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PROMOTION ET PROTECTION DES DROITS DE L'HOMME

DÉFENSEURS DES DROITS DE L'HOMME

**Rapport de la Représentante spéciale du Secrétaire général concernant
la situation des défenseurs des droits de l'homme, M^{me} Hina Jilani**

Additif

Mission au Nigéria^{*}

^{*} Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit, qui est joint en annexe au résumé, est distribué uniquement dans la langue originale.

Résumé

En 2005, la Représentante spéciale s'est rendue au Nigéria, où elle s'est entretenue avec de hauts responsables de l'État, des défenseurs des droits de l'homme d'horizons divers et des représentants d'organisations intergouvernementales internationales et d'États. Le but de cette mission était d'évaluer la situation et le rôle des défenseurs des droits de l'homme au Nigéria.

Dans la section I, la Représentante spéciale décrit le dynamisme actuel de la société civile au Nigéria et note que la transition à la démocratie a fait naître des défis variés et nouveaux pour le mouvement des droits de l'homme, tout en faisant ressortir la nécessité d'adapter les stratégies de celui-ci. Aujourd'hui, la société civile nigériane allie expérience et maturité à des idées et à des approches nouvelles et variées. La Représentante spéciale salue les initiatives prises par le Gouvernement dans le domaine des droits de l'homme, initiatives qui ont favorisé l'avènement d'un meilleur cadre pour la promotion et la protection des droits de l'homme, ainsi que de meilleures perspectives en la matière.

Dans la section II, la Représentante spéciale examine le cadre juridique dans lequel s'inscrit l'action des défenseurs des droits de l'homme. Elle note avec préoccupation la persistance d'un certain nombre de graves lacunes dans la législation, d'où un environnement qui est loin d'être propice à l'action des défenseurs des droits de l'homme, dont la sécurité est parfois mise en danger. En particulier, elle exprime sa préoccupation au sujet du cadre régissant la liberté de réunion, l'accès à l'information et, dans une moindre mesure, la liberté d'association.

Dans la section III, la Représentante spéciale passe en revue les limites de l'action des défenseurs des droits de l'homme au Nigéria. En particulier, elle se dit préoccupée par la situation des journalistes qui écrivent sur la corruption et la bonne gouvernance, ainsi que par la situation des syndicats et des syndicalistes. Elle passe en revue les difficultés rencontrées par les militants des droits économiques, sociaux et environnementaux, en particulier dans la région du Delta du Niger, et par les militants des droits de la femme. Elle note que les autorités ne réagissent pas aux problèmes soulevés par les défenseurs des droits de l'homme et que le degré d'impunité reste élevé, ce qui accroît sensiblement la vulnérabilité des défenseurs des droits de l'homme.

Annex

**REPORT OF THE SPECIAL REPRESENTATIVE OF
THE SECRETARY-GENERAL ON HUMAN RIGHTS
DEFENDERS ON HER VISIT TO NIGERIA
(3-12 MAY 2005)**

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Introduction

1. Pursuant to her mandate, the Special Representative of the Secretary-General on human rights defenders conducted an official visit to Nigeria from 3 to 12 May 2005.
2. The Special Representative would like to thank the Government of Nigeria for extending this invitation and wishes to acknowledge the cooperation extended to her by the Ministry for Foreign Affairs in the preparation of her visit and throughout its duration. She welcomed the opportunity to meet with the Minister for Foreign Affairs, the Minister of Internal Affairs, the Ministers of Defence, Labour and the Environment, the Chief Justice of Nigeria, the Attorney-General of the Federation and other senior members of Government and Parliament. She regrets that she was unfortunately not able to meet with the President.
3. Apart from Abuja, the Special Representative visited Kaduna, Port Harcourt and Lagos, where she met state governors, state police commissioners, armed forces commanders and other senior State authorities. She is grateful to the Office of the United Nations Resident Coordinator for the logistical support they provided during her visit. She also extends her gratitude to the wide spectrum of civil society actors who met with her to share their experience and expertise throughout her visit.

I. CIVILIAN RULE: AN ENHANCED ENVIRONMENT FOR HUMAN RIGHTS DEFENDERS

A. Human rights defenders community in Nigeria

1. Historical background

4. Human rights defenders in Nigeria were systematically targeted during the oppressive military regime in the 1990s. Representatives of NGOs, pro-democracy activists, journalists and lawyers suffered from extrajudicial killings, arbitrary detention, ill-treatment and torture aimed at suppressing their activities and silencing them. It is widely recognized that despite the repressive environment in which they worked, the resilience of human defenders in exposing the weaknesses and challenging the authoritarianism of the military regime was a significant factor in bringing about civilian rule. The 1999 elections, which brought President Obasanjo to power, marked an important transition from military to civilian rule which brought hope for a new era of respect for fundamental rights and democracy.
5. Significant improvements to the environment for human rights defenders were amongst the immediate gains of Nigeria's transition to civilian rule in 1999. Human rights defenders consistently reported that since the end of the military regime, their overall situation has improved.

2. A vibrant civil society

6. In the course of her visit, the Special Representative met with a host of civil society representatives who work on a vast array of issues from civil and political rights such as freedom of expression, information, illegal detention, summary executions and police abuse, as well as economic, social and cultural rights in a variety of contexts. In the southern states, defenders are particularly vocal on economic and environmental issues related to the impact of oil production

on local communities. Women's rights groups are also well represented in the Nigerian civil society.

7. Nigerian defenders come from very varied backgrounds including human rights activists, trade unionists, journalists and writers. In their vast majority, they work within civil society organizations, many of which have created issue-specific programmes, spread throughout the country. Frequently, networks are set up to give momentum to legislative reform initiatives. The freedom of information network that coordinates advocacy on the freedom of information bill, the women rights network, and the Transition Monitoring Group (TMG), and the election monitoring network, are illustrative of this trend.

3. A movement in transition

8. During military rule the human rights movement in Nigeria had united and organized to fight for democracy. The transition to democracy brought different and newer challenges for the human rights movement as well as the necessity of adjusting its strategies for the defence of human rights to the new environment. Although many significant actors in the struggle against military dictatorship either chose to join political parties because of the opening up of political space in the country, or disengaged from civil society activities, believing that their objective had been achieved, a new generation of defenders did step in. The present civil society in Nigeria, therefore, combines experience and maturity with fresh ideas and different approaches to the promotion and protection of human rights.

9. Most defenders work as members of human rights organizations with more of their activities focused on training, education and advocacy on law reforms. There are few organizations working on public mobilization and fewer engaging in public action. Monitoring of individual cases of violations and victim support has also waned, except as a part of women's rights advocacy.

10. Currently, amendments to the Constitution, legislation on the freedom of information, electoral reform and legislative reform for the protection of women's rights are amongst the central concerns of human rights organizations. Many of the organizations continue to participate in committees set up by Government for identifying areas of legislative reform in order to bring about conformity between national legislation and international standards of human rights. An important example of successful advocacy of human rights groups is the passage of a law in Rivers State prohibiting female circumcision.

11. Many NGOs also work in cooperation with government agencies on human rights education and training. One example of positive results of such cooperation is the nationwide prison staff training programme undertaken by Prisoners Rehabilitation and Welfare Action (PRAWA). The Special Representative was informed that this training has now been incorporated in the curriculum of the regular training of prison staff. Other successful collaborative programmes have been education programmes aimed at raising awareness of human rights within the population through workshops, seminars and conferences targeting students, teachers, and women. Defenders who have been active in the defence of human rights for a long period, however, feel nostalgic about the more vibrant role played by the civil society, particularly human rights organizations, in challenging lapses of the State and calling for accountability for human rights violations. NGOs whom the Special Representative met

explained this change in human rights activity in two ways. In the period immediately following the restoration of civilian rule in Nigeria, the civil society wanted to provide the new civilian Government with space to develop and strengthen. More recently, defenders have found it difficult to pursue issues of human rights violations owing to donor preference for projects in which defenders can adopt a collaborative approach with the State. Some also indicated that the will to struggle against State resistance to change practices that persist in violating human rights has been weakened after the long and hard struggle that the human rights community experienced during military rule.

B. Government initiatives supporting human rights defenders

12. As part of the transition to civilian rule, the Government of Nigeria adopted laws, developed policies and strengthened institutions aimed at addressing human rights issues. This movement towards inclusion of human rights concerns in State policies has created an improved framework and better prospects for the promotion and protection of human rights as well as a more constructive environment for human rights defenders to work in.

1. Ratification of international instruments

13. Today, Nigeria is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. In 2000 and 2001, Nigeria also signed the two Optional Protocols to the Convention on the Rights of the Child, ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Rome Statute of the International Criminal Court.

2. Strengthening national institutions for the support of human rights defenders

14. The National Human Rights Commission (NHRC), established in 1995, has received more support from the Government's policies. NHRC aims to promote and protect human rights by providing a forum for public enlightenment and dialogue and facilitating the implementation of Nigeria's various international and regional human rights treaty obligations. The functions of the Commission include monitoring and investigating alleged cases of abuse, reporting on the respect of human rights within the country, assisting victims in seeking redress, monitoring prisons, engaging in human rights education and helping the Government formulate policies on human rights.

NHRC cooperation with defenders

15. The strengthening of NHRC is seen by the vast majority of human rights defenders as a positive development in support of their work. Many indicated that NHRC is currently very active and collaborates with civil society in the areas of legislative reforms and awareness-raising programmes. An illustrative example of such cooperation is the collaborative initiative between NHRC, UNICEF, the Constitutional Rights Project, Penal Reform

International, the National Bar Association and the National Working Group on Juvenile Justice Administration which resulted in a national study visit to 68 prisons and detention centres in March 2003.

16. The dynamism of NHRC and its visibility amongst civil society are illustrated by the increase in the number of complaints received yearly, which have more than quadrupled since 1999. Between 1996 and 1998, the Commission received a total of 376 complaints, whereas from 2000 to 2002, 1,506 complaints were received.

Limitations of NHRC

17. While NGOs have generally recognized the positive role played by NHRC in addressing human rights issues, they also pointed out a number of limitations. Most acknowledged that NHRC has been operating independently, but expressed concerns that institutional safeguards are insufficient to guarantee a sustained level of activity or development. In this respect, they emphasized that the 1999 Constitution does not guarantee the existence of such a body and that the NHRC statutes do not adequately guarantee its independence. In particular, they pointed to the fact that members of the Commission are appointed by the President, who also has the power to remove them.

18. They also underlined the Commission's lack of investigatory powers and authority to compel authorities to respond to their queries. Overall, NHRC reported having received good cooperation from the authorities in the pursuit of its activities, but in some cases having encountered reluctance from some officials. At times, such obstructionist behaviour on the part of the authorities has resulted in undue delays in the conclusion of cases. Defenders also pointed out that NHRC has not, so far, made its reports public nor made any public assessment of the situation of human rights in the country. Lastly, both NHRC itself and defenders stressed that the lack of adequate funding represented a serious obstacle to the Commission's ability to discharge its mandate adequately.

19. During her meeting with the Executive Secretary of NHRC, the Special Representative was informed that in addition to its Abuja headquarters, five zonal offices have been established in Lagos, Maiduguri, Enugu, Kano and Port Harcourt. She regrets not having been able to assess the capacity and efficiency of these offices first hand. Nevertheless, she notes that amongst the civil society actors, only a few are aware of their existence.

3. New initiatives

Development of a national plan of action on human rights

20. The Government has developed a National Plan of Action, which was presented to the public during the Human Rights Summit in October 2001. The Special Representative was given a copy of the plan, which aims at constituting a framework for sustained and coordinated measures to be undertaken by the country as a whole to protect and promote human rights within a given timeframe.

21. NHRC reports that the process of developing the plan was both collaborative and consultative. It brought together various stakeholders, including the National Assembly,

government departments and civil society (including the private sector) and provided a forum for identifying and agreeing on priority areas. In November 2002, the finalized plan was submitted to the Chairman of the Steering Committee, the Attorney-General of the Federation and the Minister of Justice.

22. The Special Representative was given the implementation plan for the National Action Plan, which provides for a number of steps to be taken before 2006, but she was unable to confirm whether the implementation process had started and how it is being carried out. As such, she cannot assess its impact on the work of human rights defenders.

Advisory functions

23. In order to flesh out its new policies for human rights, the Government has created several senior advisory positions. The Special Representative had the opportunity to meet with the Special Adviser on Ethics and Human Rights and the Special Adviser on Civil Society.

24. The mandate of the Special Adviser on Ethics and Human Rights is to advise the President on human rights matters for the purpose of developing national policies. It also acts as a liaison office between the various governmental structures working on human rights. Very few defenders reported having had any interaction with this particular office; on the contrary, many expressed some disappointment at the lack of response after contact had been initiated. Owing to the minimal information she received on the activities and programmes carried out by the office of the Special Adviser, the Special Representative regrets that she is not in a position to assess its impact on the situation of human rights defenders.

25. In 2003, the Government created the Office of the Special Adviser on Civil Society to act as a bridge between the Government and civil society actors. It is tasked with presenting the concerns and aspirations of the Nigerian civil society to the Government and informing civil society about governmental programmes and activities. For instance, the office was tasked with identifying three NGOs to participate in the National Reform Conference. The Special Representative welcomes the creation of this Office which, if granted the appropriate space and resources, could act as a forum for productive civil society participation in public affairs and policies, as a channel of communication between civil society actors and the executive branch, and help develop a climate of mutual trust and respect between the Government and civil society.

26. However, the Special Representative notes that while NGOs welcomed the creation of this position, few reported having developed working relationships with this office and, in the absence of any declared policy or initiatives by the Office of the Special Adviser, there was little clarity about its role. In several instances, NGOs also expressed reservations regarding the process through which the Office chose the NGOs with whom it maintained any level of contact.

Parliamentary committees

27. Many defenders welcomed the positive role performed by the committees of the House of Representatives in addressing human rights concerns. They indicated that House committees have shown a capacity to react consistently to human rights issues and been easily accessible to civil society actors. Notably, defenders mentioned the positive feedback received from the

House committees on information, water resources, power and human rights. The Special Representative regrets that her scheduled meetings with the Chairman of the Human Rights Committee and the Speaker of the House were cancelled. As a result, she was not able to collect information on the mandate and activities of the Committee or have any discussions that could enable her to assess its efficacy for the protection and support of human rights defenders.

28. Many defenders and some members of the committees whom the Special Representative was able to interview regretted the lack of response from the Government regarding concerns raised in the Parliament on issues brought to its attention by human rights groups. They regretted that committees are limited to making recommendations which receive little attention or response from the executive and are seldom implemented. It was also emphasized that this lack of response resulted from Parliament's limited powers of oversight of executive action.

Human rights initiatives by the states

29. A number of states have set up Directorates of Citizens' Rights. The Special Representative met with the team from the Lagos Directorate established in 1999 as part of the state administration's policy to provide greater access to justice through Government-funded legal defence, advice, mediation and human rights education.

30. Of particular relevance to the Special Representative's mandate is the work performed by the Human Rights Protection Unit and the Office of the Public Defender. The Unit is responsible for the protection and enforcement of the fundamental rights of the residents of Lagos State. It handles petitions concerning human rights violations and monitors prisons. Between 2000 and 2004, the Unit officially handled some 2,636 petitions, mostly related to landlord and tenant issues, arbitrary arrests, detentions and killings. Thirty one cases ended in trials, and the Unit was able to secure the release of a number of persons illegally arrested and detained. It is noteworthy that the number of petitions received and dealt with by the Unit more than tripled in its first four years of existence, increasing from 263 in 2000 to 865 in 2004. The Directorate also organized a series of workshops aimed at training the police forces.

31. The Office of the Public Defender aims at providing free legal advice and counsel in civil and criminal matters to disadvantaged populations. The Office now comprises 30 lawyers and five project officers. The bulk of its activities are related to monitoring cases of prolonged illegal detention and of individuals awaiting trials for years. The Lagos office reported having secured the release of some 1,000 prisoners and represented 50 accused persons in courts across the state.

32. Both the Directorate and the Office reported that high levels of corruption amongst security forces have created serious obstacles to their work. Funding has also been a factor limiting their ability to expand their work and spread the programme to other parts of the country.

33. The Special Representative was able to confirm that the work performed by the Directorate has been well received by the population and the NGO community. Many Lagos-based NGOs reported being in regular contact with the Directorate and consider this new institution as an accessible forum and an efficient tool for raising and resolving human rights issues. Concern was expressed, however, that while the Office has received significant support from state

authorities, the legal aid programme is not performing its functions due to lack of funding. The Special Representative was nevertheless encouraged by the quality of the work of the Directorate. She hopes that such institutions will also be developed in northern states to effectively address human rights issues at the local level.

Training

34. The Government reported that it has embarked on the modernizing of its police force. During her meeting with the Office of the Inspector General of Police, the Special Representative was informed that human rights education has been included in the curriculum of the basic training of the police at the staff college and is carried out by various NGOs and national and state human rights institutions, including NHRC and the Directorate.

35. The Office of the Inspector General of Police also reported that human rights desks have been set up in every state police command to handle complaints of police abuse. Overall, however, human rights defenders reported that these structures have not materialized. In most cases, human rights desks have not been set up and human rights defenders have not started interacting with them.

II. LEGISLATIVE FRAMEWORK: PERSISTENT SHORTCOMINGS

36. While defenders have generally reported an overall improvement of their situation after the advent of civilian rule, all insisted that certain federal laws continue to allow for an environment which is not fully conducive to their work and at times has put their safety at risk.

A. Freedom of association

37. The Special Representative was pleased to observe that the overall framework of laws regulating associative activities in Nigeria guarantees that human rights defenders enjoy a wide ability to form and operate NGOs free from government interferences. There are no specific laws regulating the operation of NGOs, but human rights organizations fall under the provisions of the 1999 Constitution, the Companies and Allied Matters Act (CAMA) of 1990 and relevant federal and state laws. Separate laws regulate specialized organizations such as trade unions and political parties.

38. Under the current legislation, registration or incorporation is not mandatory in Nigeria. Nevertheless, defenders have indicated that donors increasingly require organizations to be duly registered before providing funds. NGOs can register under CAMA either as a “company limited by guaranty”, which confers the status of a corporate body on the NGO itself, or as an “incorporation of trustees”, which grants the trustees of the NGO rather than the organization itself the status of a corporate body.

39. Registration of a company limited by guaranty is performed by the Corporate Affairs Commission (CAC), which verifies the availability of the proposed name. Few organizations, however, are registered as companies limited by guaranty, largely because of the bureaucracy involved in applying for the consent of the Attorney-General who may, at his discretion, withhold consent. Most NGOs therefore register as incorporated trustees under section 673 of

CAMA. It is noteworthy that there is no minimum requirement in terms of members or capital for the registration, which is open to physical and legal persons.

40. Human rights defenders unanimously reported that despite this apparently liberal regulation, in practice registering as incorporated trustees can also prove to be a long road encumbered by bureaucratic obstacles, heavy expenses and uncertainty regarding the response to their application.

41. Applications for registration may be rejected for failure to comply with even the most insignificant of requirements, or even minor omissions or discrepancies. There are no specific appeal provisions against rejection, but an application for judicial review can be brought under the common law rules. Human rights defenders reported that the Commission requires police clearance for all the trustees named in the application.

42. Human rights defenders reported that registering as incorporated trustees takes a minimum of six to nine months. The Special Representative was informed that in some instances the process has been pending for years. The case of Gender and Human Value Proactive, which sent its application in 2003 and received a response only in February 2005, and that of the League of Democratic Women, which started the process five years ago and is still not registered, are illustrative of this problem.

43. Defenders also pointed out that the expenses incurred in the process are extremely heavy, especially for smaller organizations. Despite a relatively reasonable official fee of 10,000 naira (about US\$ 95), the additional cost of newspaper advertisements, printing of a constitution, making of a seal and other expenses result in applicants spending at least 150,000 naira (US\$ 1,425) on the registration process.

44. NGOs reported having had their applications rejected due to the prevailing restrictive interpretation of provisions on the choice of the organization's name. During her meeting with CAC, the Special Representative was informed that under section 30 (1) of CAMA, NGO names cannot include words such as "federal", "national", "State", "Government", or any other word which suggests "that it enjoys the patronage of the Government of the Federation or any Ministry or Department of the Government". Defenders reported that as a result words such as "Nigeria", "governance" or "democracy" are also banned. The case of the "Institute of Corporate Governance"¹ is an illustrative example of the restrictive interpretation of CAC. According to the CAC decision, the word "institute" represents "something that is instituted", or set up by statute and not registration. The Commission's decision was confirmed in appeal by the Federal High Court, which stated that the terms "governance" and "policy" are also not acceptable as they pertain to functions of Government.

45. While the Special Representative recognizes the need to avoid any perceptions that an NGO is a State entity, she has seen examples of refusals of registration that indicated a narrow interpretation of the rules and that have caused unnecessary and serious inconvenience for applicants. She also expresses concern about the wide discretionary powers granted by law to CAC for the purpose of registering NGOs.

¹ Abuja Federal High Court, No.: FHC/ABJ/CS/543/2003.

46. The attention of the Special Representative was drawn to an attempt in 2001 to pass a bill establishing a council to regulate NGOs, oversee their activities and harmonize their operations. In this respect, the Special Representative would like to recall the conclusion laid out in her 2004 report to the General Assembly concerning NGO legislation and compliance with international standards in which she called on States to refrain from adopting further regulation which may restrict the space for NGOs. She encourages the Government of Nigeria to explore possible practical means of ensuring smoother registration procedures, to review its provision limiting the choice of names, and to review its interpretation of those provisions.

B. Freedom of assembly

47. The Public Order Act, which regulates freedom of assembly, requires a licence to be obtained to conduct “any assembly or meeting or [form] any processions on the public roads or place of public resort” 48 hours before the event. Defenders have reported that under the current legal framework, organizing protests on human rights issues has repeatedly proven arduous. While the Special Representative was able to witness a number of demonstrations and workshops that were allowed, she notes that in other cases authorizations to demonstrate or organize a seminar are denied. She was informed that while marches in support of issues perceived as “non-political”, such as women’s rights, are granted authorization, rallies concerning issues perceived as “political”, such as corruption, labour rights, or issues of democratic governance, are generally not authorized. In particular, she was able to verify that demonstrations organized by the National Labour Congress are frequently banned.

48. In certain regions, defenders reported that the law is broadly interpreted as regulating any public meetings, including workshops and conferences held in privately owned spaces. For example, the Civil Liberties Organization in Kaduna recounted that in May 2004, the Network for Justice had been denied authorization by the Commissioner of Police’s Office to hold a one-day symposium entitled “Towards democratic stability in Nigeria” “due to the prevailing tension” in the city.

49. After a careful review of the Public Order Act, the Special Representative finds that its provisions, as well as their overly broad interpretation by the police forces, severely restricts freedom of assembly. In particular, the Special Representative is concerned at the wide and discretionary powers granted to police commissioners and officers under section 4 (1), (2) and (3) to ban temporarily any public meeting in a given area. She is also concerned at the lack of judicial oversight of temporary and geographically specific bans on assemblies and by the absence of judicial process to appeal the denial of a licence. State concerns for public order and traffic have not proved convincing to legitimize restriction of the right of peaceful assembly. As a result, many defenders have reported violent repression of demonstrations.

50. Defenders working in northern states operating under sharia also mentioned other types of impediments to their workshop activities. In particular, LEDAP, an organization working on impunity and justice issues, reported having difficulties in February 2003 in holding a human rights training course for judges in Kano. They explained that they had to provide the authorities with their training material and list of resource persons. In order to receive a licence, the substance of a session entitled “Integrating human rights of women in sharia law implementation” had to be amended and the training had to be given exclusively in Hausa, which excluded trainers coming from southern states.

C. Freedom of information

51. Another crucial issue for defenders in Nigeria is the lack of freedom of information legislation and the existence of laws and practices restricting public access to information. During her meetings, the Special Representative was informed that the Official Secrets Act makes the transmitting of “classified” information an offence and prohibits access to places designated as “protected”. Under that law, “classified information” is defined as “any information or thing which ... is not to be disclosed to the public and of which the disclosure to the public of Nigeria would be prejudicial to the security of Nigeria”. It was pointed out that provisions in the law remain vague and subject to discretionary interpretation.

52. In practice, the Special Representative observed that there is no uniform policy of granting access for independent monitors to places where abuses occur, be they NGOs or journalists. Defenders reported that access to prisons is generally easier, while access to police stations, detention centres or sites of violations such as oil spills and eviction areas varies greatly.

53. Defenders unanimously deplored the dearth of public statistics, data and public information on the objectives and implementation of State policies and programmes. Weaknesses in systems of data collection and documentation within State organs result in flaws and gaps in the information in public records. For example, prison authorities do not maintain proper and full records of inmates, and police authorities also do not properly record the number of detainees in their custody, or the charges pending against them. The Special Representative was informed that in certain cases State authorities have had to resort to NGOs to help them gather important statistical information. This not only deprives defenders of the right to information, but could lead to serious flaws in policy if the information is not sound information. The Special Representative tried to verify the accuracy of this information with the Government, but was not able to get a response that could clarify the matter. She herself received very little information by way of statistics from the Government.

54. As a result of this lack of access to information, NGOs are unable to perform any form of monitoring of public policies and practices. They cannot assess the human rights compliance of public policies, nor monitor their implementation or hold public authorities accountable. This lack of transparency, and the absence of a law protecting State employees who act as whistleblowers have helped create an environment propitious for the development of corrupt practices.

55. In this respect, the Special Representative welcomes the steps that have been taken towards the adoption of a freedom of information bill. She notes that a freedom of information coalition was formed in 1999 by civil society actors who started campaigning for the adoption of a freedom of information bill. In 2003, a bill was presented and passed in the House of Representatives. She regrets that at the time of the visit, the bill was still pending in the Senate after two years, and she encourages the Government to expedite its adoption.

III. LIMITS TO THE WORK OF HUMAN RIGHTS DEFENDERS

56. While the overall climate in which defenders operate has significantly improved, the Government has shown a persistent lack of tolerance towards defenders working in areas perceived as sensitive. As a result, harassment by State authorities of journalists, labour leaders and defenders working on issues such as democratic governance, elections, corruption and economic rights still continues. Defenders repeatedly expressed their concern that the Government wishes to “box” civil society in specific issues while prohibiting its engagement in others.

A. Journalists and defenders working on corruption and good governance

57. While significant improvements in freedom of expression were amongst the immediate gains of Nigeria’s transition to civilian rule in 1999, with the blossoming of independent news outlets, some of which are critical of Government, State hostility towards public criticism of government policies in certain sensitive areas has been growing. Critical views on topics such as State-sponsored violence, corruption and lack of good governance are construed as seditious and subversive and severely repressed. The security forces, including at the senior level, have continued to display a persistently hostile and suspicious attitude towards journalists and human rights defenders.

58. It was reported to the Special Representative that since 1999, journalists have continued to be arrested, brutalized and detained in the course of their reporting. In many instances, journalists were violently prevented by security forces from filming or taking photographs. For instance, on 1 July 2003, during a peaceful rally in Abuja, an Associated Press photographer was beaten with the butt of a gun by 10 policemen as he was trying to take pictures of the demonstration, and 2 others were arrested. On 23 September 2003, two Reuters cameramen and an AP member were prevented by officials of the Navy and from the Nigerian National Petroleum Corporation from taking a picture of a ruptured pipeline in Lagos State. Their cameras were taken away and they were detained for a few hours, after which they were finally able to take photographs.

59. It was alleged that arrests of journalists are a common practice. On 8 September 2004, a staff member of *Africa Today* was arrested and detained without charges by the State Security Service. On 24 November 2004, the police in Lagos arrested and detained three editors of *Insider Weekly* in connection with a story denouncing an oil bunkering scandal in which senior government officials were involved. It was reported to the Special Representative that on 2 May 2005, the publisher of the *Midwest Herald* was arrested in Lagos by the police forces in connection with an article critical of the First Lady. At the time of the Special Representative’s visit, he was still detained without charges.

60. Members of human rights organizations also reported sporadic cases of arrests and beatings. For instance, on 30 April 2003, the south-east zone director of the Civil Liberties Organization was arrested by the police, interrogated, and accused of fighting the police and harbouring criminals for several hours in connection with his work documenting police abuses in the city of Enugu. Amongst the six officers questioning him was the Deputy Commissioner of Police.

61. Journalists and NGO members have also had their freedom of movement curbed. It was reported that in December 2002, the State Security Service (SSS) seized the passport of the Chairperson of the International Board of the Centre for Democracy and Development and informed him that his name was on their “watch list”. The chief of SSS later apologized, blaming bureaucracy for not having removed his name from the list after 1999. In the following days, the Secretary of the National Association of Democratic Lawyers and the Director of Alliance for Africa were also prevented from leaving the country to attend conferences abroad and informed that they needed clearance. In another instance, in October 2003, the head of the Africa Bureau of CNN was stopped at the Lagos airport by SSS and customs officials and informed that orders had been received not to let him into the country. Eventually he and his team were let in and received an apology from the authorities.

62. Publications by human rights organizations deemed “seditious” have been seized on several occasions. The Special Representative recalls the case concerning a report by the CLEEN Foundation and the World Organization against Torture on the issue of impunity and State-sponsored violence in 2003 which was seized by the authorities for containing seditious materials. In another instance, SSS seized all copies of a book entitled *This Madness Called Elections 2003*, which denounced government abuses during the electoral process.

63. Newspaper premises and offices of human rights organizations have been subjected to sporadic raids by security forces. The Special Representative was told that in November 2002, the premises of three independent newspapers based in Port Harcourt, *The Beacon*, *The Angus* and *The Independent Monitor*, were raided and several of their journalists arrested in connection with articles critical of the Rivers State Government. In June 2004, the Lagos office of the Constitutional Research Project was searched by SSS because of its project called “The parliamentary handbook”, which aims at publishing a directory of parliamentarians. More recently, in September 2004, the office of *The Insider Weekly* was raided and ransacked by SSS, who took computers, printers and office files and then sealed the office for two weeks. During the raid the production editor, the circulation officer and the security guard were arrested. In a press statement, SSS later alleged that it had acted within its power, for the sake of national security, as the magazine had consistently humiliated the President and other officials, which it qualified as an act of subversion and sedition.

B. Trade unions and labour activists

64. While activism is generally on the decrease in Nigeria, trade unions represent a highly organized segment of civil society that continues to mobilize the population to act collectively. As a consequence, the Government appears to consider trade unions as a threat. Throughout her visit, the Special Representative observed that trade union activities are consistently repressed in law and in practice.

65. The legislation regulating trade unions was recently amended by the Trade Union Amendment Act, which restricts the activities of unions, the freedom to decide how to organize collectively and the right to strike. In particular, the new law abolishes the regime of a single central federation and requires deregistering the National Labour Congress (NLC). It prohibits any unions other than those in the industrial sector from affiliating with NLC. It also grants federal authorities means to interfere with the internal organization of unions, for instance by setting specific rules for voting to strike.

66. The right to picket and strike, recognized in the Constitution, is limited by the new law, which distinguishes disputes over rights (e.g. contractual issues) from disputes over interests (e.g. governance issues), in which trade unions are prohibited from engaging. Under section 30 (6) (b) of the Amendment Act, strikes can only be held in connection with disputes over rights. Consequently, trade unions cannot engage in public action on policy issues. A wide category of workers considered as “essential” under the new law, including health and aviation workers, are prohibited from engaging in strikes.

67. On several occasions, authorities alleged that trade unions violently coerce individuals to participate in strikes. The Special Representative found no evidence to support these claims. On the contrary, she was shown evidence of NLC having displayed restraint in calling for a strike in certain sectors. For instance, during the October 2004 strike, the personnel and vehicles carrying out the national immunization campaign were not called on to participate.

68. While the Government insisted that the new law had been developed in consultation with civil society, NLC insisted that none of its concerns are reflected in the adopted law. The Special Representative was informed that on 29 July 2004, the NLC Parliamentary Liaison Officer and a member of the NLC administration were arrested and detained by SSS inside the National Assembly for distributing copies of the workers’ comments on the draft bill. In view of the restrictive nature of the legislation, NLC informed the Special Representative that it intended to lodge a complaint against the Government with the International Labour Organization on the basis that the new law contradicts ILO conventions and fundamental workers’ rights.

69. In the course of her dialogue with officials, the Special Representative was able to observe that Nigerian authorities, including at the highest level, perceive the labour movement as a threat to political and economic stability. The Government appears to understand trade union activities as limited to addressing a set of contractual and welfare issues to the exclusion of State policy issues. The statement by the Labour Minister, who publicly declared that trade unions have “abandoned their primary responsibility” and that the current behaviour of unions represents “anarchy” and “a dangerous trend”, is illustrative of such an understanding. This perception is at the root of the newly passed Labour Law, which restricts trade union activism to disputes over rights.

70. The legal framework and the hostile attitude of State authorities result in labour activists being intimidated, arrested, detained and beaten. Accounts of NLC members and supporters being arrested in connection with strike actions are numerous countrywide. In October 2003, following the call for a strike against the deregulation of the oil market by the Government, NLC officials were arrested, detained and charged. In another instance, on 9 October 2004, the President of the organization was arrested without a warrant at the Abuja airport two days before the strike was due to start. On 12 October 2004, eight union leaders were arrested in Abuja while they were monitoring the strike in a hotel.

71. Raids by security forces against unions also appear to be a common practice. On 7 June 2003, the leadership of the National Association of Nigerian Students was attacked by armed security agents during a press conference held to announce their joining the ongoing strike against an increase in the price of oil. Over the years, the NLC premises have been raided and surrounded by SSS which blocked access to the National Secretariat on numerous occasions and on 15 October 2004, SSS raided the office of the American Labour Solidarity Center and

arrested and detained 13 members of staff, as well as a priest and a 4-month-old child, without charges.

72. The policing of rallies, especially those organized by NLC, remains an area of grave concern in Nigeria. Cases where the police outnumber demonstrators are numerous, as are reports of the use of excessive force against protestors. The Special Representative was informed of uncountable instances of arrests, beatings, and even killings by the police during protests. During the June 2003 strike in Lagos, protesters were beaten up and some died from police brutality in Lagos, Abuja and the Niger Delta. More recently, in October 2004, during a strike action, officers from the Kaduna State Police Command are reported to have fired live ammunition into the crowd, killing a 12-year-old child.

73. Security forces have usually denied their responsibility for the violence occurring during strikes and rallies. For instance, after the June 2003 events, the Police Public Relations Officer in Lagos publicly denied any knowledge of deaths during the protest. Eventually, after the publicizing of graphic evidence, the police acknowledged the deaths but continued to deny responsibility for the killings, alleging that victims had been killed in car accidents or by rioters. In this instance, an investigative report by the Senate Committee on Petroleum Resources confirmed police involvement in the death of some four individuals, and concluded that the police reaction to the situation was “inhuman”. Based on the credible information she has received, the Special Representative concludes that in many instances, the Nigerian Police response to rallies and strikes, particularly when organized by NLC, is brutal and falls below minimum standards of democratic policing.

74. Unionism is generally either discouraged or penalized. Defenders reported that unionized teachers and professors have been dismissed or demoted for participating in strikes and others denied promotions in connection with their participation in trade unions. In 2003, following a six-month strike, 60 lecturers at the University of Ilorin were reportedly fired. Later, a judge declared the termination of their appointments illegal and ordered their reinstatement.

C. Economic, social and environmental rights activists

75. Human rights defenders working on economic, social and environmental issues in the Niger Delta remain marginalized, and are more at risk of repressive action. Even where they do not experience any active repression they receive no response from authorities and policymakers to expressions of concern regarding these areas of rights. The Special Representative had the opportunity to meet with a variety of activists while in the Delta region and was able to witness the economic and environmental degradation caused by the exploitation of oil and gas in some areas. According to the World Bank, there are some 300 oil spills every year in Nigeria. During her visit, the Special Representative visited villages in the Ogoni land where she observed the contamination of water supplies and soil and the environmental damage caused by abandoned flow stations.

76. Defenders reported that there have not been significant improvements in the way such issues have been addressed since the beginning of civilian rule. Many oil companies claim to have a policy of engaging with local communities; nevertheless, despite their dedicating a significant budget for such projects, a gap remains between their intentions and their impact on the ground. Defenders reported that responses to environmental damage caused by oil extraction

by both the companies and the State are often slow and inadequate. While companies claimed that they spend large amounts of money on clean-up operations to meet international standards and that some of the oil spills are the result of sabotage, defenders reported that in many cases, clean-up is insufficient and areas remain unusable for years after accidents happen. In May 2002, the African Commission on Human and Peoples' Rights stated in a decision that oil production by the Government and Shell PDC had caused serious health and environmental damage and that there had been inadequate compensation, information and consultation with the Ogoni. Increasingly, companies also claim to have adopted inclusive conflict resolution approaches by consulting with communities; however, these processes often do not include critical civil society actors and have not shown any tangible results.

77. Additionally, there is a lack of redress mechanisms available to communities and defenders to ensure the effective protection of their rights. Indeed, the framework regulating economic, social and environmental rights in Nigeria remains weak. Land laws, especially, tend to protect the interests of the oil and gas companies over community interests. Under the current law, state governors can expropriate land for mining purposes and compensation for the land is given to the governor rather than the concerned community. Legislation governing environmental impact assessments is also problematic as it does not require consultation with concerned communities and does not guarantee them access to findings. Furthermore, the guidelines regulating compensation for environmental damage do not allow for adequate levels of compensation.

78. While the Niger Delta Development Commission was set up by the Federal Government in response to growing discontent in oil-producing regions, in the view of the defenders who spoke to the Special Representative the Federal and state Governments have failed to assume their responsibility with respect to devising policies and allocating funds to address the economic, social and development needs of oil-producing regions. In 2004, Nigeria's oil revenue was estimated to have reached over US\$ 21 billion. Nevertheless, 7 out of 10 Nigerians are reported to live on less than \$1 a day, the absolute poverty line according to the World Bank. Essential services and social and physical infrastructure have not been provided. Rather, most of these issues seem to be left to the private oil companies to address through their community projects.

79. In the absence of the State providing such services oil companies have often stepped in to provide basic services or build infrastructure and dedicated large budgets to developing projects to address some of the immediate negative impact of their activities on the population directly affected. During their meeting with the Special Representative, companies pointed out, however, that the main responsibility for the overall development of the region remains with the Federation, which receives revenues from oil companies. There was concern that the State has not invested in infrastructure such as water supplies, roads, electricity, health centres and schools. It was pointed out that this lack of response to economic and social concerns in the region creates great competition for the benefits of oil companies, which can degenerate into inter-community violence.

80. During her meeting with the Ministry of the Environment, the Special Representative was made aware of efforts by the Government to open channels to respond adequately to concerns surrounding environmental degradation. In particular, it was claimed that the Government had made efforts to bring together affected communities, NGOs and oil companies in the framework of a national forum for dialogue for the first time in 2004 and again in March 2005. The

Minister reported that as a result all impacted sites had been registered with the authorities for remedies.

81. The Special Representative was impressed by the Minister's understanding of the issues. Nevertheless, she notes that in spite of the Government's efforts, defenders continue to report a general lack of response from the Government and the companies. They reported that on many occasions, authorities gave assurances that compensation or reparation would be provided, but often those pledges did not materialize. In the case of the demolition of the Eagle Island Estate, the Movement for the Survival of the Ogoni People (MOSOP) reported raising the issue of the economic and social impact of the demolition with both the Rivers State Government and the management of AGIP, to no avail. In particular, they noted that while at first AGIP had been rather responsive and proposed to set up a joint investigation, no action had been taken and no compensation was paid. They also pointed out that the Rivers State authorities had not responded to the private and public appeals on behalf of those affected by the demolition.

82. Apart from this lack of response, defenders' activities in the region have also been hampered by persistent hostility against their work. Accessing sites of evictions, oil spills and environmental degradation remains difficult. In March 2005, the Nigerian police arrested two Australian journalists who wanted to film the demolition of houses on the Eagle Island Estate adjacent to the AGIP industrial area in Port Harcourt. Public reports or investigations of violations of economic, cultural and environmental rights such as those denouncing links of political figures to violence, oil bunkering and the circulation of small arms have also led to arrests.

83. MOSOP continues to suffer from regular harassment. In 2002, in Bori, the Vice-President of MOSOP was threatened by a Superintendent of Police who shot into the air and threatened to kill people in the community. According to reports received, two days later the police raided the community of Yeghe, causing harm to persons and property. In May 2002, the home of the MOSOP President was raided by the police and he was taken to the State Intelligence and Investigation Bureau where he was detained. More recently, in 2003, he was arrested at the airport on his way to attend the Commission on Human Rights for having published a report on the situation of human rights in the region.

84. The confrontation of vigilante groups, militias, police and the army in the region has resulted in a climate of violence which makes defenders particularly vulnerable. NGOs estimate that there were around 1,000 deaths in the Niger Delta in 2003 and that some 70,000 arms were circulating in the region. Defenders reported a worrisome increase in militias and small arms proliferation in the region. The Special Representative is particularly concerned about the heavy presence of military personnel tasked with the protection of oil extraction sites and the negative repercussions this has had on the work of human rights defenders. In particular, the Special Representative notes that this arrangement results in a cycle of impunity for abuses as each actor passes the responsibility for violations onto the next. It is very telling that when asked about the lack of access to sites, the oil companies and the army pass the responsibility onto each other, the military responding that they have been directed by the oil companies not to grant access, while the oil companies respond that such action is the responsibility of the military.

D. Women's rights activists

85. Women's rights defenders have faced difficulties specific to their work and in particular face difficulties in raising issues of women's rights in the context of religion and the imposition of sharia in some northern states. Some victories were recorded in the south with the banning of female genital mutilation in Cross River State, but women's rights groups report that most often the federal authorities lack genuine interest in women's rights, noting that in many cases commitments by the State made at the international level are not followed up domestically. Many reported that they are often ostracized for their work by many in the Government and the opposition.

86. Women's rights defenders reported that they face the greatest challenges when working on traditional practices negatively affecting women. In many instances, these have become so ingrained that women themselves have come to believe that these conditions cannot be changed and at times are enforcing them. Organizations working on reproductive rights and health issues have been the subjects of slander campaigns and attacks against them. In August 2003, the Reproductive Health Centre organized a conference which received slanderous coverage in the media, which called participants "abortionists". Women activists working to provide protection to victims of domestic violence also reported receiving threats from family members.

87. For the most part, threats against women's rights activists come from non-State actors, including religious authorities and the media. Most often, however, the State fails to address these threats appropriately. Women's rights activists do not benefit from police protection against assaults by non-State actors. In one illustrative example, an activist was assaulted and beaten up by the husband of a victim in front of a police station, an incident that remained unaddressed by the police.

E. Lack of response and impunity for abuses

88. The lack of response from the authorities to the issues raised by civil society and the high level of impunity greatly increase the vulnerability of defenders. In one of its reports, LEDAP documented some 750 cases of extrajudicial killings, of which only 3 had been resolved and 16 investigated. Such a high rate of impunity (97 per cent) has resulted in self-censorship by defenders.

89. Since the beginning of civilian rule, the Government has set up numerous commissions and panels of inquiry to cast light onto abuses by authorities; however, to date, none of the processes has had any tangible impact. Defenders have reported in particular that in the vast majority of cases, the findings and reports of these bodies are not made public and their recommendation seldom implemented. One particular example is the lack of follow-up to the findings of the Human Rights Violations Investigation Commission (the Oputa Panel) set up in 1999 to investigate the human rights abuses committed under the previous regime, which was declared unconstitutional by the Supreme Court.

90. While the Government pointed to many processes where civil society have been included, the Special Representative notes that in sensitive areas such as oil production, corruption and elections the participation allowed to civil society was minimal. The lack of community representatives, NGO members, or independent environment experts in the Niger Delta

Development Commission set up in 2000 is an illustrative example of the lack of access by civil society to certain areas of policy and decision-making. In May 2004, CLO and NHRC met with the Minister of Justice to present a list of 50 extrajudicial killings which they had been working on. The Minister promised to intervene; as of June 2005, no action had been taken.

91. The Special Representative also observed a hostile and suspicious attitude on the part of many State officials, particularly from the police forces. In particular, one state governor explained that he considered the “vast majority of NGOs either as failed professionals or politicians who have created their organizations for personal purposes and whose organizations have no legitimacy”. This perception seems to be shared among some within the governmental sphere and was echoed by certain members of the Corporate Affairs Commission.

V. CONCLUSIONS AND RECOMMENDATIONS

92. **The Special Representative welcomes the visible commitment of the Government of Nigeria to include human rights in its national and state policies. She is particularly encouraged by the work performed by the National Human Rights Commission at the national level and the recognition it has gained from the defender community. She is equally encouraged by the creation of the Directorate of Citizens’ Rights in some southern states and hopes that similar institutions can be set up and funded to address human rights issues at the local level. Despite these promising developments, she noted that some of these institutions have not started to function in practice and others still present serious shortcomings.**

93. **She also welcomes the overall improvement in the situation and safety of human rights defenders. The environment for the functioning of defenders is expected to be further strengthened by the initiatives that are under way for the reorientation and sensitization of government departments and State authorities on human rights. However, success in any such initiative can only be achieved if the importance of active participation by civil society and the human rights community in the country is fully recognized. The transition from military to civilian rule has resulted in the emergence of democratic institutions that promote respect for the human rights and fundamental freedoms necessary for the functioning of human rights defenders.**

94. **The Special Representative is also aware of challenges that such a period of transition presents in achieving transformation of State structures, as well as in political, social and economic conditions that affect the enjoyment and protection of human rights. Nevertheless, there must be sufficient progress at a pace that guarantees the completion of transformation so that the transitional hurdles do not become fixed in State practice. The Government cannot maintain credibility for its commitment to progress and change by pointing to the improvements of the past. The expectations of the State now are those of a democratic government and cannot be satisfied by merely improving the practices of the past.**

95. **It is true that the Special Representative has found no policy of systematic harassment of human rights defenders or of obstruction of their work in general. It is also apparent that there is no resistance on the part of Government to engage with the civil society and to involve defenders in its human rights programmes. However, involvement of**

the defenders remains formal and the outcome of such cooperation is limited because of a serious lack of response from the Government to the concerns expressed by the defender community. Despite defenders' access to legislators and the willingness, particularly of the Human Rights Committee of the Parliament, to hear the concerns of the defenders, recommendations made by the civil society for improvements in the institutional and legal frameworks for the promotion and protection of human rights are rarely reflected in legislative or policy reforms.

96. However, there are areas of rights where the Government has shown less openness and tolerance of criticism, which has resulted in curbing the rights of defenders active in those areas. The Special Representative also remains concerned at the persistent shortcomings in Nigerian laws which do not allow for the emergence of a fully constructive environment for the defence of human rights.

97. She expresses concern with regard to persistent practices of harassment by security forces of defenders working on certain issues perceived as sensitive, including of journalists and human rights activists working on governance, elections, and economic and environmental rights. She is equally concerned at the lack of response of the executive branch to issues raised by civil society and the high level of impunity for perpetrators of human rights abuses.

98. The Special Representative greatly appreciates the Government's support for peace initiatives that the civil society has taken in the region of the country experiencing inter-religious tensions. She is, however, concerned that Government has been over-cautious and does not intervene to protect the lives of those who are exposed to risk because of their efforts towards peace.

99. Lastly, she notes that the prevailing climate of violence in the country has had a severe, adverse impact on the work of human rights defenders. In the past, elections were periods of increased violence and vulnerability for human rights defenders. In that context, defenders have expressed serious fears with regard to the elections scheduled for 2007.

100. The Special Representative calls on the Government of Nigeria to further strengthen the National Human Rights Commission by making express provision for the Commission's independence and autonomy; making it compulsory that inquiries or correspondence on human rights matters emanating from the Commission be responded to within 30 days, as in the case for a court summons, and entrenching the Commission in the Constitution.

101. She encourages state Governments to set up Directorates for Citizens' Rights and ensure that they receive sufficient funds to fulfil their mandate.

102. She also recommends that the Government streamline and ease the registration procedures and seriously review any plans to adopt any regulations that infringe the freedom of association of human rights organizations or limit their autonomy and independence.

103. She calls on the Government of Nigeria to review the provisions and implementation of the Public Order Act to ensure that the right to freedom of assembly is fully respected and that undue or unreasonable limits are not placed on collective and public action for the promotion or protection of human rights.

104. She urges the Government of Nigeria to expedite the process of adopting an adequate legislative framework for freedom of information and to set up adequate mechanisms to collect and publish data and statistics on public policies and institutions in order to ensure transparency and accountability, without which defenders cannot perform their monitoring and reporting functions.

105. She urges the Government of Nigeria to take immediate measures to address impunity, and in particular to set up a strict system of accountability within the security forces, including disciplinary proceedings, and include human rights training in the basic training curriculum for police officers and staff at all levels of the hierarchy.

106. The Special Representative calls on the Government to develop appropriate measures for the adequate protection of election monitors and journalists in view of the 2007 elections; in particular, she calls for formal recognition of election monitors in order to ensure their safety.
