EU's policy towards human rights defenders. EU Missions should therefore seek to adopt a proactive policy towards human rights defenders. They should at the same time be aware that in certain cases EU action could lead to threats or attacks against human rights defenders. They should therefore where appropriate consult with human rights defenders in relation to actions which might be contemplated. Measures that EU Missions could take include:

- co-ordinating closely and sharing information on human rights defenders, including those at risk;
- maintaining, suitable contacts with human rights defenders, including by receiving them in Missions and visiting their areas of work, consideration could be given to appointing specific liaison officers, where necessary on a burden sharing basis, for this purpose;
- providing, as and where appropriate, visible recognition to human rights defenders, through the use of appropriate publicity, visits or invitations;
- attending and observing, where appropriate, trials of human rights defenders.



## **Promotion of respect for human rights defenders in relations with third countries and in multilateral fora**

11. The EU's objective is to influence third countries to carry out their obligations to respect the rights of human rights defenders and to protect them from attacks and threats from non-state actors. In its contacts with third countries, the EU will, when deemed necessary, express the need for all countries to adhere to and comply with the relevant international norms and standards, in particular the UN Declaration. The overall objective should be to bring about an environment where human rights defenders can operate freely. The EU will make its objectives known as an integral part of its human rights policy and will stress the importance it attaches to the protection of human rights defenders. Actions in support of these objectives will include:

- where the Presidency, or the High Representative for the Common Foreign and Security Policy (CFSP) or EU Special Representatives and Envoys, or European Commission are making country visits, they will, where appropriate, include meetings with, and raising individual cases of, human rights defenders as an integral and part of their visits to third countries;
- the human rights component of political dialogues between the EU and third countries and regional organisations, will, where relevant, include the situation of human rights defenders. The EU will underline its support for human rights defenders and their work, and raise individual cases of concern whenever necessary;
- working closely with other like-minded countries with similar views, notably in the UN Commission on Human Rights and the UN General Assembly;
- promoting the strengthening of existing regional mechanisms for the protection of human rights defenders, such as the focal point on human rights defenders of the African Commission on Human and Peoples' Rights and the special Human Rights Defenders Unit within the Inter-American Commission on Human Rights, and the creation of appropriate mechanisms in regions where they do not exist.

## **Support for Special Procedures of the UN Commission on Human Rights, including the Special Representative on Human Rights Defenders**

12. The EU recognises that the Special Procedures of the UN Commission on Human Rights (Special Rapporteurs, Special Representatives, Independent Experts and Working Groups) are vital to international efforts to protect human rights defenders because of their independence and impartiality; their ability to act and speak out on violations against human rights defenders worldwide and undertake country visits. While the Special Representative for Human Rights Defenders has a particular role in this regard, the mandates of other Special Procedures are also of relevance to human rights defenders. The EU's actions in support of the Special Procedures will include:

- encouraging states to accept as a matter of principle requests for country visits by UN Special Procedures;

- promoting via EU Missions, the use of UN thematic mechanisms by local human rights communities and human rights defenders, including, but not limited to, facilitating the establishment of contacts with, and exchange information between, thematic mechanisms and human rights defenders;
- since the Special Procedures are unable to carry out their mandate in the absence of adequate resources, EU Member States will support the allocation of sufficient funds from the general budget to the Office of the High Commissioner for Human Rights.

### **Practical supports for Human Rights Defenders including through Development Policy**

13. Programmes of the European Community and Member States aimed at assisting in the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries, are among a wide range of practical support for assisting human rights defenders. These can include but are not necessarily limited to the development co-operation programmes of Member States. Practical support can include the following:

- bilateral human rights and democratisation programmes of the European Community and Member States should take further account of the need to assist the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries by, *inter alia*, supporting human rights defenders through such activities as capacity building and public awareness campaigns;
- by encouraging and supporting the establishment and work of national bodies for the promotion and protection of human rights, established in accordance with the Paris Principles, including National Human Rights Institutions, Ombudsman's Offices and Human Rights Commissions;
- assisting in the establishment of networks of human rights defenders at an international level, including by facilitating meetings of human rights defenders;
- seeking to ensure that human rights defenders in third countries can access resources, including financial, from abroad;
- by ensuring that human rights education programmes promote, *inter alia*, the UN Declaration on Human Rights Defenders.

### **Role of Council Working Parties**

14. In accordance with its mandate COHOM will keep under review the implementation and follow up to the Guidelines on Human Rights Defenders in close coordination and cooperation with other relevant Council Working Parties. This will include:

- promoting the integration of the issue of human rights defenders in to relevant EU policies and actions;

- undertaking reviews of the implementation of the Guidelines at appropriate intervals;
- continuing to examine, as appropriate, further ways of co-operating with UN and other international and regional mechanisms in support of human rights defenders;
- Reporting to Council via PSC and the Permanent Representatives Committee (COREPER) as appropriate on an annual basis on progress made towards implementing the Guidelines.

-----

## RECOMMENDATIONS FOR GENDER-SPECIFIC IMPLEMENTATION OF THE EU GUIDELINES ON HUMAN RIGHTS DEFENDERS<sup>‡</sup>

This draft document outlines concrete suggestions<sup>1</sup> for EU Missions (including embassies and consulates of EU member states and European Commission delegations) in implementing “Ensuring protection – the European Union Guidelines on Human Rights Defenders” (EU Guidelines)<sup>2</sup>. It is specifically aimed to ensure due support and protection of women human rights defenders.

Women human rights defenders (WHRDs) is a term referring to women who individually or with others act to promote and protect human rights; it also refers to any individual working specifically to promote women’s rights. This sub-category of defenders has been singled out because women activists face risks particular to their gender committed by both state and non-state actors including their families and communities, in particular when they confront and challenge cultural, religious or social norms about the role and status of women in their societies. Whether or not they work to ensure reproductive and sexual rights, the rights of lesbian, gay, bisexual and transgender (LGBT) individuals or people living with HIV/AIDS, their protection falls squarely within international legal obligations of all states to ensure the realisation of the fundamental human rights of all, including WHRDs.

Because of prescribed gender roles, their often marginalized social status, and at times the “controversial” nature of their work, WHRDs encounter additional risks and obstacles to those faced by their male counterparts. These risks include sexual assault and harassment, various forms of violence and the use of pejorative ideas about sexuality to discredit their individual reputations, their work, and their political agendas. Consequently, WHRDs are often the ones who require the utmost support and protection.

Our organisations specifically call for:

- The adoption of specific conclusions by the General Affairs External Relations Council (GAERC) taking note of the risks and obstacles faced by WHRDs in the

---

<sup>‡</sup> The recommendations are endorsed by: Amnesty International (AI), Asia Pacific Forum on Women Law and Development (APWLD), Asian Forum for Human Rights and Development (Forum Asia), Center for Women’s Global Leadership (CWGL), Front Line, Human Rights First, International Federation for Human Rights (FIDH), Information Monitor (INFORM), International Service for Human Rights (ISHR), World Organisation against Torture (OMCT); [http://www.defendingwomen-defendingrights.org/recommendations\\_EU.php](http://www.defendingwomen-defendingrights.org/recommendations_EU.php).

<sup>1</sup> The recommendations contained in this document are drawn from the comments of the endorsing organisations and the outcome documents produced in national, regional and international fora, including the first international consultation on women human rights defenders (Sri Lanka, 29 Nov.-2 Dec. 2005), and preceding regional consultations; e.g., in Africa (Dakar, Senegal, 18-19 November 2004) and Asia (Bangkok, Thailand, 4-6 April 2003), and national and regional workshops facilitated by AI, APWLD, FORUM-Asia, Front Line and other organisations.

<sup>2</sup> *Ensuring protection – the European Union Guidelines on Human Rights Defenders*, 14 June 2004, <http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf>.

exercise of their activities, emphasizing the urgency and necessity of enhancing their protection and stressing the importance of applying a gender perspective in addressing human rights defenders issues;

- The incorporation of gender-specific recommendations and implementation tools in to the Handbook on the Implementation of the EU Guidelines on Human Rights Defenders (as drafted under the Dutch Presidency);
- The dissemination of gender-specific recommendations for the protection of WHRDs to all missions as soon as possible and their full implementation;
- The incorporation of the gender-specific recommendations in training for mission staff on HRDs to ensure specific focus on issues related to WHRDs.

## 1. Monitoring, reporting, assessment (Section IV, Article 8)

Pursuant to Section IV, Article 8 of the EU Guidelines, EU Heads of Mission (HoM) are requested to cover the situation of human rights defenders (HRDs) in periodic human rights reports. In monitoring the occurrence of any “threats or attacks against HRDs,” HoMs are requested to assess measures (legislative, judicial, administrative, etc.) taken by the State to protect against “violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action” that curtail the exercise of the rights enshrined in the UN Declaration on Human Rights Defenders.<sup>3</sup>

### 1.1 Violence, threats, retaliation

#### Document gender-specific or gender-motivated threats, retaliation and violence

Specific violations most commonly endured by WHRDs tend to be ignored. In fulfilling the monitoring and periodic reporting requirements to the Council Working Party on Human Rights (COHOM), HoM should also use the guidelines for documenting human rights violations against WHRDs<sup>4</sup>. EU Missions should also devise documentation systems or sustained and systemic ways to record incidents of violence, retaliation and threats against WHRDs, particularly by non-state actors including armed groups, community and religious leaders, family and community members and other activists.

<sup>3</sup> *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, 8 March 1999, General Assembly resolution 53/144 (A/RES/53/144), <http://www.ishr.ch/hrdo/documents/DeclarationHRD.pdf>.

<sup>4</sup> The Manual on Documentation of Human Rights Violations against Women Human Rights Defenders contains guidelines for the documentation of violations and abuses against WHRDs. It is a project of APWLD and Inform and will be finalized in April 2007.

### Accurately assess the severity of gender-driven harassment and threats

When assessing the situation of HRDs, EU Missions must accord due and equal weight to all forms of violence and threats whether they occur in the public or private sphere. EU HoMs should endeavour to document overt public violence, threats and repression of women defenders, as well as the lesser documented, more subtle and insidious violations that take place in the private sphere. Intimidation and hostility against WHRDs aimed to discredit their work by, for example, vilifying them based on their actual or perceived sexual practises or their rejection of prescribed gender roles—also known as “sexuality baiting”—must be recognized seriously and redress instituted properly.

### Incorporate the situation of WHRDs in periodic human rights reports

In fulfilling the monitoring and periodic reporting requirements to the COHOM, HoM should include an assessment of the situation of WHRDs in a particular country drawing from the reports and recommendations of the Special Representative of the UN Secretary General on Human Rights Defenders (both annual reports and country reports). It is also important to take into consideration communications on specific cases on WHRDs at risk addressed by the Special Representative to Governments. In many cases, annual and country reports of the UN Special Rapporteur on Violence against Women, its causes and consequences can also be a valuable resource on the violations and abuses against WHRDs.

### Consult with WHRDs and women’s organisations when producing human rights reports

The HoM should consult WHRDs and women’s non-governmental organisations (NGOs) in their respective countries for additional or alternative information on the situation of WHRDs in a particular country.

## **1.2 *De facto or de jure* adverse discrimination**

### Analyse state response to gender-based discriminatory laws and practices

Assessing the generalised patterns of gender-based discrimination will enable a more accurate and nuanced evaluation of the legal and social obstacles that hamper women from pursuing human rights work. EU Missions should highlight the failures of states to enact measures to protect, promote and fulfil women’s rights, including the rights of women to defend human rights, and .in particular, to ensure that WHRDs can conduct their activities without threats to their organisations and networks, whether they are legally or informally established.

### Monitor equal participation of women in public and civil life

EU Missions should report on discriminatory practices and laws which exclusively or disproportionately adversely impact on women and curtail their access to participation in public and civil life, especially as defenders of human rights. EU Missions should take particular note of the impact of prevailing attitudes that discredit and dismiss women as

experts on certain issues—such as religion and security—thus exclude them from debates related to women’s rights.

#### Document the absence of public platforms for pro-women’s human rights views

The gender-neutral interpretations of the freedom of expression fail to account for state and social pressure that silence women who wish to promote women’s rights by challenging national, local, social, or religious customs or conventions. Moreover, state regulations that disallow the formation or deny or revoke registration of NGOs impact in particular on WHRDs who are already more likely to be excluded from formal public spaces. To counter the effective marginalisation of women’s views from the public sphere, EU Missions could facilitate their access to public platforms and the full realisation of their rights to freedom of expression, association and assembly.

#### Document lack of access to form associations and organisations

Women’s lower socio-economic position and discriminatory legal or social practices deny women access to resources that can impinge on the exercise of their right to form human rights associations. Other laws or practices that require the approval of a male relative or a guardian for legal action or social sanction of a woman’s activism likewise prevent women from informally organizing or formally establishing groups. EU Missions could highlight cases where women activists are barred to organise themselves or are unable to access resources to form associations and organisations.

#### Monitor impunity for attack against WHRDs

In monitoring whether cases of violations against defenders are investigated, perpetrators brought to justice and victims compensated, EU Missions should account for unequal treatment of WHRDs who are subject to abuse. Perpetrators of violations against female—as opposed to male—human rights defenders enjoy greater impunity in countries with biased legal justice systems or discriminatory laws and practices or social attitudes that do not consider women as equal under the law or fail to take seriously violations against women. This situation is particularly prevalent when perpetrators are members of the WHRD’s family or community and the state lacks or fails to enforce protective or remedial measures for such violence against women.

#### Account for inter-sectional obstacles and risks faced by WHRDs

WHRDs are attacked for who they are in addition to what they do. When monitoring incidents against WHRDs and in assessing the level of risk and challenge to their work and person, the compound impact of various social factors should be considered. This is of particular concern when women’s various identity factors are compounded by hostility towards the political work they do. For example, women who work to promote the land rights of their indigenous communities struggle against hostility based on their gender and

ethnicity. Women active in trade unions or organisations for fair labour practices are particularly marginalised in countries where the female workforce is least protected and most exploited.

### 1.3 Pressure and Other Arbitrary Action

#### Document incidents of pressure not only by state but also by non-state actors designed to silence women and discourage their activism

In undertaking monitoring efforts pursuant to Section IV, Article 8, EU Missions should consider conducting field missions to highlight and verify little known or publicised violations against women defenders, in particular those operating in remote areas or who work on issues that challenge or are deemed to “transgress” social and religious conventions subjecting them to grave risk of violations by non-state actors. Such documentation can form the basis for EU Missions to call on states to investigate incidents of pressure, threats and abuse against WHRDs and to act to ensure redress for these violations and abuses, particularly by non-state actors.

#### Document donor funding policies that selectively mute women defenders working on certain rights

EU Missions should assess and evaluate EU and other donor funding policies that undermine support for comprehensive programmes that promote sexuality and reproductive rights, including work on HIV/AIDS and work with sex workers and intravenous drug users. Reduced funding to these presumably controversial areas endangers not only the provision of services and advocacy around these issues, but also contributes to a social climate of impunity for abuse against WHRDs who engage in such work.

#### Document curtailment of the freedoms of expression and association that inhibit the advocacy for women’s rights

EU Missions should also reflect in their documentation the rise in incidents of governments that are closing down borders, restricting movement, freedom of association and freedom of speech to stop human rights defenders from gathering together to advocate for human rights issues, such as civil society meetings and actions around the WTO, IFIs, etc. Curtailing these freedoms also inhibit the work of WHRDs and the advocacy for women’s rights.

## 2. Support and protection of HRDs (Section IV, Article 10)

Section IV, Article 10 of the EU Guidelines outlines possible measures that may be undertaken by EU Missions on behalf of and in consultation with human rights defenders. Notably, EU statements should regularly cite and address violations against WHRDs and the political, legal, economic and social contexts enabling the persistence of such abuse.



## 2.1 Coordinating closely and sharing information on human rights defenders, including WHRDs

### Form in-country working group of EU Missions staff working on human rights, gender, democracy, security and development policy

These country working groups, addressing different thematic concerns, should meet and strategise regularly about the situation of human rights defenders, including that of WHRDs.

### WHRD Focal Points in EU missions and delegations

Designate contact persons or focal points within the EU Missions and delegations that are gender-sensitive and aware of the specificities of WHRDs to facilitate contact with WHRDs.

### Involve WHRDs and members of international, regional and national NGOs

WHRDs and those who work for and with WHRDs should be involved in regular information and strategy meetings about protection and support for women defenders. It should also be ensured that contacts and dialogue with women and human rights defenders are not restricted to organisations funded by the European Commission (EC) or European Union (EU) member states, and that discussions transcend a donor-beneficiary relationship. Dialogue on a regular basis with local WHRDs is also necessary to better identify their concerns and tailor interventions and support to their specific needs.

### Maintain a “Watch List” of violations against WHRDs

Create a database of violations against defenders and collect case studies to highlight systematic violations and abuses against WHRDs. An alert system for monitoring and responding to threats or abuses against WHRDs can be developed based on this database. Note that such a list may only be initiated and maintained with the consent of the WHRDs and any information contained therein must be kept strictly confidential and under restricted access to ensure that it does not put WHRDs at greater risk.

### Provide in-country temporary shelter for WHRDs at grave risk

Since threats against WHRDs are often by family and community members and WHRDs may have less access to financial and other resources, EU Missions could offer temporary shelter in-country, in-region or elsewhere; refer WHRDs to other international organisations that assist human rights defenders at risk; or contribute to local initiatives, including shelters for women survivors of violence, to accommodate protection needs of WHRDs. EU Missions can also share information about expedited visa schemes or other temporary status option in EU member states for WHRDs at grave risk.

### Fund or provide for in-country protective accompaniment to WHRDs at risk

Accompaniment and protection procedures should be negotiated with the WHRDs at risk. EU Missions should be sensitive to the specific security perceptions and needs of WHRDs. For example, in many cases, WHRDs would seek protection not only for themselves, but together with their children.

- 2.2 Maintaining, suitable contacts with human rights defenders, including by receiving them in Missions and visiting their areas of work, consideration could be given to appointing specific liaison officers

### Maintain contacts with WHRDs, particularly those working on marginalised or 'unpopular' issues

Identify and outreach to WHRDs who work in remote areas or with populations or issues that are marginalised by the broad human rights agenda or the state. In particular, outreach to isolated WHRDs who work on controversial issues, such as those who work on violence against women, sexual and reproductive rights, and rights of LGBT individuals, people with HIV/AIDS, sex workers, and others. In the context of women activists who work at the community level and have not achieved public recognition for their work, this is crucial as they are most likely to suffer human rights violations without the public being aware of it.

### Create urgent action responses for WHRDs at risk

Urgent action responses may include emergency visits to the WHRD's home or place of work; extension of an open invitation to enter EU Missions compounds when faced with a threatening situation; visit the police station or detention centre where the WHRD is kept; or prompt diplomatic action on her behalf.

### Ensure that WHRDs participate in political dialogues and reconstruction initiatives

EU Missions should ensure WHRDs are active participants in bilateral or multilateral political human rights dialogues; general meetings on human rights in the country of the missions; processes addressing conflict/post-conflict reconstruction, pursuant to UN Security Council Resolution 1325 on Women, Peace and Security and relevant EU documents on the inclusion of women in conflict resolution and peace initiatives. EU Missions should ensure women's human rights form part of the agenda of these peace processes.

- 2.3 Providing, as and where appropriate, visible recognition to human rights defenders, through the use of appropriate publicity, visits or invitations

### Raise the profile of WHRDs, especially those working on marginalised issues

Providing visible recognition to WHRDs is particularly critical given the traditional separation in many countries between the mainstream human rights community and women's

rights movement. Visits from EU Missions and dissemination of materials that highlight the importance and legitimacy of the work of WHRDs are necessary, especially when they challenge traditional norms and practices. EU officials visiting men and women defenders should be of equivalent rank to ensure a consistent message about the equal importance and legitimacy of the work of all defenders.

#### Conduct visits to arrested, detained and imprisoned WHRDs

Due process violations against WHRDs must be documented from the time of arrest. EU Missions should request access to visit WHRDs held in police stations, pre-trial holding cells, any other detention centres, prisons and military bases. Note that EU delegations visiting WHRDs should include women representatives, preferably with experience in dealing with women's human rights violations, to ensure that WHRDs have the option to meet with and confide in women delegates.

When visiting WHRDs, EU Missions should also consider whether WHRDs have access to medical and counsel and if they can afford legal representation, especially in cases where they allege sexual assault and rape and that such assistance is prompt, sensitive, and timely to gather evidence of abuse and provide support for the survivor. Visit reports should ensure that confidentiality is protected and other risks associated with breaches of privacy or disclosure of information related to WHRD work does not place defenders at further risk.

#### Contribute to initiatives to establish rapid response intervention to aid WHRDs at risk

EU Missions could support networks of legal and other professionals that could immediately visit, provide medical assistance or legal counsel, or at a minimum, monitor the situation of WHRDs who have been arrested or detained. Lawyers, medical practitioners and other related professionals should be trained to identify gender-specific abuses and standards in assessing the case of arrested or detained WHRDs.

### **2.4 Attending and observing, where appropriate, trials of human rights defenders**

#### Account for gender-specific violations against WHRDs during all stages of the judicial proceedings

Discriminatory legal systems, laws, practices, social attitudes or religious dicta undermine women's equal access to the law. EU Missions should demand that WHRDs enjoy equal access to the law and the judicial investigations and proceedings against them are conducted in accordance with international fair trial standards and evolving legal norms about gender-specific violations.

#### Attend and observe parallel legal system proceedings

WHRDs may be at particular risk of unfair judgements in parallel legal or social system trials, such as community tribunals, religious or customary law courts. Such venues could function

as swift channels for condemnation and “sentencing” of WHRDs who transgress accepted norms in their advocacy for women’s rights.

#### Evaluate investigations of abuses against WHRDs

Being present in-country, EU Missions are in an advantageous position to press for exhaustive and impartial investigations to be conducted regarding violations against WHRDs and demand that those responsible are brought to justice and the victims or their relatives provided with redress and reparation.

#### Call for action against initiators of smear trials against WHRDs

EU Missions can identify state officials and non-state actors who abuse the criminal justice system, utilise the media or community to harass or threaten the reputations of WHRDs or curtail their legitimate activities for the defence of human rights and fundamental freedoms. Those identified in the trial observation reports could then be put forward for investigation and trial, as appropriate.

### **3 Promotion of respect for human rights defenders in relations with third countries and in multilateral fora (Article IV, Section 11)**

The EU Guidelines is not only applicable to EU member states but also governs relations with third countries. As such, it can be used to influence governments, both within the EU and beyond, to adopt measures for the protection of WHRDs.

#### Raising individual cases on WHRDs with third countries

Visits and dialogues with third countries can provide a unique opportunity for the EU to promote the rights of WHRDs. EU representatives should establish a practice of raising cases particularly on WHRDs with third countries, including those mentioned in the annual and country reports of the UN Special Representative on Human Rights Defenders and other Special Rapporteurs related to the protection of WHRDs.

#### Facilitating exchanges between international and regional mechanisms on human rights defenders

The exchanges between international and regional mechanisms on HRDs have been instrumental in the creation of regional mechanisms, such as the mandate of the Special Rapporteur on Human Rights Defenders of the African Commission on Human and People’s Rights (ACHPR), the Human Rights Defenders Unit of the Inter-American Commission on Human Rights (IACHR), the Focal Point on Human Rights Defenders of the Organisation for the Security and Cooperation of Europe (OSCE), and the development of regional approaches to the implementation of the Declaration on Human Rights Defenders. These initiatives should be continued and the EU should support regular annual meetings between international and regional mechanisms, with a focus on the concerns of WHRDs.

### Strengthening regional mechanisms on HRDs

Providing financial support is one way in which the EU and its member states can contribute to the strengthening of regional mechanisms. Lack of resources has been a significant obstacle on the ability of these mechanisms to carry out monitoring, investigation, and protection and follow up functions. For example, the EU and its member states can support professional staff servicing these regional mechanisms that are sensitive to the concerns of WHRDs.

### Facilitating cross-sectoral exchanges between mechanisms on women's rights and human rights defenders at regional and international levels

In order to ensure a gender-specific focus in the work of all mechanisms on human rights defenders at regional and international levels, the EU should also support meetings between women's rights and human rights defenders mechanisms. These could include exchanges between the UN Special Representative on Human Rights Defenders, the Special Rapporteur on Human Rights Defenders of the ACHPR, the UN Special Rapporteur on Violence against Women, the African Commission's Rapporteur on Women's Rights, among other specialised mechanisms, whose mandate holders often undertake field missions and document the obstacles WHRDs face in conducting their work and the gender-specific nature of the violations against them.

#### 4 Support for UN Special Procedures of the Commission on Human Rights, including the Special Representative on Human Rights Defenders (Article IV, Section 12)

The role of the EU and its member states in the former UN Human Rights Commission and the General Assembly has proven essential to ensuring the passage of resolutions strengthening the mandate of the Special Representative of the UN Secretary General on Human Rights Defenders. This support has been particularly important in the context of the recent attempts by some countries, both at the Commission and at the General Assembly, to weaken the text of the Human Rights Defenders resolutions and to limit the scope of the UN Special Representative's mandate.

### Support the renewal of the mandate of the Special Representative of the UN Secretary General on Human Rights Defenders and other relevant UN mechanisms

The mandate of the UN Special Representative on Human Rights Defenders is coming to an end in 2007. The uncertainty surrounding the UN reform process and the future of the procedures established under the former UN Commission on Human Rights raises questions regarding the certainty of renewing this mandate. In this context, the EU and its member states have an essential role to play by providing support to the renewal and strengthening of the mandate of the UN Special Representative on Human Rights Defenders and also influencing third countries to support this mandate. This proactive approach should also be adopted with regard to the mandate of the UN Special Rapporteur on Violence against Women.

## Strengthen exchanges between UN Special Representative on Human Rights Defenders and civil society

Support for regional and national consultations between the UN Special Representative on Human Rights Defenders and NGOs is another important mechanism for strengthening the work of the UN Special Representative and furthering the realisation of the rights of human rights defenders as codified in the UN Declaration on Human Rights Defenders and the EU Guidelines on Human Rights Defenders.

### 5 Practical Support to Human Rights Defenders via Development Policy (Section IV, Article 13)

In providing practical support to WHRDs, EU delegations should seek collaboration with UN specialised agencies and other international cooperation agencies with representation at the country level, in particular those with gender-specific programmes and which support women's groups, in order to ensure coordination in the implementation of the EU Guidelines with regard to WHRDs.

#### 5.1 Supporting human rights defenders through such activities as capacity building and public awareness campaigns

##### Translate and distribute copies of the EU Guidelines to WHRDs

Disseminating not only the EU Guidelines, but also information about best practices, actions and measures adopted by EU Missions to implement the Guidelines will further its application and contribute to assisting WHRDs and NGOs in understanding the practical support that the EU Guidelines can offer to WHRDs.

##### Ensure WHRDs have equal access to resources, capacity building and training opportunities

WHRDs, in particular those who work on issues of sexual and reproductive rights and economic, social and cultural rights (ESCR) are often marginalised and not recognised as *bona fide* human rights defenders with legitimate claims to exercise their right to defend human rights. Consequently, they are often excluded from broader opportunities available to human rights defenders in general. So EU Missions are encouraged to fund or provide capacity building trainings, and other academic and professional opportunities specifically for WHRDs and those engaging in defence of the rights noted above.

In particular, capacity building should include: Risk assessment and security training that address the gender-specific dimensions of risk and protection plans based on local context solutions; skills and techniques on preventing, managing and coping with context-specific violations and risks of working as WHRDs; details in national and local languages on national, regional and international mechanisms and resources available for human rights defenders, and in particular WHRDs; training on monitoring, documenting and reporting violations of human rights, including those against WHRDs themselves; developing

documentation in to advocacy materials and submission to national, regional or international human rights bodies; and campaigning techniques.

#### Strengthened coordination on capacity-building activities

Coordination between staff of EU Missions, other EU bodies, and NGOs (international, regional and national) should be strengthened at the country level to carry out capacity building activities for human rights defenders in general, and more specifically WHRDs.

#### Set up support mechanisms for multiple roles in the private and public spheres

Women still shoulder a disproportionate ratio of household and childrearing responsibilities. Due to the absence of support from family or community, who may oppose the activism of the WHRD, or support from the state (e.g. via subsidised childcare), women activists are unable to carry out their human rights work. EU Missions should ensure that women's multiple responsibilities are taken in to account and that they are provided with the support, including child care that will enable them to work as WHRDs.

#### Strengthen well-being support services for WHRDs

Set up or support services for the well-being of WHRDs, including addressing their psycho-social needs on a personal, organisational and community level.

#### Support international, regional and national capacity building initiatives on WHRDs

Support periodic national, regional and international consultations on WHRDs and assist in implementing follow-up actions, such as the development of a training manual on the documentation of violations against WHRDs, and the production of other resource materials on WHRDs.

### **5.2 Encouraging and supporting the establishment, and work, of national bodies for the promotion and protection of human rights**

#### Track response of national human rights bodies to concerns of WHRDs

Encourage national human rights bodies to cover all human rights, and in particular those that disproportionately affect women. Encourage joint projects of national human rights bodies with women's rights bodies or ministries. Advocate for the concerns of WHRDs to feature in the formation of the institutional mandate and on-going decision-making processes of national bodies. National bodies should have personnel to address violations against women and WHRDs.

### Document access of WHRDs to national human rights bodies and mechanisms

WHRDs are often unable to access national human rights bodies and mechanisms. EU Missions should report on such access by assessing the following: Are there staff with experience in handling complaints of gender-based violations? Are staff members sensitive to violations by non-state actors and the duty of the state to protect WHRDs? Do complaints by WHRDs receive equal attention to those by male human rights defenders? Are national institutions reluctant to take up cases deemed “controversial” because they involve defenders of sexuality or reproductive rights, including those of LGBT, sex workers or HIV/AIDS carriers?

#### **5.3 Assisting in the establishment of networks of human rights defenders at an international level, including by facilitating meetings of human rights defenders**

### Invite or fund WHRDs to attend sessions of UN and regional Human Rights bodies and meetings of inter-governmental bodies

EU Missions can facilitate invitations or funding for WHRDs to attend human rights meetings and events—e.g., the African Union, Arab League, Council of Europe, Organisation of American States (OAS), Organisation for the Security and Cooperation of Europe (OSCE), UN Human Rights Council, UN Treaty Bodies, UN Security Council—where they can testify and advocate on behalf of WHRDs in their country.

### Facilitate internships and tours of WHRDs to EU member states

Such trips could double up as temporary protection measures for WHRDs facing risk, as well as strengthen ties with international networks of human rights defenders, human rights and women’s rights organisations, and enhance advocacy and future protection for the WHRDs.

### Ensure access to international networks

EU Missions should ensure that WHRDs are aware of and have access to existing support networks, regional and international initiatives for the support of WHRDs. For example, EU Missions can assist WHRDs who are unable or are restricted from submitting information to international or regional human rights bodies to safely contact international organisations that may be able to submit such material on their behalf. EU Missions could also fund WHRDs to attend international network meetings, solidarity events, and other women and human rights defenders activities worldwide.

### Encourage inclusive alliances across the human rights movement

EU Missions can facilitate through co-funding or co-sponsorship of networking events, conferences and workshops to foster and strengthen alliances across various segments of the human rights movements and incorporate a women’s human rights perspective in to the general human right agenda.



- 5.4 Seeking to ensure that human rights defenders in third countries can access resources, including financial, from abroad

Prioritise funding to women's rights programmes and initiatives

As national and international funding to women's rights programmes worldwide has suffered severe cut backs in recent years, the ability of women activists to advocate for women's human rights has been compromised. EU funding priorities should emphasise the need to support the advocacy for the promotion of women's rights. Note also the persistent lack of funding to defenders who work on the rights of LGBT persons, sex workers and people with HIV/AIDS. EU Missions can also urge international financial institutions and funding agencies to allocate adequate funding and resources for the full protection of WHRDs and the promotion of their rights.

Create a resource pool earmarked for WHRDs

Specific funding or resource pool for WHRDs and their activities should include funding relief for WHRDs at risk, such as emergency support, legal defence fund, psychosocial counselling, and provisions for family care.

Craft human rights and development assistance programmes to address concerns of WHRDs

EU member states should endeavour to develop human rights and development assistance programmes that address the wider economic, political and social contexts that inhibit or restrict women's exercise of the right to defend human rights and allow for violations against WHRDs to take place.

Repeal governmental regulations that restrict access to funds by WHRDs

EU institutions and its member states need to review their regulations and influence third countries to ensure that the funding process is accessible to local and national WHRDs and that registration requirements to receive funding are not being used to limit the operation of NGOs. EU institutions, delegations and missions should raise these issues in visits to third countries, and incorporate them in political dialogues between the EU and third countries.

- 5.5 "By ensuring that human rights education programmes promote, *inter alia*, the UN Declaration on Human Rights Defenders..."

Support national implementation of Human Rights Defenders standards

Commission or fund national-level implementation of the UN Declaration on Human Rights Defenders and the EU Guidelines on Human Rights Defenders and identify gender-specific ways of implementing the provisions of these instruments in order to further the support and protection for WHRDs at the national level.

### Human Rights Education programmes at national and local levels

These programmes should target law enforcement personnel, government agencies and actors in the legal system to sensitise them to the abuses faced by WHRDs and ensure that they deliver appropriate responses. Human rights education programmes at the community level should address gender stereotypes and prejudices that work to silence and restrict WHRDs in the community.

-----

**REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF  
HUMAN RIGHTS DEFENDERS, MARGARET SEKAGGYA,  
TO THE U.N. GENERAL ASSEMBLY, 14 August 2008<sup>\*</sup>**

**(EXTRACTS)**

**V. Vision and priorities**

30. This section outlines the vision of the Special Rapporteur with respect to implementing the mandate entrusted to her. It is intended to serve as a road map for her activities in the months and years to come.

**A. Analysis of trends and challenges**

31. The Special Rapporteur believes that she can more effectively perform her overarching protection function vis-à-vis human rights defenders if she keeps abreast of the trends and patterns concerning them. An intervention in an individual case is more meaningful if it is made in a human rights context with which the Special Rapporteur is familiar. Likewise, an assessment of the situation of human rights defenders undertaken during a country visit cannot be as comprehensive as it ought to be if it ignores the broader human rights context, which ranges from the environment in which human rights defenders operate to the national and regional human rights situation, and which includes the political context.

32. Analysis of trends and challenges affecting defenders can be undertaken at various levels as part of the framework of the activities carried out in fulfilment of the mandate. In the area of communications, that means looking at previous similar or related cases; in the area of country visits, it means looking at the broader human rights context and the environment in which defenders operate. The corpus of country visits and communications, which are expected to remain at a high level, will offer opportunities to undertake further analysis of emerging trends on the basis of a solid number of cases.

33. In addition, as noted in paragraph 21 above, the Special Rapporteur regards the 2006 report on country profiles (E/CN.4/2006/95/Add.5) as the most comprehensive document analysing the situation of human rights defenders throughout the world and as a baseline for measuring the progress and setbacks resulting from the future analysis that she intends to carry out.

---

<sup>\*</sup> UN General Assembly, *Human rights defenders: Note by the Secretary-General*, 14 August 2008, A/63/288, Sixty-third session. This is the report submitted by the Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, in accordance with General Assembly resolution 62/152. Online at: <http://www2.ohchr.org/english/issues/defenders/docs/A-63-288.pdf>.

## **B. Recognition and protection for defenders most exposed to attacks and violations**

34. The mandate's focus on defenders exposed to specific forms of violations and attacks will be maintained and strengthened. Such defenders need specific and enhanced protection as well as targeted and deliberate efforts to make the environment in which they operate safer, more enabling and more accepting. Experience shows that attacks against defenders target in particular those who address human rights challenges deemed sensitive or controversial. This varies depending on several parameters, including the region, the country and the political, economic, social and cultural factors and interests concerned. The Special Representative has identified several groups of defenders that are targeted in particular for their activities to defend human rights.

35. In both thematic and country reports, specific attention has always been given to the situation of women defenders. The gender dimension of defending human rights is also among the aspects that resolution 7/8 of the Human Rights Council requests the Special Rapporteur to address. She intends to fulfil that requirement in all aspects of her work and will formulate specific recommendations in that regard.

36. It is obvious that women defenders are more at risk of suffering certain forms of violence and that they are targeted by various parts of the social and political establishment with forms of prejudice, exclusion and repudiation, in particular when they work in the area of women's rights. This can be particularly acute when women defenders are perceived as challenging cultural norms and social constructs related to gender, femininity and sexuality.

37. In her 2007 report to the Human Rights Council,<sup>1</sup> the Special Representative analysed groups and categories of defenders who are particularly exposed to attacks and human rights violations as a result of the kind of human rights work that they carry out. In particular, she considered the situation of defenders working to promote economic, social and cultural rights and of those working to promote the rights of minorities, indigenous peoples and lesbian, gay, bisexual and transgender people. Those defenders appear to continue to be at particular risk of attacks and violations.

38. Other groups of defenders might be at particular risk, depending on the geographic context or the thematic areas addressed. In some countries, defenders whose work relates to past abuses are targeted in particular. When analysing the right to protest in the context of freedom of assembly in her last report to the General Assembly, the Special Representative identified, *inter alia*, student protests as an area where repression and retaliation against protesters had been particularly harsh.<sup>2</sup>

39. Those are just two examples illustrating how both thematic and country reports can draw attention to defenders who are at particular risk. That serves a threefold purpose: (a) to

---

<sup>1</sup> A/HRC/4/37.

<sup>2</sup> See A/62/225, para.70.

enhance knowledge and understanding with regard to human rights defenders and their work, including by lending visibility to new or less familiar aspects of human rights activities, such as those carried out within the framework of article 7 of the Declaration on human rights defenders;<sup>3</sup> (b) to formulate tailor-made recommendations to address the protection needs of defenders; and to recognize the work carried out by defenders as human rights work. Such recognition is already a form of protection for defenders.

40. The number of communications sent by the Special Rapporteur is large enough to permit the identification of trends and patterns in this area. In addition, the Special Rapporteur intends to explore this area during her country visits and in her thematic reports. The focus of the Special Rapporteur on defenders at particular risk will also be part of the broader scope of the mandate and will be reflected in all her activities, including participation in conferences and interaction with stakeholders and partners.

### **C. Rights and freedoms of defenders**

41. The Declaration reaffirms a number of rights and freedoms that are instrumental to the work of human rights defenders.

42. The Special Rapporteur considers that her overarching function of promoting the implementation of the Declaration includes studying the specific challenges and obstacles that defenders face in exercising the rights set out in the Declaration with a view to formulating recommendations aimed at overcoming challenges and removing obstacles.

43. It is apparent that exercising the right to freedom of association continues to be a challenge for defenders in many countries. Restrictive legislation regarding non-governmental organizations (NGOs), excessive State scrutiny of the management and administration of NGOs and administrative and judicial harassment prompted by minor procedural irregularities or fabricated evidence, together with other forms of retaliation against human rights organizations, continue to be reported to the Special Rapporteur.

44. She also continues to receive cases involving violations against the right to peaceful assembly, in which, inter alia, defenders are arbitrarily arrested, protests are repressed through the use of excessive police force and authorizations for demonstrations are not granted.

45. The Special Rapporteur will continue analysing the obstacles encountered and the progress made in defenders' exercise of the right to freedom of association and assembly, by complementing and updating the work already reflected in reports of the Special Representative. The Special Rapporteur is also contemplating the possibility of developing indicators to assess compliance and gaps related to the exercise of those freedoms.

---

<sup>3</sup> Article 7 reads, "Everyone has the right, individually or in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance."

46. In addition to the right to freedom of association and assembly, the Special Rapporteur will study the other rights set forth in the Declaration, by undertaking thematic studies on issues such as access to information; existing practices concerning consultations with governmental defenders; the right to an effective remedy; the fight against impunity; and access to funding.

#### **D. Protection of human rights defenders**

47. The protection of human rights defenders is a core function carried out under the mandate and the ultimate purpose of the activities and interventions of the mandate holder.

48. Proceeding from that premise, the Special Rapporteur has begun to reflect on how to reinforce the protection function entrusted to her and is interested in engaging in processes and initiatives aimed at promoting the development of strategies, programmes, institutions and mechanisms for the protection of human rights defenders under threat.

49. She is keen to develop working methods and collaboration arrangements with interested Governments, national institutions, regional mechanisms related to human rights defenders, diplomatic representatives and relevant branches of international and regional organizations to follow up on individual cases brought to her attention.

50. The Special Rapporteur is also interested in studying the data required for the development of an early warning mechanism for the protection of defenders with a view to anticipating systematic threats against them by activating the appropriate sectors of the relevant national protection system.

#### **E. Follow-up**

51. As noted in paragraph 15 above, the Special Rapporteur intends to intensify efforts to follow up, including on individual cases addressed in her communications. She will do so by strengthening her collaboration with stakeholders, as explained above.

52. The range of actors described in paragraph 15 have a role not only in following up on individual cases, but also in implementing and/or monitoring the implementation of the recommendations of the Special Rapporteur, particularly those set out in country reports.

53. In addition to the actors mentioned in paragraph 15, the Special Rapporteur believes that sources of communications and, more broadly, the entire human rights community in all its aspects at the national, regional and international levels have a role in following up on cases and recommendations. While direct contacts between the Special Rapporteur and national human rights organizations are ideal and should be encouraged, in practice it is difficult to maintain such contacts on a regular basis because of language barriers and the amount of resources needed to do so. The mediation role that international NGOs, umbrella networks and other organizations working on the ground with defenders can play in

facilitating the access of national NGOs to the Special Rapporteur is fundamental in that respect, including in facilitating follow-up to individual cases.

54. Another actor that can play a positive role in monitoring the human rights situation concerning defenders — an actor that is already in the public domain — is the media. The Special Rapporteur already has a solid caseload of work involving journalists reporting on human rights and being targeted for that reason. The Special Rapporteur, like the Special Representative, regards them as human rights defenders and consistently intervenes to protect them. Their role in following up on cases at the country level through investigative journalism can make a real difference in terms of raising public awareness and shedding light on responsibilities. The Special Rapporteur will encourage the media to play their role in the promotion and protection of human rights.

#### **F. Collaboration with stakeholders**

55. Previous sections of the present report have highlighted the role that various stakeholders can play in making the activities of the Special Rapporteur meaningful and effective, in particular as regards follow-up and the roles of Governments, civil society organizations, national institutions, the United Nations system, regional mechanisms for the protection of defenders, diplomatic communities and the media.

56. While this aspect of her work need not be revisited, the Special Rapporteur wishes to reiterate once more that she will accord priority to the establishment and strengthening of solid relationships with regional mechanisms for the protection of human rights defenders, namely the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples' Rights, the Unit for Human Rights Defenders 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 the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe.

57. The Special Rapporteur welcomes the adoption, in February 2008, of the Declaration of the Council of Europe on action to improve the protection of human rights defenders and promote their activities by the Committee of Ministers of the Council of Europe and is interested in contributing to initiatives aimed at its implementation. Similarly, she is keen to contribute to efforts to improve the implementation of the 2004 European Union Guidelines on Human Rights Defenders. Both instruments have strategic value in the protection of human rights defenders. The Special Rapporteur strongly encourages the adoption of similar instruments in other regions.

58. The Special Rapporteur has already begun to collaborate with other special procedures mandate holders, in particular with regard to the communications that she sends jointly with other mandate holders. She is aware of the importance of such collaboration, which improves the effectiveness of special procedures, both as a system and in terms of individual mandates. She will consult mandate holders when planning her country visits and

drawing upon the findings of previous missions undertaken by other special procedures mechanisms with the aim of complementing and reinforcing their work.

59. The work of treaty bodies is and will remain a reference for both thematic and country reports. Relevant concluding observations will serve as a basis for follow-up in future missions, and the findings and recommendations set out in the country reports of the Special Rapporteur can be followed up in subsequent examinations of the same countries by treaty bodies. The jurisprudence and general comments of treaty bodies will continue to be references for thematic studies by the Special Rapporteur, particularly those related to the rights and freedoms of human rights defenders.

#### **G. Popularizing the Declaration on human rights defenders**

60. The Special Rapporteur believes that further efforts are needed to improve understanding of the rights and obligations that the Declaration on human rights defenders entails. Ten years after its adoption by the General Assembly,<sup>4</sup> the Declaration is not an instrument that is sufficiently familiar either to those who bear the principal responsibility for its implementation, namely, Governments, or to its rights-holders, namely, human rights defenders.

61. The Special Rapporteur will promote and engage in activities aimed at the popularization and dissemination of the Declaration at the national level, including by enhancing understanding of the rights and obligations that it entails—primarily, governmental accountability for its implementation—and by helping to build the capacity of defenders to ensure respect for the rights to which they are entitled under the Declaration.

62. Popularizing the Declaration will be part of the Special Rapporteur's approach to her work, to which she will add a number of ad hoc activities. For example, on the occasion of the tenth anniversary of the Declaration, she wrote to all Governments through their Permanent Missions in Geneva, encouraging them to translate the instrument into national languages, as the General Assembly recommends in paragraph 10 of its resolution 62/152. The Special Rapporteur has developed a website on which versions of the Declaration in various languages are made available.<sup>5</sup> She hopes that Governments will respond positively to her invitation and that the Declaration will soon be accessible in many other languages on the Special Rapporteur's website. She has also extended the same invitation to national institutions, civil society organizations and OHCHR field presences.

63. As a further contribution to the popularization of the Declaration, the Special Rapporteur annexes to the present report a number of key messages outlining principles and positions regarding defenders and the Declaration that can be used for awareness-raising and outreach activities concerning human rights defenders. The Special Rapporteur encourages the organization of activities to mark the tenth anniversary of the adoption of the Declaration,

---

<sup>4</sup> Resolution 53/144, annex.

<sup>5</sup> <http://www2.ohchr.org/english/issues/defenders/translation.htm>.



together with the sixtieth anniversary of the adoption of the Universal Declaration of Human Rights, and hopes that those messages can be used on those and other occasions.

64. In the years to come, the Special Rapporteur will undertake other activities aimed at popularizing the Declaration, such as the development of a manual or set of guidelines for various stakeholders on how to use and implement that instrument.

#### **H. Good practices**

65. The protection and monitoring role to be played in accordance with the mandate inevitably results in more reporting on violations affecting defenders rather than on good practices in the area of protecting them and promoting the right to defend human rights. While the protection function carried out under the mandate will remain predominant, the Special Rapporteur is keen to study, share and report on good practices related to human rights defenders. She believes that greater awareness of good practices in that area will encourage their adoption and will therefore contribute to better implementation of the Declaration.

66. The Special Rapporteur sees her engagement in activities aimed at the sharing of good practices related to human rights defenders, particularly at the regional level, as part of her overarching priority of popularizing the Declaration.

67. She will pursue that aspect of her work through participation in conferences and events on human rights defenders; through country visits, during which she will also look into good practices; and through analysis of trends and challenges, which she will undertake periodically.

68. The universal periodic review mechanism of the Human Rights Council can be another forum in which good practices related to human rights defenders can be shared and reported upon. That point will be expanded upon in the following section.

#### **I. Universal periodic review mechanism**

69. In her last report to the Human Rights Council, the Special Representative noted that the universal periodic review can be an opportunity to monitor the situation of human rights defenders in countries reviewed by the Council. She therefore encouraged Governments and other stakeholders to report on the situation of human rights defenders in national reports or in contributions submitted with a view to the preparation of the reports on which the review is based.<sup>6</sup>

70. The Special Rapporteur also considers the universal periodic review mechanism to be of strategic value in improving the situation of human rights defenders in the countries under

---

<sup>6</sup> See A/HRC/7/28, paras. 86-88.

review. As the Declaration is not a binding instrument and does not have a reporting mechanism, as a treaty-bodies system does, the potential of the mechanism is even bigger.

71. In view of the strategic value of the universal periodic review, the future report of the Special Rapporteur to the Human Rights Council will be devoted entirely to it with a view to the formulation of recommendations that will contribute to improving its effectiveness regarding the situation of human rights defenders.

72. To that end, the Special Rapporteur intends to share good practices that might emerge in this area, in terms of: (a) consistent analysis of the situation of human rights defenders in the universal periodic review reports; (b) precise and measurable recommendations concerning human rights defenders; (c) consultation with and participation by civil society at the national level; (d) a proactive attitude on the part of delegations in addressing human rights defenders; (e) the implementation of the recommendations resulting from universal periodic reviews concerning human rights defenders, including other elements of analysis that might emerge in the future.

## **VI. Conclusions and recommendations**

73. The present report outlines the vision and the priorities of the Special Rapporteur, which she wishes to share with Member States and other stakeholders in a spirit of openness and transparency. She hopes that the same spirit will characterize her relationships with them throughout her tenure.

74. The Special Rapporteur will interpret her mandate while building on the achievements of the previous mandate holder, the knowledge base developed and the methods of work used.

75. Inasmuch as the core function carried out under the mandate is the protection of human rights defenders, the Special Rapporteur will place strengthened emphasis on the promotion aspect of her role by focusing on good practices related to the protection of defenders and the promotion of the defence of human rights and by popularizing the Declaration.

76. In her future reports to the General Assembly and the Human Rights Council, the Special Rapporteur will have the opportunity to make many recommendations. She has already made a number of them in the body of the present report. In concluding the report, she wishes to reiterate the request made in the resolution renewing her mandate, which urges all Governments to collaborate with the Special Rapporteur. She therefore calls on them to respond favourably to her requests for invitations to visit countries, and to her requests that initiatives be undertaken to translate and disseminate the Declaration on human rights defenders, and that activities be organized to mark the tenth anniversary of the adoption of that instrument.

## Annex

### **Key messages concerning human rights defenders ten years after the adoption of the Declaration on human rights defenders – ten messages to raise awareness about defenders**

On the occasion of the tenth anniversary of the adoption of the Declaration on human rights defenders and with the purpose of further popularizing that instrument, the Special Rapporteur wishes to bring the following messages to the attention of the international community.

**1. Human rights defenders.** Human rights defenders are those who, individually or together with others, act to promote and protect human rights. It is their activities in the defence of human rights that makes them human rights defenders.

**2. The Declaration on human rights defenders is an international instrument for the protection of the right to defend human rights.** The Declaration reaffirms rights that are instrumental to the defence of human rights, including, *inter alia*, freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to gain access to information, to provide legal aid and to develop and discuss new ideas in the area of human rights. Implementing the Declaration is a precondition for the creation of an enabling environment that enables human rights defenders to carry out their work. National laws, including, in particular, legislation regulating the activities of civil society organizations, should uphold the principles of the Declaration.

**3. An enabling environment for human rights defenders.** The activity of defending human rights can be carried out safely and effectively if the environment in which defenders of such rights operate is conducive to their work. The enjoyment of the rights and freedoms set out in the Declaration is the primary element of an enabling environment. Other factors that contribute to such an environment are: the existence of effective and independent national human rights institutions; systematic collaboration with public authorities; the systematic participation of defenders in decision-making, including in the areas of law and policy, through institutionalized processes of consultation; policies related specifically to human rights defenders; human rights education policies and programmes; and open support for defenders on the part of public authorities and the political establishment.

**4. The protection of human rights defenders has a multiplying effect on the protection of human rights.** Human rights defenders are on the front lines of the protection and promotion of human rights in their countries. Protecting those who defend human rights has a multiplying effect on the broader promotion and protection of human rights. Conversely, wherever human rights defenders are under attack, respect for human rights is curtailed. The situation of human rights defenders is therefore a fundamental indicator of the situation of human rights in countries, and the protection of defenders is an indispensable element of the social and institutional framework for the protection of all human rights.

**5. A wide range of protection measures.** The primary responsibility for the protection of human rights defenders lies with Governments. Protection measures vary depending on the security risks faced by defenders. Ranging from security measures applied by the police to the analysis of patterns of attack against defenders, witness protection programmes, the investigation and prosecution of the perpetrators of attacks against defenders and public recognition and acknowledgement of the work of defenders and condemnation of attacks against them, Governments can undertake a vast array of actions to respond to the protection needs of defenders. Protection can also be ensured by other actors, including defenders themselves and their networks; the judiciary, with its fundamental role in ending impunity; human rights mechanisms at the national, regional and international levels, including those established specifically for the protection of human rights defenders; the diplomatic community, with its good offices and diplomacy tools, including the issuance of emergency visas; and the media, which report on and lend visibility and recognition to the work of defenders. A combination of a broad range of protection measures is often the best response to ensure adequate protection for defenders under threat.

**6. End impunity for violations against human rights defenders.** The inability to investigate, prosecute and convict perpetrators of attacks and violations against defenders exposes them to greater risks and strengthens the public perception that human rights can be violated with impunity. Breaking that vicious circle of impunity is a fundamental contribution to the protection of defenders and of human rights more broadly.

**7. Political will is often a decisive factor in bringing about real change.** Legislation, policies and institutions are indispensable factors in creating an enabling environment for defenders. However, the attitude of the political establishment can make a fundamental difference in the effectiveness of legislative and institutional frameworks. Very often, firm public stands in support of human rights defenders can transform a situation of vulnerability for defenders into one of empowerment.

**8. Protection and recognition for defenders most exposed to attacks and violations.** Attacks against defenders are targeted in particular at those who work to overcome human rights challenges deemed sensitive or controversial. This varies depending on several parameters linked to the human rights context. In general, more efforts are needed to recognize and protect women human rights defenders and defenders working to promote economic, social and cultural rights, as well as those working to uphold the rights of minorities, indigenous peoples and lesbian, gay, bisexual and transgender people. Those defenders need specific and enhanced protection, as well as targeted and deliberate efforts to make the environment in which they operate a safer, more enabling and more accepting one.

**9. The gender dimension of the defence of human rights.** Women defenders have been and remain a vibrant part of the human rights movement. In several countries, women defenders are the leading force in the human rights community and women's organizations are the sector of civil society with the most social capital. However, women defenders — particularly those working in the area of women's rights — are at greater risk of being targeted by forms of prejudice, exclusion and repudiation by various parts of the social and

political establishment. Analysis of the gender dimension of the work carried out in the defence of human rights is fundamental to addressing the protection needs and the legitimacy gaps that may affect women defenders. Parameters such as the level of participation, the number of organizations and the degree of representation related to women defenders, the prominence of women's rights on the agendas of defenders and patterns of gender-based violations against the human rights of defenders are to be taken into account when assessing the situation of human rights defenders.

10. **Establish and strengthen regional human rights mechanisms for the protection of defenders.** In recent years, mechanisms for the protection of human rights defenders have been established at the regional level within regional intergovernmental organizations. These include the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples' Rights, the Unit for Human Rights Defenders 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 the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. Those mechanisms complement and reinforce the protection role of the United Nations Special Rapporteur on the situation of human rights defenders and are well placed to closely monitor the situation of defenders. They deserve support and resources so that they can implement their mandates. Furthermore, consideration should be given to the establishment of a regional mechanism in Asia.

-----



## Subscriptions

The annual subscription rates of the LST Review are as follows:

Local: Rs. 2,000.00 (inclusive of postage)

Overseas:	South Asia/Middle East	US\$ 40
	S.E.Asia/Far East/Australia	US\$ 45
	Europe/Africa	US\$ 50
	America/Canada/Pacific Countries	US\$ 55

Individual copies at Rs.220/- may be obtained from LST, 3 Kynsey Terrace, Colombo 8, and BASL Bookshop 153, Mihindu Mawatha, Colombo 12.

For further details, please contact;

Law & Society Trust  
3 Kynsey Terrace, Colombo 8, Sri Lanka  
(+94)-11 2691228 / 2684845 / 2686843  
lst@eureka.lk

# Now Available

## LANGUAGE RIGHTS IN SRI LANKA: Enforcing Tamil as an Official Language B. SKANTHAKUMAR (Ed.)

Since 1987, and through the enactment of the 13<sup>th</sup> Amendment to the Constitution, Tamil has joined Sinhala as an official language in Sri Lanka. This elevated status for the Tamil language endows Tamil speakers living in any part of the country with the right, *inter alia*, of communicating with any government office or officer in their own language and of receiving communications too in that language.

However, outside of the Northern and Eastern provinces (and imperfectly even there), Tamil speakers continue to be discriminated against in their access to, treatment within, and experience of public services such as government departments, police stations, courts, public transport and health service – through non-compliance of state agencies with the official languages law – thus denying them *de facto* equality.

This book is a compilation of papers from a Consultation on the enforcement of Tamil as an Official Language. It includes analysis of Tamil language needs and proficiency among public officers in Colombo, Nuwara Eliya, Puttalam, Trincomalee and Vavuniya; elaboration of recent measures by the Government of Sri Lanka to bilingualise the public service; the role of civil society organisations in enforcement of language rights; and rights-based critiques of the official languages policy as well as recommendations for its improvement and application.

It also includes a valuable compendium of Constitutional and statutory provisions such as Chapter IV of the 1978 Constitution and the 13<sup>th</sup> and 16<sup>th</sup> Amendments; Public Administration Circulars Nos. 3 and 7 of 2007; historical documents such as section 29 of the Soulbury Constitution, the 1956 Official Language Act, 1958 Tamil Language Act; and international human rights law instruments such as relevant provisions of the UN Covenant on Civil and Political Rights and the UN Minority Rights Declaration in its entirety.

The contributors are *D. E. W. Gunasekera, N. Selvakumaran, Raja Collure, Kumar Rupesinghe* and *B. Skanthakumar*.

ISBN: 978-955-1302-14-6 | Price: Rs 350/-; US \$ 7



**Law & Society Trust**

3, Kynsey Terrace, Colombo 8, Sri Lanka  
Tel: 2691228, 2684845 Tele/fax: 2686843

E-mail: [lst@eureka.lk](mailto:lst@eureka.lk) Website: <http://www.lawandsocietytrust.org>.