

@BREACHING THE WALLS OF SILENCE

Issues at stake in the UN Draft Declaration on Human Rights Defenders

1. Breaching the walls of silence

Human rights defenders are the women and men on the front lines of the struggle to realise the ideal proclaimed in the Universal Declaration of Human Rights (UDHR), that all people should be free from "fear and want". Wherever there is persecution and oppression, where human rights are denied or human dignity threatened, where there are harassed minorities or oppressed peoples, defenders strive to protect the weak and hold the powerful to account.

Since the end of the Second World War, the international community has recognized a distinctive body of rights: if these rights were respected and promoted they would guide us towards the ideal enunciated in the UDHR. Human rights is understood today as a system of values, which forms the very basis of society and encompasses every aspect of life — the community, culture, politics and the economy — at the individual and the collective level. Human rights apply to everyone, without discrimination. The long negotiations that led to the recognition of these rights were attained through the struggles and confrontations in which oppressed peoples and individuals made the gains that emerge in the form of national and international law.

The work of human rights defenders takes place in the framework of these struggles and negotiations: they denounce human rights violations, and oppose them peacefully but actively; they support and protect the victims; and fight to end impunity. They also try to forge the consensus necessary for progress, promote understanding, and try to bridge the gaps between people and governments that are often derived from their history or culture. The human rights community is a mixture of human rights NGOs and other individuals or associations, including trade unions, popular and religious organizations. Human rights defenders can be lawyers, journalists, peasant leaders, relatives of victims, trade unionists, doctors, teachers or students. This community has expanded considerably in recent years, in parallel with the increasing scope of their work and recognition of their contribution.

Nevertheless, although significant gains have been made, the work of human rights defenders will never be completed. In part this is due to the nature of social and intellectual development, which ensures that "new" rights will continue to be proposed and debated,

while the implementation and enforcement of rights that have already earned recognition will be constantly assessed and evaluated.

Moreover — and perhaps this is the principal reason for the existence of human rights defenders — despite these advances and their recognition, despite the elaboration of a vast body of protective standards and the promises made by governments with regard to respecting them, human rights always run the risk of being trampled. When it comes to protecting the rights of their citizens, the distance between government rhetoric and reality, between expressed intentions and actions, is still enormous. The international community must remain vigilant in order to consolidate the gains of the past and continue advancing towards the future. This could never be accomplished without the commitment of the men and women who defend human rights within the borders of their own countries. Ultimately, they act on behalf of everyone.

The work of human rights defenders must be protected and supported, rather than restricted, because of the vital contribution they make to any community, at any stage of social or political development.

Human rights defenders are often found in the vanguard of debates over how to forge and strengthen the laws and institutions that protect rights, or about the role that human rights should play in international relations. Defenders furnish information, pose new ideas and challenge old concepts about rights and law, and introduce these ideas and proposals to lawmakers and the public for debate and scrutiny. Through their activities of promotion, denunciation and protection, defenders act as watchdogs for human rights, helping to curb the authoritarian tendencies that can be found in any community and promoting the values of tolerance and pluralism that lay the foundations for democratic coexistence. Even those governments that retain — at least in theory — sophisticated mechanisms for human rights protection have not been able to eliminate human rights violations. Faced with this situation, defenders act as the voice of those who cannot speak for themselves, and take on the defence of the dispossessed, minorities and other vulnerable sectors. In short, human rights defenders are an important factor in ensuring that civil societies that are more or less established continue to grow and develop.

In societies that are neither open nor tolerant, or are suffering the consequences of violent conflict or dictatorship, defenders play a decisive role. When unions and political parties have been banned, when parliaments have been dissolved and the free press closed, when dissidents have been murdered, jailed or forced into exile, human rights defenders are often the only force standing between ordinary people and the unbridled power of the state. When there are no official institutions able to provide protection and assistance, victims turn to human right defenders. Defenders try to relieve suffering, act as a last line of defense against arbitrariness, and denounce violations, but they also record and preserve the information that will one day expose the legacy of the past. They are a crucial source of

data about the situation of human rights in a particular country; they alert the world's media and international NGOs and denounce abuses to the relevant bodies of the United Nations (UN) and other institutions, helping to breach the walls of silence that offending governments often try to maintain.

The role of human rights defenders is likewise key in countries undergoing political upheaval or transition. They are among the first to take advantage of small democratic openings, no matter how feeble they appear to be. They help to enlarge the political spaces that are being won, they organize and participate in the first public demonstrations, taking advantage of the most minimal opportunity for freedom of expression. Because they are mobilized for causes that transcend party political lines, defenders help create the civil consensus that frequently follows dictatorships. They also work to keep the fundamental values of the community alive — including truth and justice for the victims of past human rights violations — values that can be vulnerable to the political pragmatism that often prevails during a period of transition. But at the same time, human rights defenders constitute a guarantee that justice is not turned into vengeance against the old oppressors and that the truth about the past is not used as a partisan tool. In addition, they try to ensure that new-found freedoms flourish, by continuing to investigate and denounce any new violations of human rights.

International human rights work shares many of the goals that defenders struggle to achieve in their own countries. At the international level, defenders can amplify and disseminate the ideas and information of their local counterparts. In reports and campaigns, they publicize the situation of the victims and offer them solidarity; they raise the awareness of people and their governments, pushing them to take action. Through international missions they gather information, observe trials and meet directly with the authorities, making recommendations based on experience gained in other countries. In international organizations and forums, they encourage the adoption of resolutions on countries or situations where human rights are under attack and they struggle to expand the frontiers of international law that consolidate and strengthen these rights. The international defense and promotion of human rights and their defense at the local level are interdependent; they sustain each other.

There is, however, an additional dimension to international human rights work: to defend the rights of the defenders and to obtain their recognition and protection. In many countries, human rights defenders put their lives on the line to protect others, and regularly confront threats and risks. Defending the victims and promoting their rights does not exempt them from danger, it magnifies it; and human rights workers themselves frequently become victims of imprisonment, torture, assassination and "disappearance". They are often targeted after being accused of offering support to "subversives" or of acting against the national interest. They can be harassed and have their work curtailed through ostensibly legal channels: when their writing is banned or censored, when official

restrictions prevent them from getting resources to support their work, deny them freedom of movement and the right to organize themselves or restrict their ability to represent the victims. The greatest threat comes from governments that perceive defenders as an obstacle to their policies of suppressing dissent, who fear that defenders will expose the repression they try to conceal from the scrutiny of the international community.

Amnesty International has pushed for more than a decade for the elaboration of an international instrument that recognizes and strengthens the right to defend human rights. Defenders work on the whole spectrum of human rights — trade union rights, rights to land, economic rights, women's rights, minority and language rights, rights relating to physical and mental health, and many more — not just the more limited range of civil rights that Amnesty International focuses on in its research and campaigning. However, the protection of those who defend and promote all of these rights is a matter of high priority for the organization, which is committed to using its resources to ensure that those who defend human rights can do so openly and fully, without fear of being imprisoned, harassed, tortured or killed.

2. Developing a United Nations Declaration on Human Rights Defenders

The international community has repeatedly commended the constructive role played by human rights defenders, and by the national and international NGOs that work on human rights. Resolutions taken by the UN Commission on Human Rights and the UN General Assembly, among others, have emphasized the rights and duties of individuals, groups and institutions to promote and protect human rights and fundamental freedoms. These same bodies have deplored the fact that human rights defenders are frequently persecuted and subjected to reprisals because of their work. In August 1995, for instance, the Sub-Commission on Prevention of Discrimination and Protection of Minorities expressed concern over whether defenders were receiving adequate protection from the competent authorities, and urged governments to investigate alleged cases of persecution of defenders. In 1993 the UN World Conference on Human Rights explicitly recognized "the important role of non-governmental organizations in the promotion of all human rights," and affirmed that NGOs "and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of national law."¹

It might seem obvious that those who fulfill a function so highly commended by individual governments and the international community as a whole should be protected by the law and enjoy their human rights in the exercise of that function. Everyone is already entitled

¹The Vienna Declaration and Programme of Action, part I, par 38.

to many of the rights that make human rights work possible — the right to freedom of expression, for example, or to freedom of association — and human rights defenders must be able to exercise these rights as freely as anyone else. Defenders should thus have an international instrument that specifically guarantees their right to defend human rights, that defines means for the exercise of that right and offers concrete guidance to governments on the legal safeguards necessary to allow defenders to operate. However, what seems so simple has not been reflected in the process of producing an international standard on defenders. Ten years of tortuous negotiations in the UN demonstrate once again that for some governments, where human rights are concerned (and above all their promotion and enforcement) the gap between rhetoric and reality continues to be as wide as ever.

In 1985 the UN Commission on Human Rights established an "Open-ended Working Group on a Draft Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms". The title alone suggested problems by raising the possibility that special duties could be imposed on defenders, and that "defendable" rights and freedoms might be restricted to those that have gained clear international recognition.

The Working Group meets annually in Geneva shortly before the session of the Commission on Human Rights, and is open to representatives of all members of the Commission and to observers from other UN member-states, intergovernmental organizations (IGOs) and NGOs with consultative status. Once the Working Group has finalised the Draft Declaration, it will be transmitted to the Commission on Human Rights, and then to the UN General Assembly for adoption.

From the beginning, the drafting process has been slow and complicated. The 10 years of debate have been characterized by the constant tension between those who are trying to reinforce the rights necessary for human rights work, and those who would like to impose on the rights of defenders a set of new limitations that could make their work practically meaningless.²

As the Working Group only adopts an article of the Draft Declaration when the state representatives reach consensus about it, individual governments can exercise a virtual veto against any article simply by continuing to oppose it. A few states³ have

²On the origins of the Working Group, see Nigel Rodley and Alan McChesney (representatives of Amnesty International and the International Commission of Jurists, respectively, to the Working Group in 1992 and previous years), in "Review", the International Commission of Jurists, no. 48 (1992).

³In the early years of the Working Group, the Soviet Union and other eastern-block countries presented arguments and reservations that delayed the drafting of the text. Since the beginning of the 1990s, progress has been slowed or stopped by China, Syria, and particularly Cuba, although they have frequently been supported by other governments, including Mexico and Iran.

systematically blocked the recognition of rights that are indispensable for the defence and promotion of human rights, and have taken and supported initiatives that would impose severe limitations on the work of defenders.

Among the greatest difficulties have been:

- ◆ refusal to recognize to defenders the rights and freedoms that make their work possible, such as the rights to freedom of expression and association
- ◆ refusal to recognize the right of groups and individuals to obtain the necessary financial and material resources for the defence of human rights, especially if these resources come from international sources
- ◆ refusal to recognize the right of defenders to intervene on behalf of victims, a restriction that would allow them to react only if their own rights were being violated
- ◆ resistance to accepting that defenders have the right to cooperate with each other at the international level
- ◆ attempts to subordinate the activities of defenders to domestic legislation — including even minor administrative provisions — which often falls short of the rights and protection offered by international human rights standards
- ◆ efforts to impose duties and responsibilities on defenders that would oblige them to act in accordance with the predominant ideology in their country
- ◆ reticence to granting the necessary legal safeguards to human rights defenders
- ◆ attempts by some states to define certain rights as "defendable", giving preference to those they consider most important, and thereby excluding others.⁴

The fact that these same obstacles continue to be thrown in the way of significant progress has resulted in a complex and convoluted draft, which is difficult for those without a specialist knowledge of the subject to understand. The extreme politicisation of the debate has frequently pushed the true object of the Draft Declaration to one side: to develop and protect the rights of human rights defenders.

In spite of the enormous difficulties in the drafting process, some advances had been achieved during the first nine sessions. A first reading text was finalised in 1994⁵, and the

⁴ see, for example, China's proposal. UN Document: UN Document: E/CN.4/1995/93, paragraph 52.

Group adopted 14 of the 21 articles that make up the Draft Declaration. This was made possible by the flexibility and spirit of cooperation consistently demonstrated by many government delegations. For their part, human rights NGOs made key concessions during the debates in order to get agreement on the text.⁶

The outcome of the 1994 session created expectations that the Draft Declaration would be completed and adopted the following year. There are two reasons why this expectation could not be met. First, the articles still to be adopted recognize those rights that are most essential for human rights work, and as such are controversial for some governments: the right to solicit and obtain resources for the work of defenders, for example, or the right to observe judicial proceedings. Second, there was a marked hardening in the position of the governments that are trying to impose severe limitations on defenders. During the two weeks of the 1995 session only two articles and a paragraph highlighting the importance of human rights education were adopted. The Preamble of the Declaration was discussed but not agreed. Yet only 18 months before, the UN World Conference on Human Rights had recommended "the speedy completion and adoption of the Draft Declaration".⁷

The following sections are not a comprehensive analysis of the Draft Declaration⁸. Rather, they highlight some salient aspects of the work of defenders, the degree of recognition that has been granted to their rights during the debates in the Working Group, and the nature of the obstacles and difficulties encountered⁹. The complete text of the Draft Declaration is attached as Appendix One.

⁵The drafting process of the Working Group consists of two stages, or "readings". A draft of the preliminary text is completed during the first reading. The text of this draft contains articles and elements still in dispute, which usually appear in brackets. During the second reading, a final text should be adopted which can be sent to the Commission on Human Rights. The first reading was finalised in 1994 and the second reading began. The most significant advances have been made during the debates of an informal drafting group.

⁶Several NGOs that have consultative status before the UN have been active in the Working Group. Participants in the 10th session, for example, included: Amnesty International, the Baha'i International Community, the International Commission of Jurists, the International Council of Jewish Women, the International Federation of Human Rights, the Lawyers Committee for Human Rights, the International Service for Human Rights and the Peace and Justice Service — Latin America

⁷Vienna Declaration and Programme of Action, part II, par 94.

⁸In particular, the text of the preamble will not be discussed, nor various corrections or initiatives that arose during the debates.

⁹For a complete analysis of the Draft Declaration and of the drafting process up to 1994, see the excellent article prepared by the International Service for Human Rights: "Draft Declaration on Human Rights Defenders, An Analytical Study". This document can be obtained from the International Service, 1 Rue de Varembé, PO Box 16, Geneva, Switzerland.

3. The right to defend human rights

The defence of human rights is a task shared by everyone, regardless of their ideological convictions, social background, or national origin. In any field of work, in schools and religious institutions, in unions and political parties, as individuals or by working in groups, the defence of one's own or other people's rights is an essential and entirely legitimate activity. As such it must be sanctioned, protected and encouraged.

If everyone shares responsibility for defending human rights, then everyone must be entitled to carry out the activities inherent in that task. The rights that make most of these activities possible are already guaranteed to all people: the right to freedom of expression, for example, or to freedom of association and peaceful assembly. The right not to take certain actions must likewise be affirmed, so that no one will suffer reprisals or punishment for refusing to participate in violations of human rights.

Recognition of the right to defend human rights should incorporate the following principles:

- ◆ the right to defend human rights should be interpreted in the widest possible sense so that it encompasses both promotion and efforts to prevent abuses
- ◆ the defence of human rights relies on the work of individuals, but also on informal groupings and legally recognized associations. Every possible effort should be made to encourage joint initiatives in human rights defence and promotion
- ◆ as the observance of human rights is a matter of universal concern, the right to defend them must not be subjected to geographical restrictions. It should be possible to exercise this right on the international as well as the national level
- ◆ it should be possible to exercise the right to defend and promote any and all human rights, including those whose acceptance is indisputable (like the right to life, liberty and personal security or the rights to work and an adequate standard of living), or other newer rights whose formulation is still being discussed
- ◆ individuals and groups should have the right to choose which rights they work on. Specialising in the defence of specific rights (such as the rights of the child, the right to equality or access to justice, or the right to a healthy environment) is as legitimate as working on behalf of all human rights

- ◆ the right to defend human rights must be guaranteed by the law. This guarantee should not just include the protection necessary for human rights defenders, but also assumes that their means of obtaining the material and financial resources that make their work possible are not obstructed

The Working Group has recognized a few of these principles in Chapter I, Article 1 and Article 3:

Chapter I, Article 1 (adopted January 1995)

Everyone has the right, individually and in association, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in this declaration are effectively guaranteed.

Chapter I, Article 3 (Adopted January 1994)

No one shall participate, by act or failure to act where required, in violating human rights and fundamental freedoms, and no one shall be subject to punishment or adverse action of any kind for refusing to do so.

4. The right to information and to freedom of expression and opinion in the defence of human rights

Ensuring that people are well informed about their rights and about the safeguards that states must implement in order to protect them is an important factor in the prevention of human rights violations. This right to know and to make known to others what rights they have, how they should be protected and who ensures this protection should thus be affirmed without restrictions. The full exercise of this right implies that the following must also be possible:

- ◆ to develop and promote courses on human rights for inclusion in official programs of education
- ◆ to carry out specialized training for professions that fulfill an important role in the defence and promotion of human rights, for example judges, journalists, lawyers, health professionals and teachers

- ◆ to implement courses for law enforcement officials and those in charge of detention centres and prisons, and to ensure that human rights education is incorporated into the relevant training programs for these officials
- ◆ to ensure that human rights information and education programs reach all sectors of society, by carrying out extensive information campaigns, popular education workshops and other means of spreading the message of human rights in clear, accessible and appropriate language

But the list of recognized human rights is not static and unchangeable. Political events and debates lead to the proclamation of new rights, and individuals, groups and institutions must be informed and able to participate in the development of new concepts and standards, and to advocate their full recognition. To achieve this it is necessary to have:

- ◆ the freedom to carry out academic and field research in order to analyse the ideas and events that influence the observance of established human rights and the emergence of new rights
- ◆ adequate resources to support this research, including libraries and unrestricted possibilities for the exchange of ideas and materials
- ◆ full access to national and international forums for debate and decision-making, in order to facilitate the promotion of ideas and opinions.

Some of these general principles have been recognized explicitly or tacitly in Articles 1 and 4 of Chapter II of the Draft Declaration:

Chapter II, Article 1 (Adopted January 1994)

Everyone has the right to know, to be informed about and to make known to others human rights and fundamental freedoms to which they are entitled.

Chapter II, Article 4 (Adopted January 1994)

Everyone has the right to develop and discuss new human rights ideas and principles, and to advocate their general acceptance.

But in order to put these general principles into practice, they must be accompanied by recognition of other, more specific rights. This includes a number of rights already recognized for everyone that should be strengthened and adapted for the defence of human

rights. However, a small number of governments in the Working Group persist in refusing to recognize these rights to defenders or in trying to limit them severely.

Exercising the right to be informed about human rights means being able to seek, receive and impart information and ideas. Besides open access to the media and to academic sources, defenders must be entitled to:

- ◆ direct and unhindered access to information on human rights and in particular to information on the means of ensuring state observance of these rights: relevant judicial rulings or decisions, for example, or the treaties that a country has ratified and the laws promulgated for incorporating those treaties into national legislation
- ◆ organize documentation centres and data banks where the information received from national and international sources can be accumulated, systematised and exchanged

In order to inform others and to discuss and debate ideas and principles about human rights, it is necessary to be able to:

- ◆ produce books, pamphlets and other materials that disseminate information and opinions
- ◆ organize and participate in conferences, round tables, discussions and seminars at national and international levels
- ◆ join or offer support to international missions that try to document the human rights situation in a country or region
- ◆ address governments and other public national authorities, the media, political parties, trade unions and other groups of defenders
- ◆ establish contacts with intergovernmental organizations that work on human rights issues, and with the governments and experts that belong to them.

The Working Group has reached no consensus on these issues. In the 1995 session, for example, Cuba tried to subject such activities to the limitations of national laws, and together with Syria, proposed that access to information be restricted.¹⁰

¹⁰ UN Document: E/CN.4/ 1995/ 93, paragraphs 158 and 163

The Working Group has not reached agreement on Chapter II, Article 2:

Chapter II, Article 2 (not agreed)

Everyone has the right, individually as well as together with others,

(a) To seek, obtain, receive and hold information about these rights and freedoms, including having full access to information as to how these rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) To publish, impart or disseminate freely to others views, information and knowledge of [universally recognized] human rights and fundamental freedoms.

Exercising the right to information and to freedom of opinion and expression in the defence of human rights means more than just discussing and promoting abstract ideas and concepts. Concrete, tangible violations occur every day, all over the world; the struggle to stop them demands that people be able to speak out without fear of reprisal. The individuals and groups that defend human rights must have the right to:

- ◆ verify the existence of abuses for themselves, by interviewing the victims, witnesses and relevant experts (lawyers and forensic doctors, for example), speaking to the authorities, studying documentation, and carrying out any investigation aimed at providing objective and impartial information
- ◆ analyse the national legislation of any country and the conduct of its governmental institutions in order to verify their consistency with international human rights standards and to see if the governments respect their international commitments
- ◆ analyse and debate openly the human rights situation in any country in meetings, conferences and seminars, and to make recommendations and propose solutions for the problems identified
- ◆ bring their opinions and findings directly to the attention of the public and the authorities through press conferences, open letters, published reports or presentations about the human rights situation of a specific country, minority or group.

The Working Group has not agreed to guarantee these elements of the right to information and freedom of expression and opinion in the defence of human rights. In 1994 for example, the representative of China argued that the right "to solicit public attention" to human rights issues was such a vague concept that it might "legitimise the use of violence

and even criminal acts, such as highjacking airplanes...".¹¹ Mexico suggested that such a right could be admitted only if restricted by national law and made subject to the requirements of public order.¹² In 1995 China, Mexico and Syria suggested eliminating the part of the text that recognized the possibility that defenders could exercise these rights "in their own country and elsewhere".¹³ Cuba, supported partially by Iran, proposed eliminating the entire article that refers to these rights, arguing that it was unnecessary.¹⁴

The Working Group has not reached agreement on Chapter II, Article 3:

Chapter II, Article 3 (not agreed)

Everyone has the right, individually and in association with others, to study, discuss and form opinions as to whether these rights and freedoms are observed, both in law and in practice, [in their own country and elsewhere, and to solicit public attention on these matters].

In Chapter III, Article 2, the Working Group recognized the right of defenders to communicate with governmental authorities, as a part of the right of all persons to participate in the government of their country and in the conduct of public affairs. Although not explicitly indicated, this recognition seems to include the right to submit requests to the authorities and to promote official ratification of international human rights treaties and initiatives to bring national legislation into line with these treaties. The formula adopted by the Working Group includes the right to criticize the workings of government bodies, to make proposals for improving them, and to point out barriers to the effective implementation of human rights.

¹¹ UN Document: E/CN.4/1994/81, paragraph 120

¹² UN Document: E/CN.4/1994/81, paragraph 134

¹³ UN Document: E/CN.4/1995/93, paragraph 184

¹⁴ UN Document: E/CN.4/1995/93, paragraph 196

Chapter III, Article 2 (adopted January 1994)

Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the Government of his country and in the conduct of public affairs. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticisms and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realisation of human rights and fundamental freedoms.

5. The right to freedom of assembly and freedom of association in the defence of human rights

Human rights can be defended by individuals working alone or through the combined efforts of different people in formal or informal associations. In addition, it is often necessary for groups of defenders to gather publicly or privately. It would be impossible, for instance, to exercise the right to know about, to debate and to promote new rights without being guaranteed the right to peaceful assembly, often realised through conferences, meetings and seminars. But defenders should also be ensured the right to carry out public meetings, demonstrations, vigils and acts of solidarity with victims in which they denounce and expose human rights violations.

The right to peaceful assembly should also be observed at the international level, in order, for example, to allow defenders to attend or host international meetings or conferences. This right should not be subject to more restrictions than other rights whose exercise is likewise inherently peaceful.

Beyond the right to peaceful assembly, defending human rights requires the skills and expertise of many different kinds of people, who must be able to pool these resources in a permanent way. Defenders must thus have the right to establish and participate in formal and informal groups or associations, particularly NGOs, to communicate with or belong to relevant international organizations, and to register legally-recognized associations.

The Working Group has not reached agreement regarding the rights to freedom of peaceful assembly and association. In 1994 for example, Cuba suggested that these rights should be subjected to any limitations imposed by national law, in addition to those already established in current international human rights standards. Cuba also announced its intention to introduce this kind of limitation in relation to other rights dealt with in the

Draft Declaration.¹⁵ The proposal was repeated in the 1995 session.¹⁶ Mexico suggested that the rights to peaceful assembly and association and the right to communicate with NGOs and international organizations should be exercised only in the defence of human rights already universally recognized.¹⁷ This last proposal would significantly weaken the possibility of working for the recognition of new rights.

The Working Group has not reached agreement on Chapter III, Article 1 of the Draft Declaration:

Chapter III, Article 1 (not agreed)

For the purpose of promoting and protecting [universally recognized] human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(a) to meet or assemble peacefully;

(b) to form, join and participate in non-governmental organizations, associations, or, where relevant, groups;

(c) to communicate with non-governmental or inter-governmental organizations.

6. The right to defend the human rights of others¹⁸

Those who are tortured or "disappeared", like the victims of many other human rights violations, are doubly vulnerable. Not only are they deprived of their fundamental rights, but the clandestine nature of certain violations makes it impossible for them to act on their own behalf. The struggle to support and assist victims, and to oppose violations, gives human rights defenders their most compelling reason to organize and act, it is the essence of their work. If the right to defend other people and to oppose the abuses they suffer is denied, the work of human rights defenders and the contribution they make to the community will be sabotaged. Without the focus on the victim, otherwise valuable

¹⁵ UN Document: E/CN.4/1994/81, paragraph 154

¹⁶ UN Document: E/CN.4/1995/93, paragraph 217

¹⁷ UN Document: E/CN.4/1995/93, paragraph 220

¹⁸ *The right to defend the human rights of third persons through the use of the law and institutions is analysed in the next section due to the special difficulties that have arisen in the Working Group in relation to this point.*

pursuits, like academic research and human rights promotion, would become purely abstract disciplines.

Although this is nothing more than common sense, the Working Group has not been able to reach agreement over whether defenders have the right to peacefully oppose *any* violations of human rights (against whoever and wherever they are committed), or to oppose only violations of their *own* human rights and fundamental freedoms.

In the 1994 session the Working Group accepted the principle that defenders had the right to participate in peaceful activities against violations of human rights in general, and it rejected a proposal that suggested that everyone has the right to oppose only the violation of his or her *own* rights.¹⁹ But during the 1995 session, Cuba²⁰, supported by China²¹, again proposed a wording that would limit defenders to defending only their own rights. The proposal of Cuba and China reversed the achievement of the 1994 session and the restriction was once again incorporated into the text, between brackets, to await further discussion. If this proposal were to be included in the Draft Declaration, it could mean, for instance, that a human rights activist would have the right to make a public declaration (if their right to do so is ultimately recognized) if he or she has been tortured, but would not have the right to protest against the torture of any other person. The relevant article of Chapter III has not been agreed.

Chapter III, Article 3 (not agreed)

Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of [their] human rights and fundamental freedoms.

In this connection, persons and groups are entitled to be protected under national law in reacting against or opposing, through peaceful means, activities and acts carried out by the State, groups or persons aimed at the destruction of [their] human rights and fundamental freedoms.

7. The right to use the law and the institutions of the State in the defence of human rights

¹⁹ UN Document: E/CN.4/1994/81, paragraph 161

²⁰ UN Document: E/CN.4/1995/93, paragraphs 224 and 234

²¹ UN Document: E/CN.4/1995/93, paragraph 226

In order to defend human rights and oppose abuses, defenders must have the right to appeal to the law and the institutions of the state, and to claim protection from them, for any victim of human rights violations. States have the corresponding obligation, often through their international commitments, to adapt their laws and institutions to permit the exercise of this right and to offer the required protection. This obligation is even more important in cases where the perpetrators of human rights violations are acting in an official capacity or with the protection or collusion of the state.

The principle that one can make use of the law in the defence of human rights was recognized by the Working Group, although not enough emphasis has been placed on the necessity of protecting defenders against abuses of the state.

Chapter IV, Article 1 (adopted January 1994)

In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in this declaration, everyone has the right to benefit from an effective remedy and to be protected in the event of violations of these rights.

But once more the recognition of an important general principle has not been accompanied by the recognition of other rights necessary to develop the principle fully and put it into practice. It is crucial that the right to appear before courts of law to seek protection and justice for the victims of human rights violations be recognized. The right to obtain a just decision must be implicit in this. Furthermore, if the defence of human rights requires the participation of lawyers, they must have the right to offer and provide such assistance.

Victims and defenders (particularly lawyers) use the courts and other state institutions to:

- ◆ demand the urgent intervention of judges and magistrates to protect fundamental rights at imminent risk of being violated
- ◆ denounce human rights violations, and demand that they be investigated and that those responsible be brought to justice
- ◆ bring cases against the state alleging responsibility for human rights violations committed by public officials, with the aim of securing compensation for the victims
- ◆ defend those wrongly deprived of their liberty because of the legitimate exercise of their rights (such as the rights to freedom of expression and association),

and in order to guarantee that those who have been accused of a crime are judged justly and impartially, with all the guarantees of due process

- ◆ appeal against abuses of power, such as unjust confiscations, unfair withdrawal of legal recognition from trade unions or professional associations, or the arbitrary removal of public officials
- ◆ secure legal protection and compensation for the victims of unjust actions committed by private or public companies, such as when workers or union leaders are arbitrarily dismissed for exercising their rights
- ◆ participate as trial observers, in their own and in other countries, in order to verify the observance of legal standards related to due process of law

Victims or their relatives often authorize lawyers to represent them before a court or tribunal. But the victims of violations such as "disappearances" and arbitrary detention are in no position to extend such authorization, neither are members of highly vulnerable groups, such as street children, or the mentally ill confined in isolation. In these situations it is imperative that defenders are able to appeal to the law and demand protection on behalf of third parties facing the imminent risk of human rights violations. This possibility is partially recognized in a number of international standards.²² In the Working Group, however, some objections were raised by Greece, the United Kingdom and the United States.²³ These delegations suggested that a provision recognizing such a means of defence would go beyond that permitted by the legal systems in many countries — which only allow the

²² For example, Article 9.1 of the Declaration on the Protection of all Persons from Enforced Disappearance, adopted by the UN General Assembly in December 1992, notes: "The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances...".

Principle 33 of the United Nations Body of Principles for the Protection of all Persons Under any form of Detention or Imprisonment, establishes in paragraph 2: "In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 [to make a request or complaint regarding his treatment], a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights."

At the regional level, the American Convention on Human Rights in Article 7 (Right to personal liberty), paragraph 6, which deals with the remedies of habeas corpus and preventative habeas corpus, establishes that: "The interested party or another person on his behalf is entitled to seek these remedies."

²³ UN Document: E/CN.4/1995/93, paragraphs 266, 277, 279, 291, 293.

victim or his expressly authorized representative to complain — and could be interpreted as allowing for "*actio popularis*".²⁴

Practically all of the other provisions that define the right to legal remedies or other assistance in defending human rights faced either direct opposition or proposals to water them down. Cuba, for instance, supported generally by China and Mexico, proposed limiting the right to denounce human rights violations openly in front of the authorities or national or international bodies. To achieve this, they again suggested subjecting this right to whatever national legal provisions are in force, thus giving very wide scope to the proposed limitation. And although they recognized the right to obtain a judicial decision, they proposed omitting the reference to the decision being "just".²⁵

Proposals have been introduced that would subject the right to observe trials and other legal proceedings — fundamental for evaluating judicial systems and guaranteeing that they operate effectively — to conditions more restrictive than those currently permitted by international human rights standards.²⁶ The introduction of some limitations to the right to attend trials and judicial proceedings could also be used to restrict the right of all persons to have their cases determined in a public hearing.

The right of defenders to address intergovernmental organizations has also come under fire. Mexico, for example, has proposed that defenders must exhaust all internal remedies before resorting to the mechanisms provided by international human rights instruments.²⁷ The proposal could be interpreted to mean that defenders could not make an oral intervention before the UN Commission on Human Rights unless they had first exhausted all remedies available in their own country.²⁸ On the other hand, the freedom to address (in writing, for example) those international mechanisms that monitor respect for human rights should never depend on whether defenders have taken up every single national legal remedy available.

This account covers only some of the problems encountered by the Working Group over this issue. The first sentence of Article 2 refers to Article 1 (above), which says, in part, that "everyone has the right to benefit from an effective remedy...".

Chapter IV, Article 2 (not agreed)

²⁴The argument does contain a difficult legal problem that could require special attention to resolve. Nevertheless, there is some hope that a solution can be found, given that the Cuban delegation, which has opposed most of the rights proposed for this chapter, appears to have accepted the merit, at least in principle, of the right to intervene judicially for the benefit of third parties in urgent cases (see E/CN.4/1995/93, paragraph 292).

²⁵UN Document: E/CN.4/1994/81, paragraph 202 and UN Document: E/CN.4/1995/93, paragraphs 268, 270 and 271, for example.

²⁶UN Document: E/CN.4/1994/81, paragraph 202, (iv).

²⁷UN Document: E/CN.4/1995/93, paragraph 278.

²⁸Although some quasi-judicial or judicial bodies do require domestic remedies to be exhausted before they will consider a communication admissible, this is not the case in most intergovernmental forums.

To this end, everyone has the right, *inter alia*, to:

- (a) Draw public attention to violations of human rights and to complain about the policies and actions of individual officials and governmental bodies by petitions or other means to competent national judicial, administrative, or legislative authorities or any other competent authority provided for by the legal system of the State, as well as to any relevant competent international bodies;
- (b) Complain to and have that complaint promptly reviewed in a public hearing and decided by an independent, impartial and competent judicial or other authority established by law;
- (c) Obtain a just decision and award providing redress, including any compensation due as well as enforcement of the decision and award, all without undue delay;
- (d) Attend such relevant hearings or proceedings or, as the case may be, trials to assess their fairness and compliance with national and international standards;
- (e) Offer and provide assistance, including professionally qualified legal assistance, in defending [universally recognized] human rights and fundamental freedoms;
- (f) Unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights in accordance with applicable international instruments and procedures.

8. The right to obtain resources for the defence of human rights

The individuals and groups who defend human rights obviously need to have material and financial resources in order to carry out their work. Defenders cannot rely on being paid for the services they provide; the victims of human rights violations and the other people represented or assisted by defenders are almost invariably poor. This clearly cannot stop the defence of human rights, and defenders raise the money and other resources they need by some of the following methods:

- ◆ the production and sale of books, leaflets, articles or other publications on human rights

- ◆ public fundraising through other campaigning activities, such as education and information sessions; selling crafts, posters and other goods; street theatre; speaking tours; and street collections
- ◆ collecting professional fees (on the part of lawyers or health professionals, for example) when and if the beneficiaries can pay
- ◆ donations and legacies from individuals or organizations, which could include financial contributions or other resources (such as books, medical supplies, computers or faxes)
- ◆ contributions from governmental and intergovernmental bodies, as well as from private foundations that offer support programs to human rights defenders.

These and other fundraising activities are legitimate as much for the means by which they are carried out as for their ultimate object — the defence and promotion of human rights through peaceful means. The right to solicit and obtain resources to support the defence of human rights ought to be recognized as fully as it is for any other activity, moreover, it should be encouraged and protected by law. Defenders should be granted the widest possible facilities for exercising this right, including tax exemption or charitable status. The right to obtain funding and resources should not be restricted in a discriminatory manner, that is, human rights defenders should not be subjected to any funding restrictions that do not apply to other individuals, or to public, private or international concerns operating in their country. On the contrary, if any exceptional or emergency situation makes funding restrictions necessary, some means of alleviating the situation which does not hinder the work of the defenders should be found as soon as possible.

Governments that violate human rights frequently try to suppress the activities of human rights defenders — both individuals and NGOs — by preventing them from obtaining adequate resources. Financial monitoring and restrictions can also be used more subtly to harass or control human rights NGOs: governments can hold up approval of foreign funding; they can impose unduly harsh auditing requirements; they can threaten to withdraw or restrict tax-exempt or charitable status. It is crucial that the right to obtain resources be clearly recognized in the Draft Declaration. But the Working Group has yet to achieve any consensus over this significant point. In the 1994 session, for example, Cuba and China proposed that the relevant article on the right to obtain resources be entirely eliminated,²⁹ arguing that it contravenes the sovereignty of the state, the principle of

²⁹ UN Document: E/CN.4/1994/81, paragraph 183. In 1992 Cuba had proposed that the obtaining of funds should be restricted to domestic sources in the country in which the activities of the defenders were taking place. For the possibility of obtaining resources externally, the Cuban proposal would impose a wide spectrum of limitations on the part of the law and other national administrative regulations. (see UN Document: E/CN.4/1992/53, Appendix II).

non-interference in the internal affairs of a state, and because the World Conference on Human Rights did not include this right in its final document. During the 1995 session Cuba added that the recognition of this right contravened the purposes and principles of the Charter of the United Nations.³⁰

Chapter III, Article 4 (not agreed)

1. Everyone has the right [is entitled], individually and in association with others, to solicit, receive and utilize voluntary financial or other contributions, for the purpose of promoting and protecting, through peaceful means, [universally recognized] human rights and fundamental freedoms.

2. In this connection, all contributions, including those from foreign sources, and the use thereof, shall be subject, on a non-discriminatory basis, to the national legislation as referred to in chapter V.

9. The obligation of the State to promote and protect the defence of human rights

Special responsibilities fall on states and their leaders in regard to the protection and promotion of human rights. They are responsible for exercising public power within strict limits; abuse of these limits necessarily leads to excesses or arbitrariness. Establishing the delicate equilibrium between the use of legitimate power and the respect for human rights is a fundamental obligation of every government. In order to fulfill this obligation, governments must establish institutions that guarantee the free exercise of fundamental rights and contribute to the organization of society so that these rights can be enjoyed as widely as possible.

States have responsibilities that go beyond internal affairs. Since it has been acknowledged that respect for human rights is a concern of the entire international community and not simply a domestic matter, governments (together with international organizations and NGOs) have intensified their role in the development and promotion of international human rights law. When the international community adopts a new human rights instrument, governments should incorporate its principles into their respective legal systems and put them into practice. At the same time, they should make every possible effort to ensure that other nations observe these principles.

³⁰ UN Document: E/CN.4/1995/93, paragraph 263

But this cannot be accomplished by states acting in isolation. In both the national and international spheres, the participation of individuals, groups and institutions of the community is crucial. The role of human rights defenders, as demonstrated throughout this document, is indispensable and the value of their contribution has been confirmed over and over again.

In principle, the role of defenders and the state's obligation to promote and protect human rights should complement one another naturally. Of course disagreements and contradictions do arise in the debate over the observance of human rights and how to put them into practice. But such debates must be allowed to flourish in order to advance the common objective of promoting and protecting human rights. It would therefore seem logical that governments genuinely interested in furthering this objective should encourage the work of defenders — who operate for motives essentially convergent with their own — and protect them from the risks they are exposed to because of their work.

While it is recognising the rights of defenders, the international community should also be establishing the obligations and responsibilities that governments have towards them. In this connection, it must be borne in mind that the state's commitment to promote and protect human rights would be difficult to fulfill without the presence of defenders.

The Working Group has moved in the direction of recognizing the role of states in protecting human rights and their obligation to offer protection to defenders. Some of the problems encountered during the debates include the following:

- ◆ the ideological divide over different conceptions of human rights has forced several participants to remind the Working Group that its mandate is not to redefine human rights, but to produce an instrument to protect human rights defenders
- ◆ difficulties in agreeing the scope of discretion that states should be allowed in regard to the level of protection they offer defenders and on the establishment of institutions for the defence of human rights

The fundamental problem, however, is that although the Working Group has agreed that the state is obliged to protect defenders from any threats or violence that arise "as a consequence of their legitimate exercise of the rights referred to in this declaration", it has not yet reached any agreement over exactly what those rights are. The risk is that provisions on state obligations to protect defenders, which could in principle be useful, will turn out to be meaningless if these provisions continue to refer to rights that are not defined. These and other problems make it necessary to recognize explicitly all the rights of human rights defenders that are to be covered by the Declaration.

The articles thus far adopted show that some level of agreement has been reached over the issue of protecting defenders:

Chapter I, Article 2 (adopted January 1995)

Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political as well as other fields and the legal guarantees required to ensure that all persons, individually and in association, are able to enjoy all these rights and freedoms in practice.

Chapter II, Article 5 (adopted January 1994)

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include:

(a) the publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the State's periodic reports to the bodies established by the international human rights treaties to which it is a party, as well as the official report of these bodies;

3. The State has the responsibility to take steps to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education, and to encourage all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials to include appropriate elements of human rights teaching in their training programmes.

Chapter IV, Article 3 (adopted January 1994)

To the same end, each State shall, inter alia:

(a) Take all necessary steps to ensure the protection by the competent authorities of everyone, individually or in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this declaration;

(b) Encourage and support, where appropriate, the creation and development of further institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institutions;

(c) Conduct or ensure that a prompt and impartial investigation or inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

10. Limitations to the work of human rights defenders

As an essentially peaceful activity conducted in pursuit of legitimate goals, the defence of human rights should not be subjected to restrictions. On the contrary, governments should encourage human rights work and support it through legal means.

The very nature of human rights work demands compliance with certain criteria: independence from governments and partisan interests; willingness to speak with any and all political agents; and adherence to the rule of law. Fundamentally it requires unrestricted respect for the human rights of others. Everyone can and should find some ground on which to defend human rights, but they must never be exploited, or callously used in the service of any other social, economic or political activity.

For its part, the Universal Declaration of Human Rights already refers to the essentially moral duties that everyone has towards the community, and explains why they exist. It also defines the reasons for any limitations that could be imposed on the rights it guarantees, and precludes interpretations of its own text that could be used as a justification for any suppression of human rights.³¹ The duties and limitations of the UDHR apply to everyone, and therefore to human rights defenders.

Since the beginning of the drafting process, AI and other NGOs, and some states, have argued that additional limitations to the work of defending human rights should not be included in the Draft Declaration. Existing instruments contain enough restrictions already. However, the NGOs understood that if it proved necessary to include limitations in order to reach a consensus, a similar formulation to that contained in the UDHR would suffice. The NGOs have been opposed to proposals that subordinate, in general and abstract form, the exercise of the rights of defenders to the provisions of national law. If these proposals were adopted, states whose laws violate international standards for human rights would be able to put a halt to the work of defenders simply by targeting laws or administrative regulations against them.

Several states have also consistently attempted to introduce limitations that go beyond those specified in the UDHR by proposing a series of ambiguous provisions which suggest that it is primarily national law that determines the form in which the rights of defenders can be exercised. Some of their concepts have been derived from other international instruments and applied, out of context, to the rights of defenders. Moreover, some states have proposed adding limitations to each of the articles in the Draft Declaration that recognizes those rights.

³¹Article 29 of the UDHR. 1. Everyone has duties to the community in which alone the free and full development of his personality is possible. 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30 of the UDHR. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

The Draft Declaration currently contains four articles adopted in Chapter V, dedicated to limitations. A few provisions appear to have been included in order to limit the limitations. Articles 1, 3 and 4 are inspired partially by Articles 29 and 30 of the UDHR. Article 2 is new.

Chapter V, Article 1 (adopted January 1994)

Nothing in the present declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations nor as restricting or derogating from the provision of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments in this field.

Chapter V, Article 2 (adopted January 1994)

Domestic law consistent with the United Nations Charter and other international obligations and commitments applicable to the State in the field of human rights and fundamental freedoms, is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed, and within which all activities referred to in this declaration for the promotion, protection and effective realisation of those rights and freedoms should be conducted. (adopted January 1994)

Chapter V, Article 3 (adopted January 1994)

In the exercise of the rights and freedoms referred to in this declaration, everyone, acting individually or in association with others, shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society and in accordance with applicable international obligations and commitments.

Chapter V, Article 4 (adopted January 1994)

Nothing in the present declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this declaration or at their limitations to a greater extent than is provided for in this declaration.

In Chapter IV, the Draft Declaration also offers guidance for the people or groups who could affect the human rights of others because of their profession or occupation

Chapter IV, Article 4 (adopted January 1994)

Everyone, whether individually or in groups, has the right to the lawful exercise of his occupation or profession. Everyone who, as a result of his occupation or profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national or international standards of occupational and professional conduct or ethnics.

These limitations, as well as the guidance given by Chapter IV, Article 4, should have been sufficient, but this did not prove to be the case. During the 1994 session, Cuba proposed adding a long list of new limitations to the work of human rights defenders. These proposals reinforce others that have attempted to create additional and often ambiguous duties and obligations for defenders, such as the responsibility to respect "the culture of the community in its entirety, as well as the cultures that exist within the community."³² This can be interpreted to mean that defenders could not oppose certain traditional practices and punishments that contravene human rights but are frequently tolerated or carried out by governments.³³

The Cuban proposal contains language more suited to legislation aimed at suppressing rights than to a human rights declaration. It aims at protecting state sovereignty, territorial integrity and the principle of non-interference in internal affairs from the threat apparently posed by the defence of human rights. Furthermore, it limits the work of defenders to its "humanitarian essence"; it prohibits selectivity or specialisation in the defence of human rights; and even calls on defenders "to refrain from manipulating information and events with the aim of defaming or damaging the image of other persons and institutions, thereby encouraging smear campaigns". This proposal consolidates many of the excuses habitually used by governments to repress defenders and hamper their work. If accepted, this and similar proposals would destroy the value of what has been accomplished in the Working Group and make the Draft Declaration a completely ineffectual instrument. The complete Cuban proposal is included as Appendix II of this document

³² From an idea introduced by Turkey in 1993.

³³ These and other obligations are contained in the proposed Article 5, Chapter V of the Draft Declaration. To analyse them in entirety, see Appendix 1.

One government representative noted that the proposal reminded him of the accusations people in his country had faced during a past military dictatorship. If the defence of human rights were to have a strictly humanitarian character in the sense of the proposal, he pointed out, it would enable the defenders to concern themselves with the victims of the torture but not to confront the state policies that permit such torture to take place. The demands for impartiality, he added, negated the essence of legal defence, which requires lawyers to be partial, and the reference to non-selectivity would imply that a defence lawyer for political prisoners could not be more concerned for the well-being of his clients than for all other prisoners.³⁴

The NGOs and various state representatives strongly opposed this new attempt to undermine the rights of defenders. The Cuban proposal was supported by China and Syria³⁵, and partially by Mexico³⁶.

11. Conclusion and Recommendations

Human rights defenders around the world have often been left to stand alone, surviving through sheer grit and courage. Governments have singularly failed to protect them. For more than 10 years, government delegations and human rights NGOs have made significant efforts to agree on a text aimed at recognising and strengthening the work and the rights of human rights defenders, but the Draft Declaration now appears to be stuck in a cul-de-sac. During the 1995 session, many delegations and the NGOs were given good reason to deplore the way in which progress was being obstructed. The Commission on Human Rights, for its part, resolved to reduce the length of the Working Group session in 1996 from two weeks to one.

³⁴ UN Document: E/CN.4/1994/81, paragraph 334 contains the intervention of the representative of Chile in this respect. Various other delegations considered the Cuban proposal to be unacceptable, among them Australia, Austria, Canada, the United States, the Russian Federation, the Netherlands, Norway, the United Kingdom (see for example UN Document: E/CN.4/1995/93, paragraphs 301 and 302).

³⁵ UN Document: E/CN.4/1994/81, paragraphs 335, 336.

³⁶ UN Document: E/CN.4/1994/81, paragraph 304.

If the proposals of the states that are blocking completion of the text were to be adopted, the rights of human rights defenders would be subjected to more limitations at the international level than the rights of any other person. Human rights cannot be defended if defenders themselves cannot exercise the rights necessary to do so. Moreover, an instrument would have been drafted whose principal function would be to protect states from human rights defenders, rather than vice-versa. Human rights defenders are no threat to the state. Governments that systematically violate human rights may well find that it damages their reputations, but they must realise that this damage is caused by the violations themselves, and not those who work to expose them.

The Draft Declaration in its current state poses few legal problems and consensus could be reached over the few that do exist. The root problem is that a small group of governments seem determined to prevent the creation of a useful instrument for the defence of human rights. Amnesty International believes that the purpose of this Declaration should be to recognize and strengthen the right to defend human rights in the face of real and sometimes violent suppression by governments and their agents. As part of our campaign to secure the completion and adoption of a strong text for this Declaration, we are urging all parties to the Working Group to heed the following recommendations:

I. As a first step, government delegations in the Working Group should agree that the consensus rule cannot be exploited in order to provide a *de facto* power of veto

II. If the Draft Declaration is to fulfill its intended purpose, it is vital that no new limitations on the rights of defenders be added to those already adopted

III. The Draft Declaration should guarantee the right to defend human rights, and the full exercise of all the rights and freedoms that this entails. As an absolute minimum this should include:

◆ **the right to defend the rights of other people**

◆ **the right to form, join or affiliate to national or international human rights organizations**

◆ **the right to advocate human rights ideas freely and openly**

◆ **the right to choose to defend any or all human rights**

◆ **the right to obtain and utilise the resources necessary for the work**

◆ **the right to communicate with national and international NGOs, and to have unrestricted access to intergovernmental organizations**

- ◆ **the right to participate in peaceful actions aimed at promoting observance of human rights**
- ◆ **the right to use the law and state institutions in the defence of human rights, and to appeal to them when the victims cannot do so for themselves**
- ◆ **the right to defend human rights in every dimension, independently of state ideology, on both the national and international level**

Appendix II

At the 1995 session the delegation of Cuba proposed that the following new paragraph be added to Chapter V, article 5:

"4. To this end everyone has a duty, *inter alia*:

(a) To refrain from using the promotion and protection of human rights for political purposes extraneous to the humanitarian essence of those activities;

(b) To refrain from encouraging or participating in activities detrimental to the principle of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of States or contrary to the security and stability of the country in which he lives;

(c) To refrain from acts contrary to the right of the people to which he belongs to achieve full self-determination and freely to exercise such self-determination to determine its political status and economic, social and cultural development;

(d) To refrain from any kind of propaganda for war or advocacy of national, racial or any other hatred which constitutes incitement to discrimination, hostility or violence;

(e) To observe the principles of objectivity, impartiality and non-selectivity in carrying out such activities;

(f) To refrain from manipulating information and events with the aim of defaming or damaging the image of other persons and institutions, thereby encouraging smear campaigns;

(g) To refrain from using the promotion of human rights as a way of covering up activities inconsistent with the purposes and principles of the United Nations."