

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*

## **Summary of the Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani**

by  
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In 2000, the Secretary-General named Hina Jilani as Special Representative on Human Rights Defenders, whose mandate included:

- (a) To seek, receive examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;
- (b) To establish cooperation and conduct dialogue with Governments and other interested actors on the promotion and effective implementation of the Declaration; and
- (c) To recommend effective strategies better to protect human rights defenders and follow up on these recommendations.<sup>1</sup>

The Special Representative fulfilled her mandate through communications, country visits and thematic reports. During her seven-year tenure, Hina Jilani undertook 13 country visits to 12 countries, sent 2,007 communications to 120 countries and prepared 34 reports.

### **Communications**

The geographical breakdown of these communications was as follows:

- 31% to the Asia/Pacific region,
- 27% to Latin America and the Caribbean,
- 15% to North Africa and the Middle East,
- 14% to Africa and
- 13% to Europe, North American and Central Asia.

The communications concerned the situation of 3,376 defenders, 22% of which were for women defenders. The highest percentage of communications concerning women defenders were in Europe, North America and Central Asia (36%), followed by Latin

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<sup>1</sup> E/CN.4/2001/94

America and the Caribbean (25%), Asia/Pacific region (21 %), North Africa and the Middle East (15 %) and Africa (10 %).<sup>2</sup>

The average rate of Government replies to communications from the Special Representative was 52% over the seven years. The Special Representative received further information in 38% of cases, with 50% from North Africa and the Middle East, 42% from Africa, Asia and the Pacific, 39% from Europe, North America and Central Asia and 25% from Latin America. When further information was received, the Special Representative sent follow-up communications in approximately half the cases.<sup>3</sup>

### **Thematic Analysis**

The Special Representative undertook a thematic analysis of the communications she sent and the replies she received. Her reports in 2004<sup>4</sup> and 2005<sup>5</sup>, identified trends related to the defenders targeted, the vulnerability of defenders, the types of violations, the perpetrators, the outcome of cases and the government responses.

In subsequent reports, the Special Representative focused on the right to assembly, defenders working on economic, social and cultural rights, defenders at particular risk and the right to protest<sup>6</sup>. Her 2006 report to the General Assembly<sup>7</sup> identified six categories of violations:

- arrests;
- violence against defenders during assemblies;
- threats against defenders;
- travel restrictions for defenders;
- assemblies that are interrupted or not allowed to be held and
- restrictions imposed on freedom of assembly through legislation.

The Special Representative's report to the General Assembly in 2007<sup>8</sup> built on that analysis.

In addition, the Special Representative was able to identify defenders that are at particular risk, including those defending the rights of indigenous people and minorities, those defending the rights of Lesbian, Gay, Bisexual, and Transgender/Transsexual people and women defenders.<sup>9</sup>

### **Expanded Network of Sources**

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<sup>2</sup> [\*Promotion and Protection of all Human Rights\*](#), Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Report Submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, A/HRC/7/28, para. 19-22

<sup>3</sup> *Supra*, note 2, para. 23-26

<sup>4</sup> E/CN.4/2004/94

<sup>5</sup> E/CN.4/2005/101

<sup>6</sup> A/61/312; A/HRC/4/37; A/HRC/4/37; A/62/225

<sup>7</sup> A/61/312

<sup>8</sup> A/62/225

<sup>9</sup> *Supra*, note 6, para. 29-34 A/HRC/4/37

A large network of sources on the ground is essential to follow-up on cases. These sources must be informed and trained on how to use the mandate and on the importance of submitting information. In addition, regional and international organizations are essential as interfaces between the Special Representative and the sources on the ground.<sup>10</sup>

### **Constructive Dialogue**

The main purpose of the communications from the Special Representative is to provide protection to human rights defenders. The effectiveness of the protection depends on constructive dialogue between the Government, the Special Representative and the source of the complaint. The Special Representative acts as an intermediary between the Government and the source to facilitate communications and follow-up communications.

Other stakeholders, such as national institutions, regional organizations and the diplomatic community can act as mobilizing agents and as a bridge between the Government and the defenders.<sup>11</sup>

### **Government Responsiveness**

The first responsibility of Governments is to verify the accuracy of the reported violation. Governments are then required to report on the measures taken to investigate the violations, prosecute the perpetrators, compensate the victims, protect defenders at risk and prevent future human rights violations. However, most of the reports from Governments lack relevant information and structure. In other cases, the reports often allege that defenders have committed illegal acts. This focus indicates alarming patterns of criminalization of the defenders.<sup>12</sup>

### **Country Visits**

Country visits are the most powerful means for the Special Representative to make a difference at the national level. They create momentum, opportunities to establish direct contacts with institutions and organizations and allow defenders to learn about the Special Representative's mandate and how to access it. There was also a higher level of Government responsiveness in countries that had received a visit by the Special Representative.<sup>13</sup>

### **Thematic Reports**

In her Reports, the Special Representative studied and analyzed thematic areas relevant to defenders and the implementation of the Declaration on Human Rights Defenders.

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<sup>10</sup> *Ibid*, para. 48-49

<sup>11</sup> *Ibid*. para. 36-39

<sup>12</sup> *Ibid*. para. 40-45

<sup>13</sup> *Ibid*, para. 53-56

Her 2002<sup>14</sup> Report studied the impact of the September 11, 2001 attacks on human rights defenders. In that report, Ms Jilani expressed concern that Governments might use the terrorist attacks as an excuse to breach human rights. She continued this analysis in her 2007 Report<sup>15</sup>, which dealt with the effect of anti-terrorism measures on the right to protest. In addition, she produced Reports which analyzed the impact of security legislation on defenders and the role of defenders in emergencies<sup>16</sup> and the role of defenders in the preservation, restoration and building of peace.<sup>17</sup>

The Special Representative's Reports also focused on the enjoyment of the freedoms of association, the freedom of assembly and the right to protest.<sup>18</sup>

The Special Representative's reports consistently address the specific situation of women defenders, who require additional protective measures in order to work in a secure environment<sup>19</sup> and other defenders who enjoy less protection and/or are more at risk of violations, including those defending the rights of indigenous people and minorities, those defending the rights of lesbian, gay, bisexual, and transgender/transsexual people and women defenders<sup>20</sup>.

Finally, the Special Representative addressed the importance of regional mechanisms for the protection of defenders<sup>21</sup>.

### **Report on Country Profiles**

Pursuant to her mandate, the Special Representative prepared a report to the Commission on Human Rights in 2006<sup>22</sup>, which contained a compilation of the developments in 118 countries. The report can be used as a benchmark to measure the progress on the implementation of the Declaration on Human Rights Defenders.<sup>23</sup>

### **Indicators**

The Special Representative identified the following indicators to assess the situation of human rights defenders:

#### **1. Legislation**

- Does legislation relevant to the activities of defenders comply with the Declaration

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<sup>14</sup> E/CN.4/2002/106

<sup>15</sup> A/62/225

<sup>16</sup> A/58/380

<sup>17</sup> A/60/339

<sup>18</sup> A/59/401; A/61/312; A/62/225

<sup>19</sup> E/CN.4/2002/106, E/CN.4/2006/95, A/HRC/4/37 and A/62/225

<sup>20</sup> A/HRC/4/37

<sup>21</sup> A/57/102 and E/CN.4/2006/95

<sup>22</sup> E/CN.4/2006/95/Add.5

<sup>23</sup> *Supra*, note 2, para. 69-71

2. Has an enabling environment for human rights defenders been created which provides for the:
  - Enjoyment of rights and freedoms instrumental to the activities of defenders and recognized by the Declaration
  - Existence and effectiveness of independent national human rights institutions
  - Systematic collaboration with public authorities
  - Systematic participation and consultation of human rights defenders in decision-making processes
  - Policies on human rights defenders
  - Human rights education policies and programs
  - Open support to defenders from public authorities and the political establishment
  
3. An Assessment of the community of human rights defenders
  - Number and types of organizations
  - Type of activities undertaken by defenders
    - Capacity-building and human rights education
    - Awareness-raising and outreach
    - Monitoring and reporting
    - Legal aid
    - Research and development of new human rights ideas
    - Civil, cultural, economic, political and social rights
  - Level of activities and outreach
    - Grass-root
    - National
    - Regional and international
  - Gender
    - Level of participation, organization and representation of women defenders
    - Prominence of women's rights on the agenda of defenders
    - Patterns of gender-based human rights violations against defenders
  - Non-discrimination
    - Level of participation, organization and representation of defenders belonging to or working on the rights of groups discriminated against
    - Prominence of equality on the agenda of defenders
    - Patterns of human rights violations against defenders belonging to or working on the rights of groups discriminated against
  - Networks and coordination
    - Level of solidarity and coordination among defenders
    - Existence and effectiveness of common goals and strategies agreed upon by defenders
    - Networks on thematic areas, at different levels and across sectors of civil society
    - Capacity to access and use national, regional and international human rights mechanisms
    - Transparency, objectivity and accuracy in the work of human rights defenders
  - Funding
    - Availability of funding opportunities, within and outside the country

- Capacity to obtain funding Possibility of determining their own priorities versus being donor-driven
  - Tax exemption for non-profit organizations
4. An assessment levels of security for defenders
    - Number and type of attacks and threats against defenders
    - Availability and effectiveness of protection programs and measures
  5. An assessment of impunity for perpetrators of human rights violations against defenders
    - Number and type of human rights violations against defenders
    - Accessibility of remedies available to defenders
    - Number, quality and outcome of investigations and prosecutions sanctioning violations against human rights defenders and providing compensation to victims
    - Existence, accessibility and effectiveness of independent oversight mechanisms for violations committed by public authorities
  6. Governments' collaboration with regional and international human rights mechanisms
    - Collaboration with the Special Representative
      - Responsiveness to questionnaires sent by the Special Representative for the preparation of reports
      - Responsiveness to communications
      - Responsiveness to requests to carry out country visits
      - Reporting on measures taken to implement recommendations<sup>24</sup>

### **Engaging Stakeholders**

Stakeholders should implement the recommendations of the Special Representative and promote the Declaration of Human Rights Defenders. The first step is to make stakeholders aware of the Special Representative's mandate and build their capacity to use it. The staff at the Office of the High Commissioner for Human Rights (OHCHR) acts as resources persons in training sessions and workshops to build the capacity of defenders to access and use the mandate. In addition, the OHCHR fact sheet can be used as a tool to disseminate information on the Declaration of Human Rights Defenders and the mandate of the Special Representative. Finally, a training manual on the Declaration of Human Rights Defenders and the mandate of the Special Representative should be developed.<sup>25</sup>

### **The Universal Periodic Review**

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<sup>24</sup> *Ibid*, para. 78

<sup>25</sup> *Ibid*. para. 81-85

The Universal Periodic Review may be an important opportunity to monitor the situation of human rights defenders.<sup>26</sup>

### **International and Regional Mechanisms**

The establishment of regional mechanisms has been a major development to advance the situation of human rights defenders. It is crucial for regional mechanisms to share experiences and identify common objectives. Regular collaboration will identify common priorities that will strengthen the overall system.<sup>27</sup>

### **Conclusions and Recommendations**

Hina Jilani's conclusions and recommendations are reproduced in full below.

“96. Following up on the work of the Special Representative is both a methodology as well as an end in itself. It is a methodology to monitor and assess the impact of the work of the Special Representative and to provide her with elements to identify gaps, trends, achievements and concerns in the implementation of the mandate and of the Declaration. Follow-up as an end in itself relates to the actual implementation of the recommendations of the Special Representative, including the collaboration with the mandate. As a methodology, it is part of the working methods of the Special Representative while follow-up intended as implementation of recommendations is within the responsibility of stakeholders, Governments, human rights defenders, international and regional organizations, international and regional human rights mechanisms, national human rights institutions and the media.

97. The two understandings of follow-up overlap and depend one on the other. Reviews and analysis of the work of the Special Representative facilitate implementation by further refining and targeting recommendations and advance the discourse on human rights<sup>28</sup> defenders. Implementation is strengthened when it is acknowledged by review exercises that recognize experiences and initiatives to follow up on the work of the Special Representative as good practices.

98. In reviewing work on follow-up undertaken by the Special Representative, this report outlines elements of a methodology, which shows how quantitative and qualitative analysis can combine to provide a comprehensive picture of the work of the Special Representative based on data and their analysis and not on perceptions; proposes a matrix to undertake follow-up country visits; outlines a schematic list of indicators to assess the situation of human rights defenders; and underlines the role of stakeholders in following up on each component of the work of the Special Representative, be it communications, country visits or thematic reports.

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<sup>26</sup> *Ibid.* para. 86

<sup>27</sup> *Ibid.* para. 91-95

<sup>28</sup> FN 14 “Front Line Handbook for Human Rights Defenders: What Protection Can EU and Norwegian Diplomatic Missions Offer?”, published by Front Line, November 2007. A/HRC/7/28 page 27

99. A follow-up methodology is of use not only to the mandate-holder but also to all those committed to the implementation of the Declaration. The Special Representative encourages stakeholders, in their different roles and capacities, to use and further develop this methodology to facilitate the implementation of the Declaration.

100. In this respect, the Special Representative recalls the contribution and collaboration expected from stakeholders to follow up on the activities of the mandate and implement its recommendations.

#### Communications

Governments should respond to all the communications sent by the Special Representative. Replies should be timely and comprehensive in responding to the questions asked by the Special Representative. In addition to these minimum requirements, a good practice for replies is to provide information not only on the measures taken to redress the individual situation reported but also on the initiatives undertaken to prevent similar situations from happening again. In some cases, by reporting individual situations, communications point in fact to structural and systematic problems of which individual situations are a consequence. Governments should see the communications procedure as an opportunity to be alerted to situations that, if addressed properly and thoroughly, can improve not only the situation of individual defenders but the overall environment of human rights defenders, which is a fundamental indicator of the general situation of human rights in a country. Human rights defenders, and organizations and institutions that act as sources of communications, should provide follow-up information on cases submitted to the Special Representative in a more systematic manner. They should also look at replies sent by Governments and provide feedback on that basis. Sources on the ground are in a better position to assess the information provided in Governments' replies. In order to improve the exchange of information between sources on the ground and the Special Representative, the role of international networks and organizations that act as interfaces between the mandate and sources on the ground is to be strengthened. (emphasis added) A/HRC/7/28 page 28.

#### Country visits

The Special Representative recommends to all stakeholders to regularly report on challenges and achievements in the implementation of the recommendations contained in reports on country visits. The Special Representative can submit this information in a separate report on follow-up to country visits, as the Special Rapporteur on torture does on a yearly basis, in the communications report, or in updates of the report on country profiles submitted in 2006.

#### Thematic reports

The Special Representative opened some lines of research, such as the enjoyment of defenders of the rights set forth in the Declaration or the situation of defenders at particular risk or less recognized. The Special Representative recommends this analytical work be continued and expanded to enrich knowledge and understanding



of the Declaration and the challenges and achievements related to its implementation. The high number of communications sent by the mandate provides now, and every year more so, a solid caseload that can serve as a basis for a wide range of thematic analysis and monitoring. The Special Representative recommends a more active engagement of stakeholders in the preparation of and the follow-up to her thematic reports, and refers to the practical suggestions and recommendations in this area put forward in paragraphs 72 to 74 above. (emphasis added)

101. Capacity-building activities on the Declaration and the mandate of the Special Representative should be developed and strengthened, those implemented by NGOs as well as by the United Nations system, in particular OHCHR, and other international and regional organizations.

102. The Special Representative recommends that the situation of human rights defenders be one of the elements to review in the UPR process of the Human Rights Council.

103. The Special Representative encourages the intensification of collaboration and joint initiatives among existing international and regional mechanisms for the protection of human rights defenders, with a view to strengthen the overall system for the protection of defenders by building on complementarities. (emphasis added)

104. Finally, the Special Representative wants to pay tribute to human rights defenders, for whose recognition and protection she has been working all these years, and encourages them to continue their struggle for the promotion and protection of human rights worldwide.”

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