

62nd SESSION OF THE COMMISSION ON HUMAN RIGHTS
COMPILATION OF SPECIAL PROCEDURES' RECOMMENDATIONS BY COUNTRY

In its resolution 2004/76 on “Human Rights and Special Procedures”, the Commission on Human Rights requests the High Commissioner:

“10 (c) To continue to prepare a comprehensive and regularly updated electronic compilation of special procedures’ recommendations by country, where such does not yet exist, including the relevant comments of States thereto as published within the United Nations system”.

The present document compiles recommendations by special procedures after visits carried out since the completion of the 61st session of the Commission on Human Rights until 27 March 2006.

As requested in the above-mentioned resolution, regularly updated versions of the document will be posted on the OHCHR’s web site.

For any additional information on the status of country visits by special procedures mandate-holders (visits scheduled, visits requested, visits carried out), please refer to the table on country visits by special procedures, which can be found at the following address:

<http://www.ohchr.org/english/bodies/chr/special/visits.htm>

Thematic Special Procedures' 2005 country visits

Thematic Special Procedures' 2005 country visits

In 2005 thematic Special Procedures

- sent **62 visit requests**
- undertook **50 fact finding country visits** (including follow up visits)

As of March 2006, 53 States had extended a standing invitation to all Special Procedures

List by country

Country	Standing invitation	Mandate	Date of visit
Afghanistan		Special Rapporteur on violence against women, its causes and consequences	9-19 July 2005
Albania		Special Rapporteur on the sale of children, child prostitution and child pornography	31 October to 7 November 2005
Belgium	Standing invitation	Working Group on people of African descent	13 to 17 June 2005
Bosnia and Herzegovina		Special Rapporteur on trafficking in persons, especially in women and children	20-28 February 2005
Bosnia and Herzegovina		Representative of the Secretary-General on the human rights of internally displaced persons	9-15 June 2005
Botswana		Special Rapporteur on the right to education	26 September to 4 October 2005
Brazil	Standing invitation	Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance	17 to 25 October 2005
Brazil	Standing invitation	Special Representative of the Secretary-General on the situation of human rights defenders	5-16 December 2005
Burkina Faso		Special Rapporteur on the human rights of migrants	2-9 February 2005
Cambodia		Special Rapporteur on adequate housing as a component of the right to an adequate standard of living	22 August to 2 September 2005
Canada	Standing invitation	Working Group on Arbitrary Detention	1-15 June 2005
China		Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	21 November to 2 December 2005
Colombia	Standing invitation	Working Group on Enforced or Involuntary Disappearances	5 to 13 July 2005

Croatia	Standing invitation	Representative of the Secretary-General on the human rights of internally displaced persons	6-8 June 2005
Ecuador	Standing invitation	Special Rapporteur on the independence of judges and lawyers (first and second missions)	14-18 March 2005 and 11-15 July 2005
France	Standing invitation	Special Rapporteur on freedom of religion or belief	18-29 September 2005
Georgia	Standing invitation	Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	19-25 February 2005
Georgia	Standing invitation	Representative of the Secretary-General on the human rights of internally displaced persons	21-24 December 2005
Greece	Standing invitation	Special Rapporteur on the sale of children, child prostitution and child pornography	8-14 November 2005
Guatemala	Standing invitation	Special Rapporteur on the right to food	26 January to 4 February 2005
India		Special Rapporteur on the right to food	20 August to 2 September 2005
Iran	Standing invitation	Special Rapporteur on violence against women, its causes and consequences	29 January to 6 February 2005
Iran	Standing invitation	Special Rapporteur on adequate housing as a component of the right to an adequate standard of living	19-30 July 2005
Israel and the Occupied Territories		Special Representative of the Secretary-General on the situation of human rights defenders	4-11 October 2005
Japan		Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance	3-12 July 2005
Kyrgyzstan		Special Rapporteur on the independence of judges and lawyers	18 September to 1 October 2005
Lebanon		The Special Rapporteur on trafficking in persons, especially women and children	7-16 September 2005
Mexico	Standing invitation	Special Rapporteur on violence against women, its causes and consequences	21-25 February 2005
Mongolia	Standing invitation	Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	6-10 June 2005
Mozambique		Independent Expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights, particularly economic, social and cultural rights	25-29 July 2005
Nepal		Representative of the Secretary-General on the human rights of internally displaced persons	13-23 April 2005
Nepal		Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	10-17 September 2005
New Zealand	Standing invitation	Special Rapporteur on the situation of human rights and fundamental	16-26 November 2005

		freedoms of indigenous people	
Niger		Special Rapporteur on the right to food	8-12 July 2005
Nigeria		Special Rapporteur on freedom of religion or belief	27 February to 7 March 2005
Nigeria		Special Representative of the Secretary-General on the situation of human rights defenders	3-12 May 2005
Nigeria		Special Rapporteur on extrajudicial, summary or arbitrary executions	27 June to 8 July 2005
Russian Federation		Special Rapporteur on violence against women, its causes and consequences	17 to 24 December 2004
Serbia and Montenegro	Standing invitation	Representative of the Secretary-General on the human rights of internally displaced persons	16-24 June 2005
South Africa		Working Group on Arbitrary Detention	4-19 September 2005
South Africa		Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people	28 July to 8 August 2005
Sri Lanka		Representative of the Secretary-General on the human rights of internally displaced persons	28 February to 2 March 2005
Sri Lanka		Special Rapporteur on freedom of religion or belief	2-12 May 2005
Sri Lanka		Special Rapporteur on extrajudicial, summary or arbitrary executions	28 November to 7 December 2005
Sudan		Representative of the Secretary-General on the human rights of internally displaced persons	3-13 October 2005
Thailand		Representative of the Secretary-General on the human rights of internally displaced persons	2-5 March 2005
Tajikistan		Special Rapporteur on the independence of judges and lawyers	18 September to 1 October 2005
Turkey		Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism	16-23 February 2006
Uganda		Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health	17-25 March 2005
United States of America		Independent Expert on the question of human rights and extreme poverty	23 October to 8 November 2005

For Press releases on country visits please visit:

[Special Procedures of the Commission on Human Rights](#)

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AFGHANISTAN

Introduction

During the period under review, the Special Rapporteur on violence against women, its causes and consequences visited Afghanistan from 9 to 19 July 2005 (please refer to document E/CN.4/2006/61/Add.5).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.5, paras. 79-82; 87-89)

(i) State-building and sense of citizenry

79. The building of a strong, democratic, inclusive State able to ensure throughout the country an environment of economic and social development from which girls and women fully benefit, has correctly been identified by the Government, by the United Nations, and by bilateral supporters as a priority for the country - this also is important for the improvement of the situation of women. In this context, the Special Rapporteur would like to highlight the importance not only of building State institutions, but also of encouraging the grass-roots development of a sense of citizenry in both men and women. Two programmes are particularly promising in this respect, the National Solidarity Programme and the consultation process on transitional justice carried out by AIHRC. Therefore the Special Rapporteur recommends that:

- The Government, with the support of the international actors, ensure continued financial and political support to the National Solidarity Programme, allowing it to achieve its goals where it has already been launched and to reach those districts which have not yet benefited from it. The Government, the international actors and civil society have to be vigilant that the specific provisions aimed at women's full participation in the Programme are vigorously applied;
- The Government and the international actors ensure that the sense of being taken seriously, as citizens and as victims of war crimes and crimes against humanity, which the AIHRC consultation process has given many citizens of Afghanistan, is not dissipated and turned into disillusionment by indefinite postponement of the transitional justice processes;
- NGOs identify and implement projects that allow women to rebuild communities from the grass roots, to strengthen solidarity among themselves and to organize for self-help. The Government and the international actors should support those projects as a matter of priority.

(ii) Review of family and criminal law

80. The multiplicity of normative systems in Afghanistan favours the power structures intent on oppressing women in the private sphere and in public life, facilitates their impunity, and presents a significant obstacle for women and defenders of women's rights. The Special Rapporteur therefore recommends:

- To give priority to a clear codification of family law and of the criminal law concerning gender-specific offences in compliance with article 22 of the Constitution, which expressly provides that men and women have equal rights and duties before the law, as well as with the Convention on the Elimination of All Forms of Discrimination against Women;
- That the legislation reiterate the mandatory character of the registration of marriages and divorces;
- That the criminal law clearly establish that those involved in the organization of child and forced marriages commit a crime and must be prosecuted and punished.

81. In drafting this new legislation, the Ministry of Justice and the Ministry of Women's Affairs might consider seeking advice from the AIHRC. It might also prove useful to seek the input of these United Nations agencies present in the country, which have the necessary expertise, as well as of experts from other predominantly Muslim countries which have enacted a secular family law and criminal law.

(iii) Public awareness and targeted information campaigns on women's rights

82. In order to prepare, accompany and give full effect to the above clarification and codification of women's rights in the private sphere and of the criminalization of violence against women, in particular of forced and child marriages, the Special Rapporteur recommends that the Government:

- Clearly instruct the police and the judiciary that child marriages are null and void, and that under-age girls who have been “married” must be returned to their families of origin (as long as this does not endanger their safety) and cannot continue to live in the household of their “husband” until they reach marriageable age;
- Clearly instruct the police and prosecutor's offices that girls and women who escape situations of domestic violence must not be returned to their families unless their safety can really be ensured;
- Establish specialized women's rights units within the police at the provincial and district levels and equip them with adequate human and technical resources (e.g. vehicles), and ensure a strong component of female staff. Also, the Government should increase the resources of the central human rights unit in the Ministry of Interior;
- Identify and implement a realistic and effective way to enforce the duty to register marriages and divorces, and launch a media campaign in favour of marriage and divorce registration;
- Sensitize and train police officers, prosecutors and judges;
- Launch media campaigns to inform the public that forced and child marriages violate fundamental precepts of Islam;
- Consider the possibility of organizing workshops to sensitize clerics and preachers to the need to clearly state to their communities that forced and child marriages violate fundamental precepts of Islam.

(vi) Data collection and research

87. The scarcity of data on violence against women is a major obstacle to assessing the scale of the problem and designing effective strategies and programmes to combat it. NGOs and international organizations are engaged in efforts to collect relevant information, both statistical data and case studies. The Special Rapporteur recommends that the Ministry of Women's Affairs increase its efforts to collect data from all relevant sources, including other ministries, hospitals, the police, courts, shelters and prisons, and to start building a substantive database on violence against women, and to provide support to comprehensive research on gender issues.

(vii) Prioritizing in public policy women's human rights and the elimination of violence against women

88. In addition to the above, the Special Rapporteur encourages the Government, international actors and civil society to prioritize the elimination of violence against women in public policy. To this end, the Special Rapporteur recommends that:

- The Government strengthen the Ministry of Women's Affairs, the Human Rights Office of the Ministry of Interior, the Afghan Independent Human Rights Commission and other entities mandated to protect women's rights;
- International donors consider focusing support on projects that have a potential to further equality between men and women and to counteract violence against women in the short and medium term.

89. To sum up her recommendations, the Special Rapporteur urges the Government of Afghanistan and the international community to acknowledge and address the unbearable and hardly paralleled level of violence against women as a priority ranking equally with security and economic development.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

Special Rapporteur on Violence against women (E/CN.4/2006/61/Add.5, paras. 83-86)

(iv) Women in detention

83. With regard to women in detention, the Special Rapporteur recommends:

- That the Ministry of Justice, in cooperation with the Ministry of Women’s Affairs, review the file of every single woman currently in detention to verify whether
 - There is a valid judgement sentencing the detainee to imprisonment, or in the case of pretrial detention an order by the authority competent under the new Criminal Procedure Law;
 - The woman was found guilty of or is accused of a crime expressly punishable under the 1977 Criminal Code or another codified (written) law currently in force, emanating from a government authority competent to legislate in criminal matters;
 - The woman has enjoyed a fair trial with a right to defence and respect of other internationally recognized guarantees to a fair trial.

84. Considering the limited number of prisons for women in Afghanistan, it should be possible to complete this review within six months of the publication of the present report. The data thus collected and the legal expertise gathered during this exercise will prove very useful in the review of Afghanistan’s family law and the criminal law regarding offences against morality recommended above.

85. The Special Rapporteur would also like to draw the attention of the Government to the need to consider, in parallel to the above review on grounds for the detention of women, the question of transit houses for women who are released from detention, as well as for their children.

(v) Increasing and strengthening safe houses

86. Despite the drawbacks and risks for women connected with safe houses highlighted above, the immediate need to protect women from extreme violence requires an increase and strengthening of these shelters. In this regard, the Special Rapporteur recommends:

- The opening of additional shelters, in the few cities that already have ones but even more urgently, in areas where there are none. While it is advisable that safe houses are run by NGOs, the Government must give them its strong and unambiguous support, at the political level, financially and in the form of legal protection for shelter activities. These resources should be adequate to provide psychosocial counselling for the women in shelters, legal aid and vocational training;
- In order to avoid victims of violence mixing with women who have a criminal past (who, of course, are also often victims of violence), and to avoid confusion in the public perception of

the nature of safe houses, it is advisable to create separate transit houses for women who are released from prison.

V. Fundamental freedoms:

n/a

VI. Economic and social rights

(v) Increasing and strengthening safe houses

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VII. Cultural rights

n/a

VIII. Situation of specific groups

Special Rapporteur on Violence against women (E/CN.4/2006/61/Add.5, para. 86)

Women in shelters

(v) Increasing and strengthening safe houses

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IX. The right to development and international cooperation

Special Rapporteur on Violence against women (E/CN.4/2006/61/Add.5, paras. 79; 88-89)

(i) State-building and sense of citizenry

79. The building of a strong, democratic, inclusive State able to ensure throughout the country an environment of economic and social development from which girls and women fully benefit, has correctly been identified by the Government, by the United Nations, and by bilateral supporters as a priority for the country - this also is important for the improvement of the situation of women. In this context, the Special Rapporteur would like to highlight the importance not only of building State institutions, but also of

encouraging the grass-roots development of a sense of citizenry in both men and women. Two programmes are particularly promising in this respect, the National Solidarity Programme and the consultation process on transitional justice carried out by AIHRC. Therefore the Special Rapporteur recommends that:

- The Government, with the support of the international actors, ensure continued financial and political support to the National Solidarity Programme, allowing it to achieve its goals where it has already been launched and to reach those districts which have not yet benefited from it. The Government, the international actors and civil society have to be vigilant that the specific provisions aimed at women’s full participation in the Programme are vigorously applied;
- The Government and the international actors ensure that the sense of being taken seriously, as citizens and as victims of war crimes and crimes against humanity, which the AIHRC consultation process has given many citizens of Afghanistan, is not dissipated and turned into disillusionment by indefinite postponement of the transitional justice processes;
- NGOs identify and implement projects that allow women to rebuild communities from the grass roots, to strengthen solidarity among themselves and to organize for self-help. The Government and the international actors should support those projects as a matter of priority.

(vii) Prioritizing in public policy women’s human rights and the elimination of violence against women

88. In addition to the above, the Special Rapporteur encourages the Government, international actors and civil society to prioritize the elimination of violence against women in public policy. To this end, the Special Rapporteur recommends that:

- The Government strengthen the Ministry of Women’s Affairs, the Human Rights Office of the Ministry of Interior, the Afghan Independent Human Rights Commission and other entities mandated to protect women’s rights;
- International donors consider focusing support on projects that have a potential to further equality between men and women and to counteract violence against women in the short and medium term.

89. To sum up her recommendations, the Special Rapporteur urges the Government of Afghanistan and the international community to acknowledge and address the unbearable and hardly paralleled level of violence against women as a priority ranking equally with security and economic development.

X. Comments from the Government¹

n/a

¹ As published as official documents of the CHR.

ALBANIA

Introduction

During the period under review, the Special Rapporteur on the sale of children, child prostitution and child pornography visited the country from 31 October to 7 November 2005 (please refer to document E/CN.4/2006/67/Add.2).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the sale of children (E/CN.4/2006/67/Add.2 , paras. 116; 126; 129-131)

116. The Special Rapporteur believes that the construction of a functioning child protection system should be a priority for the country, the overarching objective of policies and programmes touching upon children. The foundations of the institutional and policy framework are there. To this end, the Special Rapporteur recommends:

(a) To give priority to the implementation of the national strategy on children and the one on combating child trafficking, ensure the harmonization between them and other strategies related to children. Adequate resources are to be allocated to that end and a monitoring system established. Implementation of the recommendations of the CRC should continue. Monitoring and accountability mechanisms should be established;

(b) To ensure that children's rights are protected through an adequate national institutional set up (a functioning and high-profile Committee on Children's Rights within the Government, with focal points in regions) focusing on identification, assessment and referral of children at risk and their families to appropriate support services;

(c) Institutional experiences at the local level, such as the Child Protection Unit in the municipality of Kukes, the coordination group in Elbasan and the Child Labour Committees at the district level, should be strengthened and replicated when appropriate.

126. Regarding anti-trafficking programmes, the Special Rapporteur recommends that Albania:

(a) Focus on prevention in communities with social programmes targeted at children at risk and their families, including the establishment and strengthening of community-based services;

(b) For children who cannot stay with their families, develop community-based alternatives to residential care, including a foster care system;

(c) Invest more in longer-term reintegration efforts and monitor their impact;

(d) Remedy the current lack of social workers with specific expertise in dealing with child victims of trafficking, violence, exploitation, abuse and neglect. Capacity-building in this area is needed as are protocols and standards of care;

(e) Respond to child trafficking as a broader child-protection issue and ensure that appropriate institutional mechanisms are in place to identify, assess and refer children at risk of or affected by trafficking to appropriate support services.

129. The Special Rapporteur encourages the Government to address the problem of corruption at all levels. The envisaged decentralization of social services will give prominence to the municipalities. New risks of corruption might arise. The Special Rapporteur recommends being vigilant over the risks of corruption at the local level once the municipalities will administer budgets they were not used to have.

130. The Special Rapporteur recommends adopting measures to promote media reporting on children in a way that is not only fully respectful of their rights but also instrumental for the protection and promotion of children's rights. Codes of conduct, incentives for ethical reporting and other initiatives can be implemented.

131. The Special Rapporteur welcomes the commitment expressed by the Chairperson of the Parliament on child protection and encourages Parliament to play an active and visible role to promote and protect children's rights.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on the sale of children (E/CN.4/2006/67/Add.2 , paras. 123-125)

123. The Special Rapporteur recommends researching the phenomenon of child sexual exploitation in Albania and taking measures to address it, including measures to avoid the development of a black market in child prostitution.

124. On domestic violence and abuse, the Special Rapporteur recommends that Albania:

(a) Train the police on how to best assist victims of domestic violence when reporting cases of abuse and to consider setting up ad hoc premises in police stations with specialized personnel, with a view to creating a more friendly environment for victims to help them overcoming fear and reluctance to report cases of abuse;

(b) Establish procedures and protocols so that key professionals in contact with children, e.g. teachers, health practitioners and social workers, know how to identify, report and refer cases of suspected abuse and a follow-up procedure is in place. The psychologists recently introduced in schools can play a role in this respect.

125. The substantial number of children not registered at the civil registry is a concern. Unregistered children are deprived of their most basic rights and exposed to higher risks of exploitation and abuse. The Special Rapporteur urges the Government to adopt measures to facilitate procedures for birth registration.

IV. Administration of justice and the rule of law

Special Rapporteur on the sale of children (E/CN.4/2006/67/Add.2 , paras. 119-120)

119. On the legislation, the Special Rapporteur recommends that Albania:

(a) Ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(b) Consider the possibility of decriminalizing prostitution as a crime for which prostitutes can be sentenced;

(c) Define the crimes of the sale of children and child pornography;

(d) Allow children to file complaints on abuse without parental consent;

(e) Adopt a law on clear and accessible procedures enabling victims of trafficking to get compensation;

(f) Improve processes related to legal guardianship when families are involved in trafficking their children.

120. In the area of investigation and prosecution of the crime of trafficking, the position of victims/witnesses is particularly vulnerable. The Special Rapporteur recommends that Albania:

(a) Take measures to ensure that the law on witness protection is implemented and witnesses are adequately protected;

(b) Enable judges to order measures of assistance for victims of trafficking beyond the duration of the judicial proceeding;

(c) Ensure that child specific protocols are incorporated into such measures, with the guiding principle of the best interests of the child.

V. Fundamental freedoms

n/a

VI. Economic and social rights

Special Rapporteur on the sale of children (E/CN.4/2006/67/Add.2 , paras. 117-118; 127-128)

117. Social programmes for communities are clearly missing in Albania. The implementation of social policies that serve as a protection net for children should be a priority. All political sectors should work around this goal adopting a multisectoral approach and Parliament is the appropriate setting to initiate discussions and identify objectives. Programmes in the area of education, prevention of violence, support to families as well as vocational training and leisure activities should be a priority to prevent marginalization and exclusion of thousands of children. This is particularly crucial for youth and young women. The establishment of youth centres where these programmes could be offered is recommended.

118. The Special Rapporteur further recommends creating the profession of specialized social workers with a specific expertise to work in prevention and protection programmes for children and communities at risk as well as in the reintegration of child victims. The European Union could provide aid and expertise in this area.

127. Regarding education the Special Rapporteur recommends that Albania:

(a) Undertake campaigns on children's rights and the fundamental role of education. The revised Plan of Action for the first phase (2005-2007) of the World Programme for Human Rights Education can be used as a reference;ⁱ

(b) Reinforce the role of primary schools as a keystone to fight against trafficking and other risks of child exploitation. Teachers should receive an adequate salary and training to better respond to the needs of children and their families. They should work in cooperation with social workers, psychologists and other professionals;

(c) Introduce life-skills development in school curricula. Specific attention should be given to the importance of family relations and the role of schools as the first instances of integration of a child with the external world;

(d) Ensure access to pre-school education for all children.

128. Social programmes are mostly implemented by civil society with international aid. It is time for the State to take up responsibilities in social matters, capitalizing on the experiences of NGOs and supporting their activities and programmes. The Special Rapporteur recommends strengthening the role of local social services in: proactively identifying and referring children at risk; monitoring standards of care; assessing the situation and developing community child and family protection plans; and serving as focal point for coordinated referral and response.

VII. Cultural rights

n/a

VIII. Situation of specific groups

Special Rapporteur on the sale of children (E/CN.4/2006/67/Add.2 , para. 121)

121. On unaccompanied children, the Special Rapporteur recommends that Albania:

(a) Sign and implement the bilateral agreement with Greece on the return on unaccompanied minors;

(b) Take measures in line with the general comment on the treatment of unaccompanied and separated children outside their country of origin recently adopted by the Committee on the Rights of the Childⁱⁱ and ensure that the best interests of the child are the primary consideration in the search for short and long-term solutions;

(c) Set up facilities to host unaccompanied children returned to the border and awaiting to be re-accompanied to their home towns and ensure personnel have appropriate knowledge and skills to work with children;

(d) Consider setting up a bilateral Commission on Children, composed of representatives of Greek and Albanian authorities as well as NGOs, to handle in a cooperative manner issues related to

unaccompanied children and child victims of trafficking. The Commission could also be the institutional framework to deal with the case of the Albanian children who went missing from the institution Aghia Varvara in Greece (see report on Greece, E/CN.4/2006/67/Add.3).

IX. The right to development and international cooperation

Special Rapporteur on the sale of children (E/CN.4/2006/67/Add.2 , paras. 118;122;132)

118. The Special Rapporteur further recommends creating the profession of specialized social workers with a specific expertise to work in prevention and protection programmes for children and communities at risk as well as in the reintegration of child victims. The European Union could provide aid and expertise in this area.

122. The Special Rapporteur encourages the Government to continue strengthening collaboration with other countries, especially with Greece, on matters related to migration and trafficking in human beings, in particular at the police level.

132. The Government is encouraged to seek the assistance of the United Nations country team (UNCT) and other international organizations in implementing the recommendations of this report. In particular, the UNCT can provide assistance in monitoring the implementation of the national strategies on children and in combating child trafficking; in institutional and capacity-building initiatives, including in assessing and drawing lessons from experiences of coordination and institutional set ups on children operating at the local level; in providing guidelines and tools to set up procedures and protocols to identify and report cases of child abuse; in carrying out evaluations of rehabilitation programmes for victims of trafficking; in setting up a system to monitor standards of care provided by social services; in visibility initiatives on child protection in partnership with the Parliament. The Office of the High Commissioner for Human Rights can be requested to provide assistance in the national implementation of the Plan of Action of the World Programme for Human Rights Education.

X. Comments from the Government²

n/a

² As published as official documents of the CHR.

BELARUS

Introduction

The Special Rapporteur on the situation of human rights in Belarus submitted to the Commission on Human Rights his report E/CN.4/2006/36.

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the situation of human rights in Belarus (E/CN.4/2006/36, paras. 81, 95 to 105)

81. The conclusions reached by the Special Rapporteur in his first report (E/CN.4/2005/35) were fully confirmed during the second term of his mandate. Therefore, the conclusions and recommendations contained in that report continue to be valid and should be considered an integral part of the present report.

95. The Special Rapporteur firmly believes that the first responsibility for improving the dramatic situation of human rights in Belarus lies with the country's authorities. Therefore, he urges the Government of Belarus:

- To give a clear and immediate sign of its readiness to cease ongoing human rights violations and bring their perpetrators to justice;
- To recognize all the resolutions of the Commission on Human Rights and the mandate of the Special Rapporteur;
- To bring the country's legislation, institutions and policies in line with international human rights and democratic standards;
- To launch a public education and public awareness programme in the field of human rights;
- To sign and ratify the International Convention on the Protection of All Persons from Enforced Disappearance as soon as it will be opened for signature and ratification;
- To proceed with the legal, institutional and political reforms necessary to ensure the respect of the international legal obligations of Belarus in the field of human rights;
- To convene an open-ended national round table on the situation of human rights in Belarus, with the participation of representative organizations of the Belarusian civil society and democratic political opposition, mandated to define, together with the Government, a road map for the implementation of the recommendations of the Special Rapporteur, of other special procedures and of the treaty bodies, particularly regarding freedom of the media and the independence of the judiciary.

96. The United Nations High Commissioner for Human Rights should be mandated to take the initiative and to offer any assistance necessary for the organization of the national round table, which should take place in Belarus. If holding the round table in Belarus proves to be impossible, the High Commissioner should facilitate its organization in another country. The Special Rapporteur recommends that the international community provide OHCHR with the resources necessary to effectively fulfil this role.

97. The Special Rapporteur recommends to the Belarusian civil society to multiply its efforts towards the establishment of a dialogue with the Government, on the way to and within the framework of the round table, and to continue working towards the consolidation and democratization of the Belarusian civic and multicultural nation, by ensuring that its proposals reflect the wider aspirations of all sectors of the Belarusian society, including those of women and of vulnerable groups. Belarusians should be involved in the process of change from the grass roots and community level of society, through a systematic and

participatory bottom-up approach. It is crucial to establish local non-political organizations dedicated to the promotion of joint projects based on the solidarity of existential interests of ordinary people and on the organized participation of citizens in the implementation of such projects. Likewise, civil society should aim at developing the conscience of the cultural identity of the Belarusians and the other ethnic and cultural groups living together with them, grounded on tolerance and respect for diversity.

98. The Special Rapporteur recommends to the democratic political opposition to disseminate widely amongst Belarusian citizens its political programme and its human rights plan of action, in order to enable the Belarusian people to take an active engagement in support of the democratic change process.

99. The international community has a crucial role to play, not only by ensuring to finally speak with one voice and act with one will, but also by avoiding keeping the human rights of the Belarusian people hostage of present geopolitical games.

100. The Special Rapporteur recommends to the international community to support the democratization process, by creating an international group of friends of human rights in Belarus, which should be supported by an international fund for the promotion of human rights in Belarus. OHCHR should be mandated and empowered to establish and service such multilateral bodies.

103. While the isolation of Belarus should in all cases be avoided, the Special Rapporteur would like to state clearly that Member States, and particularly democracies, should be aware and should not ignore that present trading relations with Belarus do not grant a better quality of life to all Belarusian citizens, but allow President Lukashenka's regime to continue controlling all the country's resources, to subdue the minds and souls of the Belarusian people, and remain in power by systematically violating human rights and threatening international security. Trade relations should only be maintained in exchange of the immediate adoption of democratic reforms, first of all the organization of the round table on the situation of human rights in Belarus. Political decision-makers have the responsibility to take necessary measures in this respect. The European Union and the United States of America should maintain the travel restrictions for Belarusian officials, while international travel for ordinary Belarusians should on the contrary be facilitated. A reduction or even an exemption for visas fees would be much welcomed.

104. The Special Rapporteur recommends to the Council of Europe to adopt the necessary amendments to the European Convention on Human Rights that may open it to the signature by Belarus even before this country meets the standards for becoming a member of the Council. This would allow Belarusian citizens to bring cases of human rights violations committed in their country before the European Court of Human Rights. The Special Rapporteur recommends to the Government of Belarus to make a formal request to the Council of Europe in this sense, as a sign of goodwill.

105. The Special Rapporteur recommends to the regional organizations to organize an inter-parliamentary conference on the human rights situation in Belarus to raise international awareness on the dramatic situation in that country and to promote a coordinated international mobilization against the violation of human rights there. A European parliamentary "troika" formed by the European Parliament, the Parliamentary Assemblies of the Council of Europe and OSCE could take the lead in this respect.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

n/a

V. Fundamental freedoms

n/a

VI. Economic and Social Rights

Special Rapporteur on the situation of human rights in Belarus (E/CN.4/2006/36, para. 103)

103. While the isolation of Belarus should in all cases be avoided, the Special Rapporteur would like to state clearly that Member States, and particularly democracies, should be aware and should not ignore that present trading relations with Belarus do not grant a better quality of life to all Belarusian citizens, but allow President Lukashenka's regime to continue controlling all the country's resources, to subdue the minds and souls of the Belarusian people, and remain in power by systematically violating human rights and threatening international security. Trade relations should only be maintained in exchange of the immediate adoption of democratic reforms, first of all the organization of the round table on the situation of human rights in Belarus. Political decision-makers have the responsibility to take necessary measures in this respect. The European Union and the United States of America should maintain the travel restrictions for Belarusian officials, while international travel for ordinary Belarusians should on the contrary be facilitated. A reduction or even an exemption for visas fees would be much welcomed.

VII. Cultural Rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

Special Rapporteur on the situation of human rights in Belarus (E/CN.4/2006/36, para. 106)

106. Lastly, the mandate of the Special Rapporteur on Belarus by its mere existence was able to give a signal of international solidarity to Belarusian victims of human rights violations and to human rights defenders, to further raise international awareness of the situation of human rights in Belarus, to mobilize international support, and to indicate clearly to the Belarusian stakeholders what measures they are expected to take in order to ensure the compliance of Belarus with its international human rights and international law obligations as a dignified member of the United Nations. Therefore, the Special Rapporteur recommends to the Commission on Human Rights to extend this mandate further not only in time, but also to enlarge the scope of its mandate and its means.

X. Comments from the Government³

n/a

³ As published as official documents of the CHR.

BELGIUM

Introduction

The Working Group of Experts on people of African descent visited the country from 13 to 17 June 2005 (please refer to document E/CN.4/2006/19/Add. 1).

I. Institutional and legal framework for the promotion and protection of human rights

Working Group of Experts on people of African descent (E/CN.4/2006/19/Add.1, paras. 67-68, 70, 72, 75-77, 79-80)

67. The experts take note of the State's view on the collection of statistical data disaggregated by race and ethnicity vis-à-vis the protection of personal data. In this regard, they stress that disaggregated data is crucial to understanding patterns of inequality. Otherwise, inequality can appear to be purely a function of class-based disadvantage, thus omitting the horizontal dimension of inequality, namely the gaps in well-being between clearly defined groups. It is important for establishing precisely what role colour and ethnicity play in economic and social exclusion, and would significantly help in development planning and resource allocation.

68. They take note of the creation by the Government of an inter-ministerial working group to discuss the issue of ethnic data collection and, to this end, recommend that the national authorities examine alternative ways for identifying the level of discrimination against people of African descent and persons of different ethnic origin. They also recommend that the Government find methods to assess the impact and the effectiveness of the measures it adopted to redress discrimination. In this respect, they request the Belgian authorities to report on the deliberations of the inter-ministerial working group.

70. Another concern is the process for the recognition of diplomas obtained in a foreign country. Many persons of African descent are highly educated, with university degrees obtained in foreign countries, but they face difficulties in having their academic titles recognized in Belgium because of the lengthy and bureaucratic procedure and the documents they need to produce.

72. The experts welcome the adoption and implementation of integration policies and encourage the competent authorities to put additional emphasis on strategies encompassing integration, participation, awareness, mutual exchange and fostering greater harmony and tolerance between the persons of foreign origin and the mainstream society.

75. The experts welcome the adoption of the law on financing for anti-democratic parties and they consider it an important step for isolating those political parties urging racial hatred through hampering them from benefiting from the public financing system. They recommend that additional measures be taken to prevent individuals and groups from seeking to arouse racial hatred and xenophobia.

76. The experts note the important role in the fight against racism and discrimination played by CEOOR, commend the programmes and projects carried out by that centre and encourage the institution to continue organizing awareness-raising activities to counter racism and discrimination and to devise empowerment strategies and programmes for the victims of discrimination.

77. The experts welcome the establishment within the Matongé area of a police unit and consider the confidence-building programmes enacted in the area as a good practice which should be extended and replicated elsewhere. In particular, they consider important the strict partnerships established by the various social stakeholders operating in the area as a capacity-building measure for establishing harmony and security in the borough amongst all the communities. A commendable practice is the cooperation with associations of African descent for countering socially deviant behaviours using tools from the African culture.

79. The experts also urge that associations of people of African descent devise strategies to cooperate and to establish a common platform to act as an interface with the governmental authorities to voice the concerns and the needs of the African diaspora in Belgium and to plan concerted actions for the betterment of the situation of people of African descent within the country. They also recommend that associations of people of African descent develop measures to establish a centre of studies on the African diaspora, as a tool for preserving the knowledge of the history, traditions, culture, languages of the countries of origin and as a centre for intercultural exchange and understanding.

80. The experts invite university institutions to continue with their rights research programmes on people of African

II. Non-discrimination and equality before the law

Working Group of Experts on people of African descent (E/CN.4/2006/19/Add.1, paras. 62-65; 71)

62. The experts believe that it is essential for the governmental actors concerned to continue investing in public actions and policies in favour of people of African descent to overcome such discriminations. The experts consider the programmes enacted to counter discrimination in the field of employment as good practices that should be replicated elsewhere and as important tools toward the establishment of a multifaceted strategy encompassing civil rights enforcement, public education and communication at the workplace.

63. The experts praise the efforts of the Belgian authorities in translating the provisions of the Durban Declaration and Programme of Action into the national legislative framework. In this regard, they consider the following actions by the Government of Belgium as good practices in the realization of the provisions of the Durban anti-discrimination agenda: the adoption of the Principles for a Federal Plan of action against racism, anti-Semitism and xenophobia and of the 10-point national plan of action to fight against racism, racial discrimination, xenophobia and related intolerance; the legislative changes that have contributed to improvements in the existing legal apparatus to fight against racism and discrimination; and the dialogue that the authorities have been promoting between the different social, political and economic actors involved to stimulate the adoption of new initiatives for combating discrimination in employment.

64. The experts also endorse the decision, included in the Principles, to develop a “barometer of tolerance”. They invite the governmental bodies concerned to pursue the realization of such an instrument, which they consider important for measuring at the quantitative and qualitative level the evolution of racist, anti-Semitic and xenophobic attitudes within the country.

65. The experts take note of the efforts of the Belgian authorities in promoting intercultural dialogue through various initiatives at the federal, regional, communities and municipal level. They acknowledge the creation and the work carried out by the Intercultural Dialogue Commission. The Mechelen “Black week” or the “African weekends” organized by the Royal Museum of Central Africa are good examples in this regard, and similar initiatives should be encouraged and implemented.

71. The experts note that, in the field of employment, discriminatory behaviours and practices are recorded, in particular in the recruitment process. The experts take note of the programmes, policies and measures put in place for fighting against discrimination in the access to the labour market. They commend all those initiatives aimed at coaching and orienting persons in search of a job and the investments made to raise awareness amongst private-sector actors of the richness of diversity. In particular, they stress the important role played by the Multicultural Enterprise Unit in promoting equal treatment of foreign workers and workers of immigrant background.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Working Group of Experts on people of African descent (E/CN.4/2006/19/Add.1, para. 66)

66. The experts take note of the initiative by the Government of Belgium in presenting apologies for its moral responsibility in the murder of Patrice Lumumba. They also praise the creation of the Patrice Lumumba Foundation as an appropriate way to restore the dignity of the victim by contributing to the sustainable development of the Congolese population through the financing of specific projects. In this regard, they would like to be kept informed on the progress of the foundation.

IV. Administration of justice and the rule of law

Working Group of Experts on people of African descent (E/CN.4/2006/19/Add.1, paras 73-74, 78 (g))

73. The experts welcome the diversity plan enacted by the police in its recruitment strategy and the training programmes for police officers which put also emphasis on diversity, anti-discrimination and anti-racism. They also take note of the projects enacted to build trust with the various communities of foreign background and encourage the furtherance and enhancement of such confidence-building measures.

74. The experts welcome the training programmes organized for judges and prosecutors on anti-discrimination issues and consider them an example to follow. They also welcome the statistical tools used by the Ministry of Justice to enable the collection of qualitative data from the various levels of the criminal justice system, to allow for statistical analyses concerning the prosecution of racism and xenophobia in the country.

78. The experts recommend that, in the short and medium terms, measures to ensure a more effective protection of the rights of people of African descent in Belgium should be strengthened. These measures should include:

(g) Additional efforts to ensure that the composition of the police reflects the diversity of society and an increase of programmes to prevent and counter discrimination;

V. Fundamental freedoms

n/a

VI. Economic and social rights

Working Group of Experts on people of African descent (E/CN.4/2006/19/Add.1, para 71, 78 (a), (b), (c), (e), (f), (g))

71. The experts note that, in the field of employment, discriminatory behaviours and practices are recorded, in particular in the recruitment process. The experts take note of the programmes, policies and measures put in place for fighting against discrimination in the access to the labour market. They commend all those initiatives aimed at coaching and orienting persons in search of a job and the investments made to raise awareness amongst private-sector actors of the richness of diversity. In particular, they stress the important role played by the Multicultural Enterprise Unit in promoting equal treatment of foreign workers and workers of immigrant background.

78. The experts recommend that, in the short and medium terms, measures to ensure a more effective protection of the rights of people of African descent in Belgium should be strengthened. These measures should include:

- (a) Further awareness-raising actions to counter discrimination in access to employment, directed in particular to private enterprises;
- (b) Policies aimed at highlighting all private enterprises applying a diversity strategy in their recruitment policies, so as to create exemplary models for other private actors that have not yet done so;
- (c) The establishment and, where already existing, the reinforcement of mechanisms for monitoring the impact of diversity employment policies;

- (e) Strengthening measures to counter inequalities in educational outcomes for children of foreign origin, through educational policies that ensure a more equal representation of target-group pupils in schools and which address the problem of repeating, school delay, absenteeism and dropout, and the overrepresentation in special and vocational training of children of foreign origin;
- (f) A greater effort to devise suitable procedures and criteria for the equivalency of diplomas;

VII. Cultural rights

Working Group of Experts on people of African descent (E/CN.4/2006/19/Add.1, para 78 (d), (h), (i))

78. The experts recommend that, in the short and medium terms, measures to ensure a more effective protection of the rights of people of African descent in Belgium should be strengthened. These measures should include:

- (d) The organization of additional intercultural initiatives, as a long-term tolerance-building strategy and as a tool for celebrating the diversity that people of African descent in particular and persons of foreign background more generally bring to Belgian society;
- (h) An increase in investments for enhancing the role of Matongé as a catalyst of the African culture and traditions in Belgium. To this end, they encourage the organization of a Matongé intercultural dialogue initiative as a venue for the African diaspora components to have a structured dialogue, as a mechanism for the African community to communicate and interact with the mainstream society through the means of its culture, its traditions, its history, its contribution to the Belgian social and economic development, thus making the borough the symbol of intercultural understanding and dialogue;
- (i) Involvement of people of African descent in playing a leadership role in the public, social, economic, academic sphere, in confidence-building and awareness-raising measures, so as to present positive role models for the young African generations and for people of African descent at large living in Belgium.

VIII. Situation of specific groups

Working Group of Experts on people of African descent (E/CN.4/2006/19/Add.1, para 69)

Children

69. The experts underline that children of African descent or with a foreign background frequently do not start their school career with the same social and cultural capital as other children and consider this aspect as an important element to take into account when framing education measures for such target groups. They are concerned that in some areas highly populated by persons of foreign origin, school classes are composed mainly of pupils of foreign background, thus undermining the integration efforts of the national authorities.

IX. The right to development and international cooperation

n/a

X. Comments from the Government⁴

n/a

⁴ As published as official documents of the CHR.

BOSNIA AND HERZEGOVINA

Introduction

During the period under review, the following special procedures visited Bosnia and Herzegovina:

- Special Rapporteur on trafficking in persons, especially in women and children visited Bosnia and Herzegovina from 20 to 28 February 2005 (please refer to document E/CN.4/2006/62/Add.2).
- Representative of the Secretary-General on the human rights of internally displaced persons from 9 to 15 June 2005 (please refer to document E/CN.4/2006/71/Add.4)

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.2, paras. 75-79)

75. The Special Rapporteur addresses a number of recommendations to the Government, the civil society and the international community to support their efforts to combat trafficking and protect its victims. The Special Rapporteur is aware that some of the following recommendations have financial implications and recommends that all relevant actors cooperate in their implementation and, when appropriate, that the international community lend its support.

76. The Special Rapporteur welcomes the revision of the NPA and encourages the Government to take the lead in its implementation, including in supporting shelters and rehabilitation programmes, and to use it as a tool to sustain efforts to combat trafficking, also drawing on the recommendations contained in this report.

77. The Special Rapporteur welcomes the efforts at coordination undertaken by the Government, including through the appointment of the State Coordinator, and encourages the Government to achieve further progress along this path.

78. The impressive legislative reform accomplished in Bosnia and Herzegovina has provided a framework for the prevention of trafficking and the prosecution of perpetrators. However, the Special Rapporteur notes that there are still weaknesses and recommends further efforts to harmonize the provisions of entity-level criminal laws with the State criminal law. In this context, she recommends that further reforms be undertaken to ensure that the crime under article 187 of the Criminal Code is prosecuted as trafficking and that issues of jurisdiction be clarified. The Special Rapporteur further recommends necessary legislative reforms to ensure that prostitutes are not criminalized and that assets and illegally obtained property are confiscated, and that the proceeds go directly into a compensation fund for victims.

79. The Special Rapporteur believes that reforms are necessary on issues such as the employment of aliens and their access to health and social rights, so as to ensure that they do not become vulnerable to trafficking.

Representative on internally displaced persons (E/CN.4/2006/71/Add.4, paras. 54, 55, 57 and 61)

54. The Representative is concerned about the deplorable living conditions of IDPs, especially those belonging to particularly vulnerable groups, such as the elderly without family support, traumatized victims, disabled or sick persons, female-headed households and families of missing persons, witnesses in war crimes investigations and trials, or members of the Roma and other minorities, who still live in collective centres, irregular settlements and other forms of temporary shelter, often experience multiple discrimination and are unlikely to be able to return to their original homes.

55. The Representative urges national and local authorities, in collaboration with international

agencies and donors, to seek durable solutions for these persons, including the creation of adequate housing and appropriate institutional arrangements such as foster families, social housing projects

57. Sustainable return in Bosnia and Herzegovina is dependent on: (a) ensuring the safety of life and limb of returnees; (b) property repossession and reconstruction of houses; and (c) a political, social and economic environment that respects human rights and addresses the special needs of returnees. While impressive results have already been achieved, many challenges remain. The Representative recommends that all necessary measures be taken to ensure the effective protection of human rights of displaced persons and returnees, including by implementing his recommendations. He calls upon the international community to ensure that assistance programmes entail a transfer of responsibilities and capacities to national and local stakeholders and that during this process the human rights of displaced persons and returnees are mainstreamed into all relevant parts of the administration. The Representative invites the authorities and the international community to establish a mechanism to closely monitor the return situation and its sustainability by using reliable indicators and disaggregated data.

61. The Representative recommends to the international community that it concentrate its efforts and resources towards the creation of an environment conducive to sustainable return. It could assist with human rights training and human rights-based capacity-building in areas such as administration of justice, employment policies, and the harmonization of the health and education systems.

II. Non-discrimination and equality before the law

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.2, para. 83)

83. The Special Rapporteur recommends that measures be considered to achieve gender balance among officials, in particular those in law enforcement, working to prevent and suppress trafficking, so as to encourage and facilitate identification of victims.

Representative on internally displaced persons (E/CN.4/2006/71/Add.4, paras. 60 and 64)

60. The unwillingness of local authorities to sufficiently respect, protect and fulfil the human rights of returnees, in particular their economic and social rights, continues to pose a major obstacle to sustainable return. These obstacles often originate in widespread and persistent discrimination along ethnic lines which still penetrates all spheres of public and private life in many regions of the country. Despite recent efforts, non-harmonized laws and regulations at different levels remain and have also hampered return and integration. The Representative recommends that existing legislation be reviewed at all levels in the light of human rights provisions relevant to IDPs and returnees, with support from the international community. A comprehensive policy of non-discrimination, possibly designed with the assistance of the international community, should be adopted to address discrimination in all spheres, particularly education, health, social protection, employment, access to justice, public participation and the media. It should include legislative measures as well as effective mechanisms for redress and compensation, a system monitoring the situation of vulnerable groups, codes of conduct and public campaigns. The participation of all sectors of society, including the private sector, would be essential for the successful implementation of the policy. Legislation should be harmonized and simplified, especially in the areas of pensions and employment, access to health, education, the use of symbols in public institutions and the recognition of the status of civilian victim of war. Human rights training, including on the Guiding Principles on Internal Displacement, should be provided to officials of the Ministry for Human Rights and Refugees and their counterparts in the entities and municipalities. At the same time, measures should be taken to better inform IDPs and returnees of their rights and existing mechanisms with which to seek redress. All IDPs and returnees, in particular the Roma, should be provided with the documents necessary to allow them equal access to administrative procedures. Further, the Representative recommends that the authorities make the necessary budget allocations for the implementation of laws affecting the situation of returnees and displaced persons, especially in the areas of social welfare and health. Municipalities should likewise allocate an adequate budget for return. The Representative invites the authorities to consider accepting the competence of the Committee on the Elimination of Racial Discrimination to examine individual

communications, by making the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

64. Discriminatory practices in employment, especially prevalent in the public sector of municipalities, discourage minority returns. Returnees excluded from the formal labour market have to resort to the informal economy or other coping mechanisms. The Representative recommends that the authorities closely review and monitor recruitment practices in the public sector with a view to eliminating discrimination. Disproportionate underrepresentation of one ethnic group in a given public company should be taken as an indication of discrimination unless otherwise demonstrated. Programmes and initiatives aimed at creating employment opportunities specifically for IDP and female returnees who are heads of household should be created. Such measures might include vocational training for women as well as training for employers on gender equality. Authorities should also take steps towards creating an environment conducive to economic growth and development in return areas, and ensure that the privatization process is conducted in a transparent and accountable manner. Past incidents of discrimination in employment need to be addressed by providing those unfairly made redundant with re-employment or compensation.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.2, paras. 80-85)

80. The Special Rapporteur welcomes the strengthened border controls and the fact that the State Border Service has developed the capacity to keep track of foreigners within the territory of the State. In this connection, she wishes to recommend that measures be taken to ensure better control of the border with Serbia and to prevent the misuse of the right to cross the border only with an identity card. She also recommends that when irregular aliens are intercepted, efforts be undertaken to determine their situation individually and to ensure that they have access to asylum procedures, if relevant, and that if they are victims of trafficking they receive adequate assistance and are not immediately deported. The Special Rapporteur recommends that further training be given to SBS officers on the identification of the victims of trafficking, on the Rule Book and the UNICEF Guidelines for the Protection of the Rights of Children Victims of Trafficking.

81. The Special Rapporteur further recommends that the identification of victims not be left totally to the discretion of SBS officers and other law enforcement officials, but that specific guidelines be developed. In defining guidelines for identification of victims, the Special Rapporteur recommends that the relevant chapter of the Legal Manual on Protection of Victims of Trafficking in Persons in Bosnia and Herzegovina prepared by the OHCHR Office in Bosnia and Herzegovina be taken into account. Rule books and procedures should also be developed on issues such as how to act in case of suspicion that a person is crossing the border irregularly.

82. The Special Rapporteur recommends greater coordination between the SBS and other law enforcement agencies, especially in the exchange of intelligence, including through joint training on the prevention of trafficking and assistance to victims. More training for law enforcement officials on the Rule Book is also necessary. The Special Rapporteur recommends that the Rule Book be revised to ensure that it addresses the question of protection of national victims and victims of trafficking for purposes other than prostitution. Measures should be taken to address the problem of corruption of local police, including introducing higher salaries, promoting internal mechanisms to report cases of corruption and ensuring that internal disciplinary measures are taken in cases of corruption.

83. The Special Rapporteur recommends that measures be considered to achieve gender balance among officials, in particular those in law enforcement, working to prevent and suppress trafficking, so as to encourage and facilitate identification of victims.

84. The Special Rapporteur also strongly recommends that steps be taken to ensure the existence of organized legal counselling, to be made available to victims upon identification so that they are aware of the alternatives at their disposal. The Special Rapporteur recommends that legal assistance be made available to victims so that they can seek compensation under the civil procedure, while being accommodated in shelters and provided with assistance, training and rehabilitation.

85. The Special Rapporteur further recommends greater coordination between the Government, NGOs and IOM to ensure that data are made available on the situation of victims after repatriation, so as to enable better assessment of the impact of identification, referral, assistance and repatriation programmes

Representative on internally displaced persons (E/CN.4/2006/71/Add.4, paras. 57 -58)

57. Sustainable return in Bosnia and Herzegovina is dependent on: (a) ensuring the safety of life and limb of returnees; (b) property repossession and reconstruction of houses; and (c) a political, social and economic environment that respects human rights and addresses the special needs of returnees. While impressive results have already been achieved, many challenges remain. The Representative recommends that all necessary measures be taken to ensure the effective protection of human rights of displaced persons and returnees, including by implementing his recommendations. He calls upon the international community to ensure that assistance programmes entail a transfer of responsibilities and capacities to national and local stakeholders and that during this process the human rights of displaced persons and returnees are mainstreamed into all relevant parts of the administration. The Representative invites the authorities and the international community to establish a mechanism to closely monitor the return situation and its sustainability by using reliable indicators and disaggregated data.

58. Most returnees now enjoy physical security. Concerns remain about the widespread presence of landmines as well as threats against witnesses in war crimes investigations and trials and members of ethnic minority groups. The Representative recommends that the authorities continue, and possibly accelerate, with the support of the international community, the process of mine clearance with a priority on return areas. Law enforcement institutions should take effective measures to ensure that all crimes and acts of violence against IDPs and returnees are properly investigated and prosecuted. A functional witness protection programme should be established.

IV. Administration of justice and the rule of law

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.2, paras. 86-89)

86. The Special Rapporteur recommends further efforts in the implementation of the new criminal procedure codes so as to clarify which crimes are to be prosecuted at the State level as trafficking rather than in the entity courts as offences carrying lesser penalties. In particular, law enforcement officials should receive training on when, how and at what stage to transmit a case to the State prosecutor. Training on investigative methods of gathering evidence should also be implemented for the police. Prosecutors should be sensitized to the need to conduct thorough investigations and to avoid precipitous prosecution for offences carrying lesser penalties. State investigations should also be strengthened, as well as cooperation between different levels of law enforcement. The Special Rapporteur strongly recommends that training be undertaken for law enforcement officials in detecting and properly investigating acts of trafficking. Steps should also be taken to increase cooperation among law enforcement agencies and between them and the prosecutors' offices so as to improve cooperation and information exchange and therefore achieve more effective prosecution.

87. In order to ensure effective prosecution, the Special Rapporteur further recommends that measures be taken to amend the standards required to prove that the victim-witness are genuinely unavailable at trial and to ensure that the definition of unavailability recognizes that the victim-witness can also be rendered unavailable through fear and that she should therefore not be subject to subpoena or arrest and/or detention as a material witness.

88. The Special Rapporteur believes that proper protection must be provided to the victims who decide to cooperate with the prosecution so that they do not feel threatened or intimidated. The Special Rapporteur recommends that protection of victims be provided not only during trial but also before and afterwards. It should include temporary leave to remain in the country for the duration of civil proceedings and work permits. Agreements on relocation to third countries should also be sought. Proper allocations should be secured to ensure the implementation of the witness protection law and the Witness Protection Programme. The Special Rapporteur recommends that agreements be sought with the countries of origin of the victims on cost-sharing schemes in order to provide strengthened assistance to the victims.

Representative on internally displaced persons (E/CN.4/2006/71/Add.4, para. 58 -59)

58. Most returnees now enjoy physical security. Concerns remain about the widespread presence of landmines as well as threats against witnesses in war crimes investigations and trials and members of ethnic minority groups. The Representative recommends that the authorities continue, and possibly accelerate, with the support of the international community, the process of mine clearance with a priority on return areas. Law enforcement institutions should take effective measures to ensure that all crimes and acts of violence against IDPs and returnees are properly investigated and prosecuted. A functional witness protection programme should be established.

59. Despite the huge progress made in solving property disputes, restitution of houses and reconstruction of buildings, a considerable number of cases remain to be solved. Vulnerable groups and minorities are disproportionately affected by unsolved cases and deficiencies in infrastructure, and they have difficulties accessing aid for reconstruction and connection to public services. The Representative recommends that the authorities continue, with the support of the international community, the reconstruction process and reconnection of houses to services in a non-discriminatory manner, and examine carefully unsolved cases of property repossession, in particular where members of vulnerable groups are affected.

V. Fundamental freedoms

n/a

VI. Economic and social rights

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.2, para. 79)

79. The Special Rapporteur believes that reforms are necessary on issues such as the employment of aliens and their access to health and social rights, so as to ensure that they do not become vulnerable to trafficking.

Representative on internally displaced persons (E/CN.4/2006/71/Add.4, paras. 60, 62-63, 65)

60. The unwillingness of local authorities to sufficiently respect, protect and fulfil the human rights of returnees, in particular their economic and social rights, continues to pose a major obstacle to sustainable return. These obstacles often originate in widespread and persistent discrimination along ethnic lines which still penetrates all spheres of public and private life in many regions of the country. Despite recent efforts, non-harmonized laws and regulations at different levels remain and have also hampered return and integration. The Representative recommends that existing legislation be reviewed at all levels in the light of human rights provisions relevant to IDPs and returnees, with support from the international community. A comprehensive policy of non-discrimination, possibly designed with the assistance of the international community, should be adopted to address discrimination in all spheres, particularly education, health, social protection, employment, access to justice, public participation and the media. It should include legislative measures as well as effective mechanisms for redress and compensation, a system monitoring the situation of vulnerable groups, codes of conduct and public campaigns. The participation of all sectors of society, including the private sector, would be essential for the successful implementation of the policy. Legislation should be harmonized and simplified, especially in the areas of pensions and employment, access to health, education, the use of symbols in public institutions and the recognition of the status of

civilian victim of war. Human rights training, including on the Guiding Principles on Internal Displacement, should be provided to officials of the Ministry for Human Rights and Refugees and their counterparts in the entities and municipalities. At the same time, measures should be taken to better inform IDPs and returnees of their rights and existing mechanisms with which to seek redress. All IDPs and returnees, in particular the Roma, should be provided with the documents necessary to allow them equal access to administrative procedures. Further, the Representative recommends that the authorities make the necessary budget allocations for the implementation of laws affecting the situation of returnees and displaced persons, especially in the areas of social welfare and health. Municipalities should likewise allocate an adequate budget for return. The Representative invites the authorities to consider accepting the competence of the Committee on the Elimination of Racial Discrimination to examine individual communications, by making the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

62. Limited, or lack of, access to the right to education constitutes a major obstacle to return, as IDPs are reluctant to return to areas where their children would face segregation and intolerance and have to attend schools with a curriculum that does not respect the cultural traditions of their own ethnic group. The Representative recommends that the authorities continue the process of harmonization of the educational system and gradually eliminate the system of “two schools under one roof”. Countrywide educational programmes aimed at creating an environment of tolerance, peace and understanding of diversity should be established.

63. The right to health is undermined by inconsistencies in health insurance schemes between entities, which mainly affect IDPs and returnees who suffered the most acute consequences of the war and who are in need of specific physical and psychological assistance. The Representative recommends that the authorities implement the 2001 agreement between the entities and the Brčko District health insurance funds, to ensure that all those insured by one entity can receive health coverage in another. Specific resources need to be allocated to assist persons suffering from post-traumatic stress disorder. State-level legislation recognizing the status of victim of torture, creating specific protection measures and granting victims specific entitlements, should be enacted.

65. Mass returns of refugees from abroad, repatriation to areas of unsustainable conditions, evictions of temporary occupants during the property repossession process and the closing of settlements may pose the risk of renewed or multiple displacement.

66. The Representative recommends that the authorities avoid depriving IDPs of their current accommodation without offering an adequate alternative solution. The Sarajevo Declaration should be implemented so as to facilitate sustainable return of internally displaced persons and avoid successive displacement. Further dialogue and collaboration on displacement at the regional level could be facilitated by the international community. The Representative calls upon the authorities to raise concerns related to the sustainability of return with the competent authorities of countries of asylum, with a view to avoiding the displacement of deportees and repatriates once they are returned to Bosnia and Herzegovina. The international community is also called upon to alert asylum States concerned of existing risks and to appeal to them to proceed cautiously with returns to Bosnia and Herzegovina, in particular of persons belonging to ethnic minorities.

VII. Cultural rights

Representative on internally displaced persons (E/CN.4/2006/71/Add.4, para. 62)

62. Limited, or lack of, access to the right to education constitutes a major obstacle to return, as IDPs are reluctant to return to areas where their children would face segregation and intolerance and have to attend schools with a curriculum that does not respect the cultural traditions of their own ethnic group. The Representative recommends that the authorities continue the process of harmonization of the educational system and gradually eliminate the system of “two schools under one roof”. Countrywide educational programmes aimed at creating an environment of tolerance, peace and understanding of diversity should be established.

VIII. Situation of specific groups

Women

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.2, paras. 89-91)

89. The Special Rapporteur believes that greater attention should be devoted to addressing the root causes of trafficking in persons into Bosnia and Herzegovina. In this context, the Special Rapporteur encourages initiatives in the countries of origin of trafficked victims, such as supporting the development of women's cooperatives, promoting women's entrepreneurship, and supporting the creation of women's economic networks to provide advocacy, training and information to businesswomen, unemployed women and women in agriculture, among others. Long-term prevention should also include anti-discrimination measures, job opportunities for women, legal migration projects targeting women, awareness-raising and programmes targeting violence against women.

90. The Special Rapporteur recommends that awareness-raising programmes be undertaken, especially in rural areas, in the main countries of origin of victims by the respective Governments, the civil society and the international community.

91. The Special Rapporteur recommends that increased attention be devoted to prevention of internal trafficking and trafficking from Bosnia and Herzegovina to other countries, with particular attention to the root causes of the phenomenon. In particular, the Special Rapporteur believes that measures to combat trafficking should take into account the Law on Gender Equality and the Poverty Reduction Strategy, as gender-based discrimination and poverty can turn Bosnia and Herzegovina into a country of origin of trafficking and foster internal trafficking.

Children

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.2, paras. 92-95)

92. The Special Rapporteur recommends increased efforts to combat international and internal trafficking of children, including through the allocation of funds specifically for this purpose. The Special Rapporteur further recommends increased regular surveillance of premises suspected of harbouring trafficked children and intensified efforts to detect and identify child victims. Special training on trafficking of children and the protection to which they are entitled under national and international law, as well as child-focused methods of intervention, detection, identification, assistance should be provided to all relevant actors (social workers, NGOs, the media, the judiciary). The Special Rapporteur further recommends that needs in terms of shelters and structures for child victims of trafficking be analysed and measures taken to ensure that children receive the assistance and protection to which they are entitled.

93. The Special Rapporteur endorses the recommendations of UNICEF concerning the need to increase general prevention measures to identify children vulnerable to becoming victims of trafficking and to make use of the Guidelines for the Protection of the Rights of Children Victims of Trafficking concerning detection, registration, referral, shelter, protection and follow-up for children from Bosnia and Herzegovina and from other countries. The Special Rapporteur recommends increased efforts to sensitize potential users of services provided by trafficked children about the human suffering of the victims, as well as teenage girls about the risks related to trafficking. Also, public campaigns with children and youth in rural areas are recommended to prevent them from becoming victims of trafficking.

94. The Special Rapporteur further recommends that police methods for dealing with children living or working in the streets, children in conflict with the law and children who are victims of crime be modernized through greater focus on proactive outreach work, confidence-building measures and cooperation with social services. The Special Rapporteur recommends outreach assistance for children living and working in the streets and members of high-risk groups, as well as the investigation of the involvement of criminal networks in begging. Professionals coming into contact with children living or working in the streets, as well as the general population, should be sensitized to the Roma culture and child protection.

95. The Special Rapporteur welcomes community watch programmes, as well as programmes undertaken by NGOs, UNICEF and IOM to tackle domestic violence and address the root causes of trafficking in children.

Foreigners

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.2, para. 79)

79. The Special Rapporteur believes that reforms are necessary on issues such as the employment of aliens and their access to health and social rights, so as to ensure that they do not become vulnerable to trafficking.

IX. The right to development and international cooperation

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.2, para. 95)

95. The Special Rapporteur welcomes community watch programmes, as well as programmes undertaken by NGOs, UNICEF and IOM to tackle domestic violence and address the root causes of trafficking in children.

Representative on internally displaced persons (E/CN.4/2006/71/Add.4, para. 55, 57, 61 and 65)

55. The Representative urges national and local authorities, in collaboration with international agencies and donors, to seek durable solutions for these persons, including the creation of adequate housing and appropriate institutional arrangements such as foster families, social housing projects or homes. He urges the international community and donors to support such projects.

57. Sustainable return in Bosnia and Herzegovina is dependent on: (a) ensuring the safety of life and limb of returnees; (b) property repossession and reconstruction of houses; and (c) a political, social and economic environment that respects human rights and addresses the special needs of returnees. While impressive results have already been achieved, many challenges remain. The Representative recommends that all necessary measures be taken to ensure the effective protection of human rights of displaced persons and returnees, including by implementing his recommendations. He calls upon the international community to ensure that assistance programmes entail a transfer of responsibilities and capacities to national and local stakeholders and that during this process the human rights of displaced persons and returnees are mainstreamed into all relevant parts of the administration. The Representative invites the authorities and the international community to establish a mechanism to closely monitor the return situation and its sustainability by using reliable indicators and disaggregated data.

61. The Representative recommends to the international community that it concentrate its efforts and resources towards the creation of an environment conducive to sustainable return. It could assist with human rights training and human rights-based capacity-building in areas such as administration of justice, employment policies, and the harmonization of the health and education systems.

65. Mass returns of refugees from abroad, repatriation to areas of unsustainable conditions, evictions of temporary occupants during the property repossession process and the closing of settlements may pose the risk of renewed or multiple displacement.

66. The Representative recommends that the authorities avoid depriving IDPs of their current accommodation without offering an adequate alternative solution. The Sarajevo Declaration should be implemented so as to facilitate sustainable return of internally displaced persons and avoid successive displacement. Further dialogue and collaboration on displacement at the regional level could be facilitated by the international community. The Representative calls upon the authorities to raise concerns related to the sustainability of return with the competent authorities of countries of asylum, with a view to avoiding the displacement of deportees and repatriates once they are returned to Bosnia and Herzegovina. The

international community is also called upon to alert asylum States concerned of existing risks and to appeal to them to proceed cautiously with returns to Bosnia and Herzegovina, in particular of persons belonging to ethnic minorities.

X. Comments from the Government⁵

⁵ As published as official documents of the CHR.

BOTSWANA

Introduction

During the period under review, the Special Rapporteur on the right to education visited the country from 26 September to 4 October 2005 (please refer to document E/CN.4/2006/45/Add.1).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the right to education (E/CN.4/2006/45/Add.1, para. 76)

76. The Special Rapporteur encourages the Government of Botswana to:

- (a) Ratify the International Covenant on Economic, Social and Cultural Rights as soon as possible, as a way of strengthening its commitment to translating economic, social and cultural human rights norms into the national agenda for development;
- (b) Adopt a rights-based approach to education by providing a constitutional guarantee to education;
- (c) Review the mandate and scope of activities of the Ombudsman or establish a national human rights institution, in accordance with international standards, as a means of strengthening human rights capacity within the country;
- (d) Withdraw the measure aiming at reintroducing school fees at junior secondary level and consider alternative ways to ensure the sustainability of education in spite of financial constraints;
- (e) Analyse the factors that cause delays in the distribution of books and adopt measures to guarantee timely delivery to all schools in the country;
- (f) Establish and implement rationalized policies for the training, recruitment and affectation of teachers;
- (g) Engage, as a matter of priority, in the training of teachers coming from the most remote areas;
- (h) Provide the same facilities for all teachers wherever they are affected;
- (i) Ensure that foreign and refugee children have the same access to education as nationals;
- (j) Develop special projects and programmes for orphaned adolescents who are forced into work to support their families, ensuring their integration into school and the provision of support to their families;
- (k) Elaborate and disseminate accessible versions of the chapter of the Education Act dealing with the rights of adolescents who are pregnant or raising children, as well as evaluate programmes of sex education and explore new approaches empowering adolescents to exercise responsibly their sexual and reproductive rights;
 - (l) Develop training programmes to increase the gender awareness of teachers, both women and men, and review all curricular materials to eliminate any discriminatory content;
 - (m) Develop new approaches to education more responsive to the needs of nomadic populations, including mobile schools and the training of teachers from such communities as well as their employment with adequate salaries and working conditions;
 - (n) Evaluate the educational achievement of the school for visually impaired children and establish additional institutions and mechanisms to ensure provision of education for children with disabilities and facilitate their access to secondary schools;
 - (o) Bring together experts from different ethnic backgrounds to prepare a pilot programme for intercultural education which could be implemented on an experimental basis;
 - (p) Adopt legislation to abolish use of corporal punishment in schools;
 - (q) Request support and technical advice from the Office of the United Nations High Commissioner for Human Rights (OHCHR) to develop a national strategy according to the World Programme for Human Rights Education.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on the right to education (E/CN.4/2006/45/Add.1, para. 76)

(p) Adopt legislation to abolish use of corporal punishment in schools;

IV. Administration of justice and the rule of law

n/a

V. Fundamental freedoms

n/a

VI. Economic and social rights

Special Rapporteur on the right to education (E/CN.4/2006/45/Add.1, para. 76)

- (a) Ratify the International Covenant on Economic, Social and Cultural Rights as soon as possible, as a way of strengthening its commitment to translating economic, social and cultural human rights norms into the national agenda for development;
- (d) Withdraw the measure aiming at reintroducing school fees at junior secondary level and consider alternative ways to ensure the sustainability of education in spite of financial constraints;
- (e) Analyse the factors that cause delays in the distribution of books and adopt measures to guarantee timely delivery to all schools in the country;
- (f) Establish and implement rationalized policies for the training, recruitment and affectation of teachers;
- (g) Engage, as a matter of priority, in the training of teachers coming from the most remote areas;
- (h) Provide the same facilities for all teachers wherever they are affected;
- (i) Ensure that foreign and refugee children have the same access to education as nationals;
- (j) Develop special projects and programmes for orphaned adolescents who are forced into work to support their families, ensuring their integration into school and the provision of support to their families;

VII. Cultural rights

n/a

VIII. Situation of specific groups

Special Rapporteur on the right to education (E/CN.4/2006/45/Add.1, para. 76)

- (i) Ensure that foreign and refugee children have the same access to education as nationals;
- (k) Elaborate and disseminate accessible versions of the chapter of the Education Act dealing with the rights of adolescents who are pregnant or raising children, as well as evaluate programmes of sex education and explore new approaches empowering adolescents to exercise responsibly their sexual and reproductive rights;
- (l) Develop training programmes to increase the gender awareness of teachers, both women and men, and review all curricular materials to eliminate any discriminatory content;
- (m) Develop new approaches to education more responsive to the needs of nomadic populations, including mobile schools and the training of teachers from such communities as well as their employment with adequate salaries and working conditions;
- (n) Evaluate the educational achievement of the school for visually impaired children and establish additional institutions and mechanisms to ensure provision of education for children with disabilities and facilitate their access to secondary schools;

IX. The right to development and international cooperation

Special Rapporteur on the right to education (E/CN.4/2006/45/Add.1, para 77)

77. The Special Rapporteur encourages OHCHR to ensure that it can offer any assistance requested by the Government of Botswana, particularly with regard to human rights education.

X. Comments from the Government⁶

n/a

⁶ As published as official documents of the CHR.

BRAZIL

Introduction

The Government of Brazil has extended a standing invitation to thematic special procedures of the Commission on Human Rights.

During the period under review, the following special procedures visited Brazil:

- The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited the country from 17 to 25 October 2005 (please refer to document E/CN.4/2006/16/Add.3).
- The Special Representative on the situation of human rights defenders visited the country from 5 to 16 December 2005 (please refer to document E/CN.4/2006/95/Add.4).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on human rights defenders (E/CN.4/2006/95/Add.4, paras. 13-18)

13. In their efforts to attain social, economic, environmental and cultural rights, in seeking to expose human rights violations and to end impunity for these violations and in resisting discrimination or marginalization, human rights defenders often experience extremely serious harm. Their right to life, liberty and physical security continues to be threatened. The Special Representative notes with the gravest concerns the numerous reports of assassinations and attempts on the lives of defenders in Brazil. In this context, the uncountable number of threats which defenders face and the persisting high level of impunity for such crimes result in a climate in which defenders fear for their lives and for those of their relatives. In some cases, she met with defenders who have had to leave their homes and families and abandon their work to go into hiding in order to ensure their own safety.

14. The Special Representative notes that much of the violence against defenders is rooted in conflicts over land and environmental protection and is perpetrated by powerful non-State actors who, in certain instances, reportedly benefit from the collusion of local State authorities. Nevertheless, she notes that killings and threats against defenders also occur in a number of urban settings at the hands so-called “extermination groups”, which are reported to have links with certain elements of the security forces.

15. The Special Representative is also concerned about information attesting to the criminalization of social action by human rights defenders. She notes that human rights defenders have been subject to unfair and malicious prosecution, repeated arrests and vilification as retaliatory action by State as well as by powerful and influential non-State entities. Leaders and supporters of social movements, in particular, have suffered and are placed at serious risk for activities in defence of human rights. Nevertheless, in certain instances even government functionaries performing their tasks have not been safe. In particular, the Special Representative received reports of labour inspectors and civil servants who were targeted.

16. The Special Representative was greatly disturbed by reports indicating that, when human rights activists organize, they are accused of forming criminal gangs and when they mobilize for collective action to protest violations of rights they are accused of creating public disorder. While she does not discount allegations made by some state governments of violence accompanying collective action in some instances, she notes, with grave concern, that peaceful public action for defence of human rights has frequently been met with disproportionate use of force. She is particularly concerned at the use of “non-lethal weapons” such as rubber bullets by security forces in their operations during such events. In response to her questions, authorities in certain states could not satisfy her as to the procedures that streamline authorization and monitoring of such use. She also notes the serious allegations of violence against defenders and abuse of powers by the State Military Police. In her estimate, Federal Police and other mechanisms for the administration of justice enjoy a relatively higher level of trust among the population.

17. She believes that more uniformity of commitment and complementary efforts to implement human rights policies by the federal and state governments could mitigate many of these concerns. She senses an urgent need for critical adjustments in the role of the judiciary in order that the social policy of the State, enunciated in the Constitution, have a stronger assurance of practical implementation. In this context she recommends constitutional interpretations and judicial action which ensure not only equal respect for economic, social and cultural rights but also removal of any superficial conflict with regard to the enforcement of different rights guaranteed by the Constitution.

18. The human rights committees of the Parliament and state legislative assemblies are generally active on these issues and are accessible to human rights defenders. However, the legislature as an institution needs to be more sensitive to human rights issues and assign more priority to the protection of activities for the defence of human rights in their legislative agenda. The Special Representative is also aware of fears that political polarization within the legislative bodies has undermined many human rights-related initiatives and impeded efforts to address structural issues at the root of the social conflicts. These efforts are necessary to ensure the prevalence of a conducive environment for human rights defenders.

II. Non-discrimination and equality before the law

Special Rapporteur on racism (E/CN.4/2006/16/Add.3, paras. 70-72 ;82)

70. Given the historical, social and cultural entrenchment of racism and racial discrimination, efforts to combat and eradicate their roots, manifestations and expressions should be undertaken as a process of national catharsis in two key steps:

(a) The establishment, as a national and collective catharsis, of a national commission on truth and reconciliation on racism and racial discrimination with a mandate to assess the manifestations, expressions and consequences of racism and racial discrimination in Brazilian society. This commission should be composed of representatives of all communities and political parties, and eminent members of civil society engaged in the promotion of human rights and racial equality. The proceedings of the commission should be largely publicized to allow members of the Brazilian society to be collectively informed of the scope and manifestations of racism;

(b) The Government should translate the conclusions and recommendations of the commission into a comprehensive national programme for the eradication of racism and the promotion of racial equality in Brazilian society, on the basis of the Durban Declaration and Programme of Action. This national programme, integrating the National Policy for the Promotion of Racial Equality, should be tailored to aim at all political, economic, social and cultural dimensions of the society, and national, regional and local levels in the country. It should include the best ways and means to expand the programme of affirmative action at all levels of the society. The national Parliament should be invited by the Government to debate and approve the final programme and allocate the necessary resources for its implementation.

71. The Special Secretariat for the Promotion of Racial Equality, whose creation is a positive step, should be strengthened as a full federal department at the centre of the federal Government, with offices in all regions, in charge of coordinating the national programme with the necessary resources and authority in all the government departments. All ministries should therefore be involved in this effort, and make the fight against racial discrimination part of their policies.

72. A national commission for equality and human rights should be established, in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (General Assembly resolution 48/134, annex). Given the interlinkage among all forms of discrimination, and for the purposes of efficiency and empowerment, the mandate of this commission should examine in a holistic way, the most important and related fields of contemporary discrimination, namely: race, colour, gender, descent, nationality, ethnic origin, disability, age, religion and sexual orientation.

82. Concerning Fundação Nacional do Índio (FUNAI) or the National Indigenous Foundation, the Special Rapporteur recommends that:

(a) FUNAI should be headed by a person fully recognized and respected by the majority of the communities, and preferably as a meaningful message of confidence and empowerment, an indigenous personality. The Government is strongly encouraged to look into this matter, in consultation with the Indian communities;

(b) FUNAI should receive sufficient additional funding in order to be in a position to complete the demarcation and registration of land within 2007;

(c) The staff of FUNAI should comprise in a meaningful way, qualified members of the Indigenous communities on the basis of a careful geographic and ethnic balance.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on human rights defenders (E/CN.4/2006/95/Add.4, paras. 13-14; 19-22)

13. In their efforts to attain social, economic, environmental and cultural rights, in seeking to expose human rights violations and to end impunity for these violations and in resisting discrimination or marginalization, human rights defenders often experience extremely serious harm. Their right to life, liberty and physical security continues to be threatened. The Special Representative notes with the gravest concerns the numerous reports of assassinations and attempts on the lives of defenders in Brazil. In this context, the uncountable number of threats which defenders face and the persisting high level of impunity for such crimes result in a climate in which defenders fear for their lives and for those of their relatives. In some cases, she met with defenders who have had to leave their homes and families and abandon their work to go into hiding in order to ensure their own safety.

14. The Special Representative notes that much of the violence against defenders is rooted in conflicts over land and environmental protection and is perpetrated by powerful non-State actors who, in certain instances, reportedly benefit from the collusion of local State authorities. Nevertheless, she notes that killings and threats against defenders also occur in a number of urban settings at the hands so-called “extermination groups”, which are reported to have links with certain elements of the security forces.

19. While security arrangements for the protection of defenders at risk is a necessary measure of an immediate and interim nature, it is not a solution to the problem. The Special Representative urges the Government to adopt more comprehensive strategies for the protection of human rights defenders, together with ending impunity for violations affecting them and by unambiguously articulating support for activities in defence of human rights. She welcomed the investigation and prosecution for the killing of Sister Dorothy, but hoped that this step at removing impunity will not end with this case and other similar incidents will be effectively addressed.

20. In view of the urgency to address the problem of criminalization of human rights activity, the Special Representative of the Secretary-General recommends that the Special Secretariat for Human Rights and the Federal Ministerio Publico make joint efforts to collect and analyse the cases brought against human rights defenders in order to propose legislation or policy guidelines to prevent prosecution of defenders for carrying out activities in defence of human rights.

21. She also recommends a more proactive role of the State in addressing social conflict and in legitimizing defenders’ participation and intervention on behalf of local movements. In particular, she draws attention to the responsibility of the State to ensure that defenders not be left isolated in their struggle or support for social justice against powerful or influential social entities and economic interests.

22. She strongly recommends a review of existing mechanisms for the monitoring and accountability of the State security apparatus, particularly the State military police. There is a general lack of confidence in the competence, vigilance and independence of the existing mechanisms.

IV. Administration of justice and the rule of law

Special Rapporteur on human rights defenders (E/CN.4/2006/95/Add.4, paras. 17-19)

17. She believes that more uniformity of commitment and complementary efforts to implement human rights policies by the federal and state governments could mitigate many of these concerns. She senses an urgent need for critical adjustments in the role of the judiciary in order that the social policy of the State, enunciated in the Constitution, have a stronger assurance of practical implementation. In this context she recommends constitutional interpretations and judicial action which ensure not only equal respect for economic, social and cultural rights but also removal of any superficial conflict with regard to the enforcement of different rights guaranteed by the Constitution

18. The human rights committees of the Parliament and state legislative assemblies are generally active on these issues and are accessible to human rights defenders. However, the legislature as an institution needs to be more sensitive to human rights issues and assign more priority to the protection of activities for the defence of human rights in their legislative agenda. The Special Representative is also aware of fears that political polarization within the legislative bodies has undermined many human rights-related initiatives and impeded efforts to address structural issues at the root of the social conflicts. These efforts are necessary to ensure the prevalence of a conducive environment for human rights defenders.

19. While security arrangements for the protection of defenders at risk is a necessary measure of an immediate and interim nature, it is not a solution to the problem. The Special Representative urges the Government to adopt more comprehensive strategies for the protection of human rights defenders, together with ending impunity for violations affecting them and by unambiguously articulating support for activities in defence of human rights. She welcomed the investigation and prosecution for the killing of Sister Dorothy, but hoped that this step at removing impunity will not end with this case and other similar incidents will be effectively addressed.

V. Fundamental freedoms

Special Rapporteur on racism (E/CN.4/2006/16/Add.3, para. 85)

85. The Government and the Parliament should take action to impede and sanction the ongoing attacks and defamation against Afro-descendant religions. In this context, an interreligious national institution should be established, in charge of promoting dialogue and tolerance between religions and fighting against racial and religious discrimination and proselytism.

VI. Economic and social rights

Special Rapporteur on human rights defenders (E/CN.4/2006/95/Add.4, paras. 13-14)

13. In their efforts to attain social, economic, environmental and cultural rights, in seeking to expose human rights violations and to end impunity for these violations and in resisting discrimination or marginalization, human rights defenders often experience extremely serious harm. Their right to life, liberty and physical security continues to be threatened. The Special Representative notes with the gravest concerns the numerous reports of assassinations and attempts on the lives of defenders in Brazil. In this context, the uncountable number of threats which defenders face and the persisting high level of impunity for such crimes result in a climate in which defenders fear for their lives and for those of their relatives. In some cases, she met with defenders who have had to leave their homes and families and abandon their work to go into hiding in order to ensure their own safety.

14. The Special Representative notes that much of the violence against defenders is rooted in conflicts over land and environmental protection and is perpetrated by powerful non-State actors who, in certain instances, reportedly benefit from the collusion of local State authorities. Nevertheless, she notes that killings and threats against defenders also occur in a number of urban settings at the hands so-called “extermination groups”, which are reported to have links with certain elements of the security forces.

Special Rapporteur on racism (E/CN.4/2006/16/Add.3, paras. 75-76)

75. Regarding the judiciary, the following should be undertaken:

(a) The Ministry of Justice should create specializations in racism and racial discrimination within the tribunals and the prosecutors’ offices, to enhance the degree of implementation by judges and prosecutors, of the existing anti-racism legislation. The specialized prosecutors within the Working Group on racism in the State Attorney’s office of the State of Pernambuco would be a positive example to follow;

(b) Regular training of judges and prosecutors on this issue should be organized;

(c) A system of control should be established in the judiciary to monitor the prosecution of the racially motivated violence and crimes against these groups.

76. The Office of the Public Prosecutor should be given investigative powers. At present, only the police carry out investigations, and prosecutors have almost no leverage in qualifying the facts submitted to them. This system is not appropriate in a setting where many police officers are involved in such crimes.

VII. Cultural rights

Special Rapporteur on racism (E/CN.4/2006/16/Add.3, paras. 77-78 ; 86)

77. The Government should urgently commence the training of teachers in order to implement the law on the teaching of African history in schools. Teachers of all subjects should receive this training. The regional histories of Africa drafted by United Nations Educational, Scientific and Cultural Organization could be used as a reference text.

78. A national memorial on slavery should be erected, to pay tribute to the millions of victims and preserve the memory of the Afro-descendant component of Brazilian history.

86. The media should reflect in their structure, management and programmes the rich cultural and ethnic diversity of the Brazilian society and promote a culture of reciprocal knowledge and interactions. The Government should promote and support the creation of community media for the indigenous and Afro-Brazilian communities.

VIII. Situation of specific groups

Special Rapporteur on racism (E/CN.4/2006/16/Add.3, paras. 73-74 ; 84 ; 79-81 ;83; 87; 88)

Indians and Afro-Brazilians

73. The prevention and repression of violence against Indians and Afro-Brazilians, in particular assassinations, should be a priority of the Government and addressed as a matter of urgency. Appropriate measures should be taken to sanction in the strongest way, police officers and others responsible of assault and murder of Afro-Brazilians and Indians.

74. A specialized police unit should be established for the protection of vulnerable groups such as Indian communities, Blacks, quilombo communities, and terreiros, following the example of the Secretariat for Justice of the State of São Paulo.

84. The Government should find appropriate affirmative action means to guarantee political representation of the Black and Indian communities in State institutions.

Quilombos

79. While acknowledging the commitment of the Government to the recognition of the quilombos, the Special Rapporteur on contemporary forms of racism, racial discrimination and related intolerance recommends that the Government should:

- (a) Undertake a census of the quilombos to assess the living conditions and the degree of recognition of the quilombos land;
- (b) Proceed urgently to the recognition and handing over of property titles to the quilombos;
- (c) Urgently organize appropriate security for the quilombos communities and their leaders;
- (d) Guarantee the provision of fundamental goods and services such as food, health, housing and education;
- (e) Consider giving directly to communities the financial resources allocated for the development of quilombos, since according to allegations, these resources do not reach the quilombos;
- (f) Create teaching tools on the quilombos in order to give more visibility to their history and emphasize their identity as part of the living memory of the history of the country.

80. The Special Rapporteur recommends that:

- (a) The decree on the recognition of the quilombos be maintained and fully implemented;
- (b) The Palmares Foundation should be strengthened in terms of authority in all government departments and financial resources, in order to carry out its fundamental role of identification and protection of the quilombos.

81. Concerning the indigenous communities:

- (a) The protection of Indian leaders and communities must be ensured;
- (b) The system of provision of health care should be revised in consultation with Indian communities, in the light of its inefficiency;
- (c) The Government should allocate appropriate resources in order to allow the implementation of a differentiated indigenous educational system, as provided for in Regulation 3 of the National Council for Education;
- (d) A parliamentary commission on the violence perpetuated against Indians over their lands should be established.

Domestic workers

83. Domestic workers, of which 90 per cent are Afro-Brazilian women, should benefit from legal recognition and protection, and be included under the protection of the labour legislation.

People living in the favelas

87. Initiatives such as the socio-educational project for children, adolescents and adults carried out in the *favelas*, such as the one by the NGO called Ação Comunitária do Brasil in the Rio de Janeiro Favela da Maré, should receive financial and other support from the Government and local authorities and should be promoted in other *favelas* and indigenous areas.

Refugees and asylum seekers

88. The Government should adopt appropriate measures to guarantee that immigration and other relevant authorities treat asylum-seekers and refugees according to international provisions and standards, in full respect of their rights as asylum-seekers and refugees, and are not discriminated against because of their race or origin.

IX. The right to development and international cooperation

Special Rapporteur on racism (E/CN.4/2006/16/Add.3, para. 89)

89. The Government of Brazil is encouraged to continue its strong support for the activities of the Organization of American States to combat racism and racial discrimination, in particular the drafting of

an inter-American convention against racism and the follow-up activities to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The Special Rapporteur is willing to participate in such activities. In this spirit, the Government of Brazil is encouraged to share with Governments of the region, its political will and its policies and programmes to combat racism and racial discrimination.

X. Comments from the Government⁷

n/a

⁷ As published as official documents of the CHR.

BURKINA FASO

Introduction

Au cours de la période concernée, le Rapporteur spécial sur la situation des migrants a visité le pays du 2 au 9 février 2005 (veuillez vous référer au document E/CN.4/2006/73/Add.2).

I. Cadre institutionnel et légal de promotion et de protection des droits de l'homme

Rapporteur spécial sur la situation des migrants (E/CN.4/2006/73/Add.2, para. 93)

93. L'établissement d'une politique migratoire nationale appropriée est nécessaire: en témoignent les problèmes croissants posés par les flux qui procèdent du Burkina Faso, ou transitent par le pays, à destination des pays occidentaux. La Rapporteuse spéciale préconise l'intégration des éléments suivants à cette politique migratoire:

a) La conclusion d'accords bilatéraux avec les pays expulsant des ressortissants vers le Burkina Faso, afin que le rapatriement puisse avoir lieu dans le respect des droits des migrants irréguliers. Un accord de ce type est surtout nécessaire avec la Jamahiriya arabe libyenne;

b) La participation active du pays dans les processus régionaux sur la migration, afin d'intégrer les préoccupations et exigences du Burkina Faso au sein des politiques migratoires régionales. Des commissions parlementaires spécialisées en migration pourraient être établies pour favoriser le développement d'un débat politique sur la migration au sein du Parlement et aider à la définition de politiques migratoires nationales adaptées;

c) Des initiatives visant à optimiser les bénéfices de la migration internationale, telles que: 1) la promotion des transferts officiels (par exemple à travers une banque étatique qui remplacerait ou réduirait le recours aux services bancaires internationaux offerts par Western Union); 2) la promotion des investissements productifs des transferts dans des secteurs pouvant stimuler le développement économique local et national; 3) l'appui aux initiatives de codéveloppement, tel le programme MIDA, visant à capitaliser les ressources humaines de la diaspora;

d) Le renforcement des contrôles sur les documents d'état civil servant à élaborer les passeports nationaux;

e) La mise en place de procédures transparentes et respectueuses des droits de l'homme en matière de migration irrégulière que les agents de sécurité puissent suivre dans le cadre de leurs fonctions, y compris concernant la situation des enfants non accompagnés. Les agents de sécurité devraient recevoir une formation à ce sujet, incluant les droits de l'homme des migrants, ainsi que les obligations internationales dérivant des instruments internationaux ratifiés par le Burkina Faso;

f) Les démarches nécessaires visant à assurer le droit de vote aux ressortissants burkinabè.

II. Non-discrimination et égalité devant la loi

n/a

III. Le droit à la vie; le droit à la liberté et à la sécurité de la personne; le droit à l'intégrité physique et morale

n/a

IV. Administration de la justice et l'état de droit

n/a

V. Libertés fondamentales

n/a

VI. Droits économiques et sociaux

n/a

VII. Droits culturels

n/a

VIII. Situation des groupes spécifiques

Rapporteur spécial sur la situation des migrants (E/CN.4/2006/73/Add.2, paras 92 ;94)

Rapatriés

92. En ce qui concerne la crise en Côte d'Ivoire et la situation des rapatriés, la Rapporteuse spéciale recommande:

- a) De donner priorité aux programmes de réinsertion socioéconomique;
- b) D'aborder expressément la situation des femmes et des enfants rapatriés;
- c) D'appuyer en particulier les projets promouvant les activités génératrices de revenus pour les femmes rapatriées. Les propositions de projets mentionnées dans ce rapport donnent déjà une idée concrète des types d'initiative qui peuvent démarrer avec des investissements initiaux d'ampleur réduite. Malgré l'absence de moyens, les associations de femmes rapatriées montrent qu'elles sont bien organisées et seraient en mesure de mener à bien des projets générateurs de revenus, si seulement elles avaient l'appui nécessaire pour commencer leur activité;
- d) D'envisager la possibilité d'établir un fonds d'assistance pour les rapatriés;
- e) De mettre en place un registre civil où pourraient être déposées les plaintes des violations des droits de l'homme subies pendant la crise en Côte d'Ivoire. Le registre pourrait servir de base pour tenter d'obtenir des réparations, par le biais judiciaire, ou par celui de la diplomatie internationale;
- f) De renforcer la protection consulaire pour les ressortissants burkinabè en Côte d'Ivoire, ce qui est non seulement de l'intérêt des ressortissants en Côte d'Ivoire mais aussi dans leur pays d'origine (reconnaissance de leur contribution pour le Burkina Faso);
- g) De surveiller davantage la situation en Côte d'Ivoire, de façon à mieux répondre aux dangers que les ressortissants burkinabè risquent de devoir affronter. Cette initiative devrait pouvoir inclure un système d'alerte efficace pour mobiliser la communauté internationale. Enfin, le Burkina Faso devrait chercher des solutions pour mieux faire entendre sa voix au sein de la communauté internationale sur la problématique de ses ressortissants en Côte d'Ivoire.

Enfants

94. En ce qui concerne la traite d'enfants, des mesures plus vigoureuses sont nécessaires pour appuyer l'action des comités de surveillance. À ce propos, la Rapporteuse spéciale se réfère aux recommandations formulées par le Comité des droits de l'enfant (CRC/C/15/Add.193, par. 55ⁱⁱⁱ) et aux études citées dans la bibliographie de ce rapport (notamment aux notes 16 à 21).

IX. Le droit au développement et la coopération internationale

Rapporteur spécial sur la situation des migrants (E/CN.4/2006/73/Add.2, para. 95)

95. La Rapporteuse spéciale demande à la communauté internationale d'appuyer le Burkina Faso dans la mise en œuvre des recommandations du présent rapport. Elle lui suggère en particulier:

a) D'appuyer les programmes de réinsertion socioéconomique destinés aux rapatriés, notamment ceux au bénéfice des femmes;

b) De faciliter le processus d'adoption, de mise en œuvre et de contrôle d'une politique nationale sur la migration. Soutenir le programme MIDA serait un effort exemplaire pour aller dans cette direction;

c) De s'assurer que l'aide de la communauté internationale soit distribuée d'une façon transparente;

d) D'être vigilante envers la situation en Côte d'Ivoire afin de prévenir par tous les moyens possibles que les ressortissants burkinabè ne subissent encore d'autres violations massives des droits de l'homme.

X. Commentaires du Gouvernement⁸

n/a

⁸ As published as official documents of the CHR.

BURUNDI

Introduction

The Independent Expert on the situation of human rights in Burundi made his fourth mission to the country from 4 to 15 October 2005. His report covers the period from 15 August to 15 December 2005 (please refer to document E/CN.4/2006/109).

I. Institutional and legal framework for the promotion and protection of human rights

Independent Expert on the situation of human rights in Burundi (E/CN.4/2006/109, para 86):

86. The independent expert encourages the Burundian authorities to press ahead with the establishment of the institutions provided for by the Arusha Agreement, especially those relating to human rights, in particular the establishment of transitional justice mechanisms and an independent national human rights institution.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Independent Expert on the situation of human rights in Burundi (E/CN.4/2006/109, para 84;85;88)

84. The independent expert addresses an urgent appeal to FNL to stop all hostilities and come to the negotiating table with the newly elected Government. He also appeals to both FDN and FNL to respect the rights of the civilian population, especially the right to life, liberty, security and inviolability of the person, as well as to discontinue hostilities.

85. Concerned at reports of arbitrary detention by government officials, in particular intelligence agents, as well as reports of torture and ill-treatment, the independent expert calls on the Government to ensure respect of international human rights and humanitarian law. He also calls for unhindered access of human rights observers to all prisons and detention facilities so that they may monitor whether government agents are complying with human rights standards.

88. The independent expert recommends prompt action on issues relating to prisoners as provided for by the various international and national commissions that have dealt with these issues.

IV. Administration of justice and the rule of law

Independent Expert on the situation of human rights in Burundi (E/CN.4/2006/109, para 86-87)

86. The independent expert encourages the Burundian authorities to press ahead with the establishment of the institutions provided for by the Arusha Agreement, especially those relating to human rights, in particular the establishment of transitional justice mechanisms and an independent national human rights institution.

87. He strongly urges the Government to implement urgent measures to strengthen the judicial system, fight impunity and bring all perpetrators of human rights violations to justice. In this respect, he urges the Government to release immediately the findings of the national inquiry on the Gatumba massacre.

V. Fundamental freedoms

n/a

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

Independent Expert on the situation of human rights in Burundi (E/CN.4/2006/109, para 81)

Women

81. The independent expert is deeply troubled by the continuing sexual violence in Burundi and reiterates his call on the Government to take swift and concrete measures to combat this phenomenon. In this respect, he believes that a visit to Burundi by the Special Rapporteur on violence against women is highly desirable.

IX. The right to development and international cooperation

Independent Expert on the situation of human rights in Burundi (E/CN.4/2006/109, paras. 89-90):

89. The independent expert urges the international community to support Burundi in its development priorities as formulated in the Government's development plan. He reiterates his call on the international community to release the funds pledged at the Paris, Geneva and Brussels conferences, and requests that it support programmes encouraging respect for and the promotion of human rights and to secure lasting peace.

90. The independent expert commends and supports the efforts of United Nations agencies in Burundi, in particular OHCHR and ONUB, the international community, as well as civil society to ensure better protection and promotion of human rights, and encourage them to strengthen their coordination and cooperation in this field.

X. Comments from the Government⁹

n/a

⁹ As published as official documents of the CHR.

CAMBODIA

Introduction

During the period under review, the following Special procedures visited the country

- The Special Representative of the Secretary-General on the situation of human rights in Cambodia from 28 November to 5 December 2005 (please refer to document E/CN.4/2006/110).
- The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living from 22 August to 2 September 2005 (please refer to documents E/CN.4/2006/41/Add.3).

I. Institutional and legal framework for the promotion and protection of human rights

Special Representative of the Secretary-General on the situation of human rights in Cambodia (E/CN.4/2006/110, paras. 67-70; 74)

67. When the Special Representative expressed his concerns to Ministers on the state of human rights and the deterioration of the environment for democratic participation and practice, he was told that the Government was simply discharging its responsibility in enforcing the law - and that much of the law in question was enacted by the United Nations Transitional Authority in Cambodia (UNTAC). The Special Representative does not share this view. The UNTAC Law was to be transitional, to deal with an extraordinary situation, and it was made when there were no human rights legal provisions in Cambodia. Since then the Constitution of Cambodia, with a strong bill of rights and several human rights treaties have been adopted. These render aspects of the UNTAC Law unconstitutional. It is the responsibility of the Government to ensure that those provisions which contradict human rights are repealed.

68. Even if a law provides for a criminal offence, the Government is not obliged to invoke it, as often the law becomes outdated with changing ideas and circumstances as to what is regarded as proper conduct. As the present report shows, most countries that previously criminalized defamation or insults, have either repealed that law or do not rely on it. The Government must always act fairly and reasonably in the way it uses the law. In this context, it is the Special Representative's view that the law has not been applied in accordance with the norms of a liberal legal system. Bail has been routinely denied to those accused by the Government; in most cases the evidence on which the prosecution relies is in the public domain, as in defamation cases, and the justification that further investigations are necessary is unconvincing, and in any case is no valid reason for detention. Finally, the law is used selectively and unevenly. The Special Representative urges the reinstatement of parliamentary immunity to members of the opposition Sam Rainsy Party; the dropping of all charges of defamation, disinformation and incitement; the granting of guarantees of non-arrest upon return for persons presently in exile under such charges; and for those charged with or convicted of offences of defamation, disinformation and incitement to be immediately released.

69. The Constitution of Cambodia, adopted by the people through their representatives in the Constituent Assembly in 1993, has yet to be fully implemented, and critical constitutional safeguards have been undermined. As a matter of priority, the Government, working in conjunction with civic organizations, should strengthen the capacity and integrity of the Constitutional Council and the Supreme Council of Magistracy, as the two institutions most central to upholding and implementing the Constitution.

70. As this report notes, little progress has been made in enacting fundamental laws despite very considerable external technical and financial assistance for this task. At the Consultative Group for Cambodia meeting in December 2004, the Government agreed that the Council of Ministers would adopt the drafts of eight key laws and submit them to the National Assembly before the end of 2005. This work is now seriously behind schedule. The Government needs to complete the drafting process and present this legislation to the National Assembly without further undue delay. These laws should further be prepared through a satisfactory participatory process and they must be consistent with Cambodia's Constitution and international human rights treaties.

74. The Special Representative welcomes Cambodia's signing of the Optional Protocol to the International Covenant on Civil and Political Rights in 2004, and the Optional Protocol to the Convention on the Elimination of Discrimination against Women in 2001. He hopes that these will be ratified in the very near future. The Special Representative also urges the Government to energetically pursue the submission of Cambodia's initial report under the International Covenant on Economic, Social and Cultural Rights, and its periodic reports to the other treaty bodies. He welcomes the completion of Cambodia's report under the Convention on the Elimination of All Forms of Discrimination against Women, which will be considered in January 2006.

Special Rapporteur on adequate housing (E/CN.4/2006/41/Add.3, paras. 81, 82 (a), (b))

81. Unclear and incomplete legal provisions and their poor implementation by the relevant authorities should be addressed as a main and first priority, setting up the ground for the development of innovative policies to address the country's housing deficit and the deep impacts of poverty and landlessness on the right to adequate housing.

82. The Special Rapporteur, therefore, strongly argues for the adoption of an indivisibility approach with respect to the right to adequate housing and other rights relating to his mandate, and would like to submit the following specific recommendations:

(a) There is an urgent need for a clear mapping of the housing needs of the country and interpretation of the data from a human rights perspective, aiming at the development of a comprehensive national housing policy;

(b) In connection with the previous recommendation, there is also a need for increasing transparency in the development of policies and openness in the assessment of priorities and results, with space for public monitoring and full participation of the affected population;

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

Special Representative of the Secretary-General on the situation of human rights in Cambodia (E/CN.4/2006/110, paras. 71-72)

71. The Special Representative is also concerned about the independence and integrity of the Cambodian judiciary. High priority should be given to adopting the Law on the Status of Judges and Prosecutors, as well as strengthening the independence of the legal and judicial process and making technical improvements in its functioning. The Special Representative further notes that there is no formal system of legal aid or other ways to facilitate people's access to courts and the legal profession. As a result, the entire responsibility for providing legal assistance to poor people and to people in rural areas generally has fallen on civic organizations, which lack adequate financial and professional resources.

72. As the present and previous reports have shown, there is a pervasive practice of impunity for persons who are politically or economically well placed, while those who offer no threat to law and order, act in good faith, but run foul of the Government, are accused and convicted. The Special Representative considers that there is a pattern to the enforcement of the law, through prosecutors and judges who do not respect legal procedures and due process, which suggests that the law is abused for political purposes. There is a need for a broad and constructive dialogue within Cambodia about the nature and impact of impunity and the measures that must be taken to overcome it. The recommendations that former Special Representatives and the human rights treaty bodies have made to end impunity must be taken up. The

Special Representative looks forward to working with the Government and the international community to this end.

Special Rapporteur on Adequate housing (E/CN.4/2006/41/Add.3, para 82 (f))

82. (f) The judiciary and the Cadastral Commission have an important role in housing conflicts and their work should be strengthened through strict respect for the rule of law and due process, including the establishment of impartial investigative procedures to verify the authenticity of ownership claims and impartial review of court and administrative decisions;

V. Fundamental freedoms:

Special Rapporteur on adequate housing (E/CN.4/2006/41/Add.3, para 82 (i))

82. (i) Measures should be adopted to facilitate the work of human rights and development NGOs in the country, with full respect for the rights to freedom of association, expression and movement.

VI. Economic and social rights:

Special Representative of the Secretary-General on the situation of human rights in Cambodia (E/CN.4/2006/110, para. 73):

73. Rights to land and housing are major problems. The report of the former Special Representative to the Commission at its sixtieth session identified a number of critical issues as regards land policy (E/CN.4/2004/105, paras. 41-47). There are many disputes about land ownership which are seldom resolved in an impartial way. Communities, particularly those of indigenous peoples, find themselves displaced from their ancestral lands without any protection of the law. Forests are being destroyed at an alarming rate. The Government has not yet disclosed information on the land and natural resources it has conceded to private companies and the military in the name of development. The report to the Commission of its Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, provides information on forced evictions, displacement and land “swaps” which are harshly impacting on the poor (see E/CN.4/2006/41/Add.3). The Special Representative encourages the Government to give serious consideration to the present report and its recommendations. He also urges the Government to ensure the prompt implementation of the Land Law and provide fair and just procedures to resolve disputes over land in accordance with domestic and international law.

Special Rapporteur on adequate housing (E/CN.4/2006/41/Add.3, para 82 (c), (d), (e), 83)

82. (c) Urgent attention must be given to those living in distressed housing and living conditions, including slum and relocation site dwellers, with the immediate provision of basic amenities;

(d) The housing-related provisions of the 2001 Property Law should be immediately implemented, including those of the newly adopted sub-decrees. Regulations should be adopted that include provisions regarding the housing situation of families living in State property and clarify the legal situation of all land swaps that occurred between the 2001 Property Law and its own adoption. In addition, information concerning all land swaps under negotiation should be immediately disclosed. In the meanwhile, besides halting all swaps, full attention should be given to the families already affected to guarantee adequate housing conditions and security of tenure in their relocation sites. Whenever evictions are still pending, all efforts should be made to actually consider relocation as a last resort and ensure consultation with the affected community;

(e) A national evictions act should be adopted in accordance with international human rights standards, especially CESCR’s general comments 4 and 7;

83. The existing obstacles against the implementation of the right to adequate housing are of enormous proportions and facing the challenges will require joint efforts by not only the Government, but also national non-governmental actors and the international community alike.

VII. Cultural rights:

n/a

VIII. Situation of specific groups:

Special Rapporteur on adequate housing (E/CN.4/2006/41/Add.3, para 82 (g), (h))

Women

82. (g) Specific policies should be developed to address discrimination against women in relation to equal access to and ownership of housing and land. Such policies should address the disproportionately adverse impact that forced evictions, displacement and poor living conditions have on women;

Indigenous

82. (h) Measures aiming at the realization of the indigenous peoples' right to adequate housing should include respect for their traditional lands and elaboration of culturally sensitive land and housing policies. Until the adoption of the sub-decree on collective ownership of indigenous lands, a moratorium on land sales affecting indigenous peoples should be considered by relevant authorities;

IX. The right to development and international cooperation:

Special Representative of the Secretary-General on the situation of human rights in Cambodia (E/CN.4/2006/110, para. 75):

75. The international community also has a crucial role to play in supporting Cambodia in its quest to strengthen human rights and democratic and accountable institutions functioning under the rule of law. In accordance with its commitments under the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, the international community, through the United Nations and other multilateral and bilateral means, must assist the Government to design and implement policies and programmes that will benefit the country as a whole, and allow the people of Cambodia to exercise their political, civil and economic rights, which was the primary rationale for their engagement in Cambodia in the early 1990s.

Special Rapporteur on adequate housing (E/CN.4/2006/41/Add.3, para.83)

83. The existing obstacles against the implementation of the right to adequate housing are of enormous proportions and facing the challenges will require joint efforts by not only the Government, but also national non-governmental actors and the international community alike.

X. Comments from the Government¹⁰

n/a

¹⁰ As published as official documents of the CHR.

CANADA

Introduction

During the period under review, the Working Group on Arbitrary Detention visited the country from 1 to 15 June 2005 (please refer to document E/CN.4/2006/7/Add.2).

I. Institutional and legal framework for the promotion and protection of human rights

Working Group on Arbitrary Detention (E/CN.4/2006/7/Add.2, para 92)

92. Canada is perceived as a model and point of reference for the peoples of many countries with regard to the rule of law and respect for human rights. It is also with this important role Canada plays in mind that the Working Group recommends that:

(a) The authorities continue pursuing and strengthening policies to address the over-representation of Aboriginals among the prison population. In this respect, the Working Group recommends particularly efforts aimed at increasing the participation of Aboriginal professionals in law enforcement and the justice system on the one hand, and - on the other hand - reinforcing efforts to sensitize the members of law enforcement agencies to the ways in which their policies and conduct contribute to such over-representation;

(b) The authorities address and reverse the trend to ever-increasing use of pretrial detention and pursue and expand their efforts to find innovative alternatives to the detention on remand of accused without “strong roots in the community”, which basically means persons belonging to vulnerable and marginalized social groups. In this context, the Working Group also recommends to make available additional resources to cover unmet needs for legal aid in the criminal justice system;

(c) The detention of asylum-seekers remain exceptional. Moreover, the Working Group recommends that the Government change the provisions in the immigration law and/or their application policies which give rise to cases of unjustified detention of migrants and asylum-seekers, as identified by the Working Group, and strengthen the control of the Immigration Division over the decision-making by immigration officers. The Working Group further recommends that the Government take remedial action with regard to the practical aspects of immigration detention that impede the effectiveness of the right to challenge detention, in particular the co-mingled detention in criminal high security facilities;

(d) The Government reconsider its policy of using administrative detention and immigration law to detain persons suspected of involvement in terrorism and particularly the use of security certificates. The Working Group recommends that detention of terrorism suspects be imposed in the framework of criminal procedure and in accordance with the corresponding safeguards enshrined in the relevant international law, in particular articles 9, paragraph 3, and 14 of the International Covenant on Civil and Political Rights, to which Canada is a party.

II. Non-discrimination and equality before the law

Working Group on Arbitrary Detention (E/CN.4/2006/7/Add.2, para 92 (a))

92. Canada is perceived as a model and point of reference for the peoples of many countries with regard to the rule of law and respect for human rights. It is also with this important role Canada plays in mind that the Working Group recommends that:

(a) The authorities continue pursuing and strengthening policies to address the over-representation of Aboriginals among the prison population. In this respect, the Working Group recommends particularly efforts aimed at increasing the participation of Aboriginal professionals in law enforcement and the justice system on the one hand, and - on the other hand - reinforcing efforts to sensitize the members of law enforcement agencies to the ways in which their policies and conduct contribute to such over-representation;

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Working Group on Arbitrary Detention (E/CN.4/2006/7/Add.2, para 92 (c); (d))

(c) The detention of asylum-seekers remain exceptional. Moreover, the Working Group recommends that the Government change the provisions in the immigration law and/or their application policies which give rise to cases of unjustified detention of migrants and asylum-seekers, as identified by the Working Group, and strengthen the control of the Immigration Division over the decision-making by immigration officers. The Working Group further recommends that the Government take remedial action with regard to the practical aspects of immigration detention that impede the effectiveness of the right to challenge detention, in particular the co-mingled detention in criminal high security facilities;

(d) The Government reconsider its policy of using administrative detention and immigration law to detain persons suspected of involvement in terrorism and particularly the use of security certificates. The Working Group recommends that detention of terrorism suspects be imposed in the framework of criminal procedure and in accordance with the corresponding safeguards enshrined in the relevant international law, in particular articles 9, paragraph 3, and 14 of the International Covenant on Civil and Political Rights, to which Canada is a party.

IV. Administration of justice and the rule of law

Working Group on Arbitrary Detention (E/CN.4/2006/7/Add.2, para 92 (b))

(b) The authorities address and reverse the trend to ever-increasing use of pretrial detention and pursue and expand their efforts to find innovative alternatives to the detention on remand of accused without “strong roots in the community”, which basically means persons belonging to vulnerable and marginalized social groups. In this context, the Working Group also recommends to make available additional resources to cover unmet needs for legal aid in the criminal justice system;

V. Fundamental freedoms

n/a

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

Working Group on Arbitrary Detention (E/CN.4/2006/7/Add.2, para 92 (c))

Asylum-seekers

(c) The detention of asylum-seekers remain exceptional. Moreover, the Working Group recommends that the Government change the provisions in the immigration law and/or their application policies which give rise to cases of unjustified detention of migrants and asylum-seekers, as identified by the Working Group, and strengthen the control of the Immigration Division over the decision-making by immigration officers. The Working Group further recommends that the Government take remedial action with regard to the practical aspects of immigration detention that impede the effectiveness of the right to challenge detention, in particular the co-mingled detention in criminal high security facilities;

IX. The right to development and international cooperation

n/a

X. Comments from the Government¹¹

n/a

¹¹ As published as official documents of the CHR.

CHINA

Introduction

During the period under review, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited the country from 21 November to 2 December (please refer to document E/CN.4/2006/6/Add.6).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on torture (E/CN.4/2006/6/Add.6, para. 82)

82. On the basis of his conclusions, the Special Rapporteur puts forward a number of recommendations and expresses his hope that the Government will take them into account in the context of ongoing reform efforts aimed at the eradication of torture and ill-treatment.

Other measures of prevention

(m) The Optional Protocol to the Convention against Torture should be ratified, and a truly independent monitoring mechanism be established - where the members of the visiting commissions would be appointed for a fixed period and not subject to dismissal - to visit all places where persons are deprived of their liberty throughout the country.

(n) Systematic training programmes and awareness-raising campaigns should be carried out on the principles of the Convention against Torture for the public at large, public security personnel, legal professionals and the judiciary.

(o) Victims of torture and ill-treatment should receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, and adequate medical treatment and rehabilitation.

Follow-up

(w) The Special Rapporteur recommends that the Government continue to cooperate with relevant international organizations, including the Office of the United Nations High Commissioner for Human Rights, for assistance in the follow-up to the above recommendations.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on torture (E/CN.4/2006/6/Add.6, para 82)

Investigation and prosecution of torture

(a) The crime of torture should be defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture.

(b) All allegations of torture and ill-treatment should be promptly and thoroughly investigated by an independent authority with no connection to the authority investigating or prosecuting the case against the alleged victim.

(c) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, should be immediately suspended from duty pending trial, and prosecuted.

(d) The declaration should be made with respect to article 22 of CAT recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention.

Circumstances surrounding capital punishment

(p) Death row prisoners should not be subjected to additional punishment such as being handcuffed and shackled.

(q) The restoration of Supreme Court review for all death sentences should be utilized as an opportunity to publish national statistics on the application of the death penalty.

(r) The scope of the death penalty should be reduced, e.g. by abolishing it for economic and non-violent crimes.

Deprivation of liberty for political crimes

(s) Political crimes that leave large discretion to law enforcement and prosecution authorities such as “endangering national security”, “subverting State power”, “undermining the unity of the country”, “supplying of State secrets to individuals abroad”, etc. should be abolished.

(t) All persons who have been sentenced for the peaceful exercise of freedom of speech, assembly, association and religion, on the basis of vaguely defined political crimes, both before and after the 1997 reform of the CL, should be released.

Forced re-education

(u) “Re-education through Labour” and similar forms of forced re-education in prisons, pretrial detention centres and psychiatric hospitals should be abolished.

(v) Any decision regarding deprivation of liberty must be made by a judicial and not administrative organ.

IV. Administration of justice and the rule of law

Special Rapporteur on torture (E/CN.4/2006/6/Add.6, para 82)

Prevention of torture and ill-treatment through safeguards in the criminal justice system

(e) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pretrial detention, which normally should not exceed a period of 48 hours. After this period they should be transferred to a pretrial facility under a different authority, where no further unsupervised contact with the interrogators or investigators is permitted.

(f) Recourse to pretrial detention in the Criminal Procedure Law should be restricted, particularly for non-violent, minor or less serious offences, and the application of non-custodial measures such as bail and recognizance be increased.

(g) All detainees should be effectively guaranteed the ability to challenge the lawfulness of the detention before an independent court, e.g. through habeas corpus proceedings.

(h) Confessions made without the presence of a lawyer and that are not confirmed before a judge should not be admissible as evidence. Video and audio taping of all persons present during proceedings in interrogation rooms should be expanded throughout the country.

(i) Judges and prosecutors should routinely inquire of persons brought from police custody how they have been treated and in any case of doubt (and even in the absence of a formal complaint from the defendant), order an independent medical examination.

(j) The reform of the CPL should conform to fair trial provisions, as guaranteed in article 14 of ICCPR, including the following: the right to remain silent and the privilege against self-incrimination; the effective exclusion of evidence extracted through torture; the presumption of innocence; timely notice of reasons for detention or arrest; prompt external review of detention or arrest; timely access to counsel; adequate time and facilities to prepare a defence; appearance and cross-examination of witnesses; and ensuring the independence and impartiality of the judiciary.

(k) The power to order or approve arrest and supervision of the police and detention facilities of the procurators should be transferred to independent courts.^{iv}

(l) Section 306 of the Criminal Law, according to which any lawyer who counsels a client to repudiate a forced confession, for example, could risk prosecution should be abolished.

V. Fundamental freedoms

See under part III the right to physical integrity

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

Special Rapporteur on torture (E/CN.4/2006/6/Add.6, para 82)

Follow-up

(w) The Special Rapporteur recommends that the Government continue to cooperate with relevant international organizations, including the Office of the United Nations High Commissioner for Human Rights, for assistance in the follow-up to the above recommendations

X. Comments from the Government¹²

n/a

¹² As published as official documents of the CHR.

COLOMBIA

Introduction

The Working Group on Enforced or Involuntary Disappearances visited the country from 5 to 13 July 2005 (please refer to document E/CN.4/2006/56/Add.1).

I. Institutional and legal framework for the promotion and protection of human rights

Working Group on Enforced or Involuntary Disappearances (E/CN.4/2006/56/Add.1, paras. 92-99; 103-105; 108-110)

92. The Government of Colombia should cease to deny the internal armed conflict plaguing the country and conditions sustaining it. This honest assessment is necessary for the Government to undertake sound diagnosis of the structural roots and predispositional factors giving rise to and sustaining the conflict, and for the designing of appropriate strategies of change.

93. It is equally important that the Government confront, rather than deny, the realities of the links that members of the military forces and National Police have maintained with paramilitary groups. This means accepting, rather than seeking to be released from “responsibility for the interpretation, for years, of the legal framework that gave them cover; for their disproportionate use of the armaments it provided to them; and for failing to take measures necessary to prohibit, prevent, and duly punish their criminal activities” (as the Inter-American Court of Human Rights (IACHR) has established, quoting the report of a recent mission by the latter body on the Demobilization Process in Colombia, undertaken within the framework of the advisory services to the Mission to Support the Peace Process in Colombia).

94. The Government should understand why in the majority of cases reported to the Working Group, paramilitaries, acting allegedly with the acquiescence of certain elements within the State military and security forces, have been and continue to be singled out for the occurrences. The Government has argued that such cases have not had adequate evidence or documentation for purposes of prosecution and judicial processing. Moreover, merely declaring paramilitaries and guerrilla groups to be “illegal armed groups” is insufficient to stop disappearances. The Government should take, and be seen to take, concrete measures to investigate the ties allegedly still existing between paramilitary groups and the State military forces or elements within the latter and their contribution to the phenomenon of disappearances from past to present. The ties must be broken and those responsible for their reported continuation must be punished.

95. The considerable efforts that have been made and continue to be made in realigning national laws and practices with Colombia’s international obligations must be highly commended. The Government must be encouraged to continue in that direction, and should be given the necessary assistance to ensure that the system of constitutional, legal, and institutional mechanisms the Government has established becomes firmly rooted and effectively functioning.

96. The Working Group wishes to remind the Government of the continuing responsibility to conduct thorough and impartial investigations “for as long as the fate of the victim of enforced disappearance remains unclarified”, in accordance with article 13 (6) of the Declaration.

97. The Working Group urges the Colombian authorities to do everything in their power to ensure the safety of relatives and witnesses, in accordance with article 13 (3) of the Declaration.

98. Despite the progress made by Colombia in designing an impressive constitutional, legal and institutional framework for handling cases of disappearances, the actual implementation of the framework has left much to be desired. Obviously, establishment of those mechanisms cannot substitute for political action. The Government must demonstrate that it has enough political will and determination to deal with the problem of criminalization of disappearances under the Constitution as well as the Criminal Code.

99. The Government must take credible steps to cut the links between the military and paramilitary groups, if the country is to be assisted in breaking out of a vicious cycle of terror and fear.

103. It is necessary to strengthen the framework for inter-agency cooperation, so as to minimize the incidence of conflicts arising from having too many institutions and agencies with their own competing programmes operating within and across different arms of government, with the resultant squabbles over which institutions or agencies have what mission or control over which aspects of Colombia's overall protection or prevention programme.

104. Concrete and appropriate measures must be taken to ensure that the National Commission to Search for Disappeared Persons can perform its laudable functions, including the Urgent Search Mechanism.

105. The tentative steps taken to create one National Register of Disappeared Persons must be commended, and other agencies of the Government running their own separate databases on disappearances must be mandated to integrate these databases with the National Register.

108. Human, technical and legal resources should be increased for the Procurator General (or the Ombudsman's) Office, along with those of the local municipal representative and the Office for People's Defence, so as to assist them in discharging their critical functions of protecting human rights and exercising disciplinary control over State agents.

109. All assets, properties, land and possessions forcibly and illegally acquired or occupied by persons who have previously participated in paramilitary operations should be seized and handed over to their rightful owners, in accordance with the Law of Extinction of Domain or any other applicable legal provisions.

110. Any persons linked to, or known to have helped or supported, the paramilitary groups or their activities should be investigated and if needs be prosecuted as accomplices to criminal activities, and if found guilty punished, according to the law. If politicians are involved, they should be prevented from finishing their terms of office and/or held ineligible for re-election.

II. Non-discrimination and equality before the law

Working Group on Enforced or Involuntary Disappearances (E/CN.4/2006/56/Add.1, paras. 116-117)

116. The Justice and Peace Law should be amended in some of its provisions so as to ensure compliance of the Law with State obligations under the Declaration, including the international human rights norms regarding truth, justice and reparation.

117. The Government should seriously consider creating a National Commission for Truth, Reconciliation and Reparation.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Working Group on Enforced or Involuntary Disappearances (E/CN.4/2006/56/Add.1, paras. 97;100;)

97. The Working Group urges the Colombian authorities to do everything in their power to ensure the safety of relatives and witnesses, in accordance with article 13 (3) of the Declaration.

100. The Working Group urges the Government to take measures to end all forms of disappearances, including the perpetration of acts carried out in combination with such other forms of gross violations as

“social cleansing”, executions, enforced displacement, rape and other forms of sexual violence and the forced recruitment of minors.

IV. Administration of justice and the rule of law

Working Group on Enforced or Involuntary Disappearances (E/CN.4/2006/56/Add.1, paras.101-102;106-107)

101. The Government must appreciate that without guaranteeing the right to truth, justice and reparation, and then backing this up with a huge investment in human development, the much-desired goal of achieving peace and reconciliation of Colombian society will be difficult to realize or sustain.

102. The Working Group lauds the very courageous and impartial work being carried out by the Constitutional Court as the apex of Colombia’s justice system, and endorses one of the recommendations of the Office of the United Nations High Commissioner for Human Rights urging both the Government and Congress not to undertake changes in regulations that would weaken the judicial control that the Constitutional Court exercises over actions by the State or limit the right of *tutela*.

106. The Ministry of the Interior and of Justice should be separated, because administration of justice and interior matters are two differently-oriented roles, and they are often incompatible.

107. The office of the Procurator General and the Prosecutor General cannot claim to be unaware that the meagre results of indictments and sanctions meted out so far to perpetrators of enforced disappearances is not for lack of cases to investigate. The Prosecutor General must rise to the challenges of the office. He must be assisted in performing the central duty of investigating and sentencing all criminal acts, including disappearances

V. Fundamental freedoms

n/a

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

Working Group on Enforced or Involuntary Disappearances (E/CN.4/2006/56/Add.1, paras. 111-115)

111. The Government must in its protection and preventive strategy take urgent measures recognizing the special needs of the country’s most vulnerable groups, particularly women, children, human rights defenders, trade union leaders, the urban poor, rural dwellers and members of the indigenous and Afro-Colombian communities.

Families of the disappeared

112. The Government must begin to treat civil society groups, human rights and other NGOs, as partners in, and not enemies of progress, and work with them from that positive perspective, while taking concrete steps to stop verbal or physical harassment of associations of families of disappeared persons or their individual members.

113. Effective measures must be taken by the Government to protect families of victims, their lawyers and witnesses, and to rescue them from the environment of fear, terror and harassment under which most of them constantly live.

114. There is need to protect the many individual and mass graves reportedly existing all over the country, given the importance of the gravesites for aiding investigation into cases of disappearances.

115. The building of appropriate memorials at suitable places should be considered, provided only that such memorials should both help families of victims to recover from the trauma of loss of their loved ones and the nation as a whole to come to terms with the past.

IX. The right to development and international cooperation

n/a

X. Comments from the Government¹³

n/a

¹³ As published as official documents of the CHR.

CROATIA

Introduction

During the period under review, the Representative of the Secretary-General on the human rights of internally displaced persons visited Croatia from 6 to 8 June 2005 (E/CN.4/2006/71/Add.3).

I. Institutional and legal framework for the promotion and protection of human rights

Representative of the Secretary-General on the human rights of internally displaced persons (E/CN.4/2006/71/Add.3, paras. 47, 49-51)

47. Particularly since the change of Government in 2000, Croatia has demonstrated impressive political commitment and allocated considerable resources to resolving issues of internal displacement. The recent conclusion of the Sarajevo Declaration also demonstrates the commitment to achieving durable solutions to interlinked displacement problems, though careful planning is required to ensure that returnees can find durable solutions rather than simply adding to the numbers of internally displaced. Currently in Croatia, a particularly complex legal regime governing notably property issues, coupled with an overburdened judiciary and reluctance at a number of regional and local levels to move beyond the ethnic divisions of the past towards a common future, has resulted in bottlenecks that continue to delay resolution of the issues of various groups of displaced persons. Policymakers and the media are also challenged to break down ingrained obstructive mindsets in parts of the general population. The Representative is, however, confident that with the guidance of his current recommendations, the Government, accompanied by appropriate assistance from the international community, will engage in a final concerted push to resolve the outstanding problems of internal displacement.

49. A still significant number of IDPs cannot return to their homes because the homes are destroyed, remain occupied by other persons who have not been evicted, or their former tenancy rights have been extinguished as a consequence of the privatization of buildings that were formerly owned collectively. For this group:

(a) The Government should carry out a final action programme for completion of the remaining reconstruction of damaged property, construction of alternative accommodation and execution of rights of repossession by the end of 2007. The programme should clearly set out the necessary resources and contain monitoring provisions to ensure that the appropriated funds are utilized for these purposes within this time frame;

(b) The Government should improve its efforts to inform the remaining IDPs, whose situations in numerous cases reveal particular complexities, about their property-related rights. In particular, it should publish a fact sheet, including in relevant minority languages, summarizing in accessible language the rights of internally displaced persons under current Croatian law and policy, the offices of relevant government ministries in Zagreb and in the provinces from which they can seek further information, and institutions such as the Ombudsman from which they can seek assistance in realizing their rights. In the elaboration of this document, consultation with appropriate non-governmental organizations with relevant experience of the issues would be valuable. Such a publication should be widely publicized and disseminated to all those concerned;

(c) The Government should redouble its efforts to reduce the delay in the resolution of outstanding property disputes by the judicial system, including by implementing, without delay, its Strategy for Justice Reform and Plan of Action, and by taking measures to accelerate the administrative handling of cases and to ensure prompt execution of court judgements;

(d) The Government should introduce "hardship" provisions into those provisions of its law and policy governing access to rights and entitlements, notably registration and filing requirements, in order to ensure that justice is done in the circumstances of all cases.

50. There remains an unwillingness on the part of certain local authorities to implement some national policies, while certain patterns of discrimination, public prejudices against returnees and economic

problems continue to pose important obstacles to the return of IDPs or affect the sustainability of such return. Consequently:

(a) The Government should ensure full implementation of the relevant legal measures and, if necessary, take the necessary legal action to enforce compliance by regional and local authorities with the provisions of national law, notably in respect of the position of ethnic minorities in local government and civil administration, and concerning discrimination in the private sector. The Government should take steps to ensure that local administrators are sufficiently accountable to the central authorities for their execution of these functions and that assessment of their performance is undertaken transparently;

(b) With the contribution of expertise of international organizations and taking into account the views of the local populations, the Government should develop a long-term strategy of economic and environmental development for the regions affected by the armed conflicts, in order that sustainable economic and employment opportunities arise in these areas. This strategy should include a phased plan for the removal of remaining landmines from agricultural areas in the conflict zones over a specified period of years.

51. The Representative recognizes that some aspects of his recommendations entail resource implications that in part may be beyond the current capacity of the Government of Croatia. A number of them also entail requirements of specific legal, planning and policy formulation and economic and environmental expertise to which the Government may have limited access. In conjunction with those needs as identified by the Government of Croatia after due consultation, the Representative calls on the international community, including notably donor States, regional organizations and relevant agencies of the United Nations, to mobilize the resources and expertise necessary to bring final closure to issues of internal displacement in Croatia. The Representative recommends that:

(a) Relevant actors of the international community, in collaboration with the Government, draw up a comprehensive programme identifying where international financial and expert support is necessary beyond the resources reasonably available to the Government of Croatia to achieve the recommendations set out above, in particular with regard to vulnerable persons in need of durable solutions, and setting out in precise terms the areas where international technical assistance would be of use to the Government in meeting these goals;

(b) International and regional agencies monitor, within their respective mandates, the implementation of the recommendations set out above and inform the authorities at the level of the central Government of obstacles or difficulties that arise in the course of their implementation

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

n/a

V. Fundamental freedoms

n/a

VI. Economic and social rights

Representative of the Secretary-General on the human rights of internally displaced persons (E/CN.4/2006/71/Add.4, paras. 49-51)

49. A still significant number of IDPs cannot return to their homes because the homes are destroyed, remain occupied by other persons who have not been evicted, or their former tenancy rights have been extinguished as a consequence of the privatization of buildings that were formerly owned collectively. For this group:

(a) The Government should carry out a final action programme for completion of the remaining reconstruction of damaged property, construction of alternative accommodation and execution of rights of repossession by the end of 2007. The programme should clearly set out the necessary resources and contain monitoring provisions to ensure that the appropriated funds are utilized for these purposes within this time frame;

(b) The Government should improve its efforts to inform the remaining IDPs, whose situations in numerous cases reveal particular complexities, about their property-related rights. In particular, it should publish a fact sheet, including in relevant minority languages, summarizing in accessible language the rights of internally displaced persons under current Croatian law and policy, the offices of relevant government ministries in Zagreb and in the provinces from which they can seek further information, and institutions such as the Ombudsman from which they can seek assistance in realizing their rights. In the elaboration of this document, consultation with appropriate non-governmental organizations with relevant experience of the issues would be valuable. Such a publication should be widely publicized and disseminated to all those concerned;

(c) The Government should redouble its efforts to reduce the delay in the resolution of outstanding property disputes by the judicial system, including by implementing, without delay, its Strategy for Justice Reform and Plan of Action, and by taking measures to accelerate the administrative handling of cases and to ensure prompt execution of court judgements;

50. (b) With the contribution of expertise of international organizations and taking into account the views of the local populations, the Government should develop a long-term strategy of economic and environmental development for the regions affected by the armed conflicts, in order that sustainable economic and employment opportunities arise in these areas. This strategy should include a phased plan for the removal of remaining landmines from agricultural areas in the conflict zones over a specified period of years.

51. The Representative recognizes that some aspects of his recommendations entail resource implications that in part may be beyond the current capacity of the Government of Croatia. A number of them also entail requirements of specific legal, planning and policy formulation and economic and environmental expertise to which the Government may have limited access. In conjunction with those needs as identified by the Government of Croatia after due consultation, the Representative calls on the international community, including notably donor States, regional organizations and relevant agencies of the United Nations, to mobilize the resources and expertise necessary to bring final closure to issues of internal displacement in Croatia.

VII. Cultural rights

n/a

VIII. Situation of specific groups

Representative of the Secretary-General on the human rights of internally displaced persons
(E/CN.4/2006/71/Add.3 , para. 48)

48. A relatively small number of IDPs still live in collective centres, many of whom are particularly vulnerable. In this regard, the Representative makes the following recommendations:

(a) The Government should ensure that all persons still accommodated in collective centres are consulted and provided realistic alternatives concerning their future status, with an identification of their particular needs and the responsibilities of specific local government agencies to meet them;

(b) For particularly vulnerable persons such as the elderly without family dependants, traumatized and sick persons or female-headed households, the central Government should ensure that public specialized facilities, such as social housing, are made available to them, whether in their current area of residence or in the areas from which they fled;

(c) For persons who have identified places of return but are without the means to travel there, the Government should promptly procure the necessary transportation. For persons who have genuine alternatives in terms of housing but remain in accommodation centres from a desire to receive services that they would reasonably be in a position to provide for themselves, should be returned to the relevant areas.

As a result, the definitive closure of the accommodation centres should be possible in the medium-term.

IX. The right to development and international cooperation

Representative of the Secretary-General on the human rights of internally displaced persons
(E/CN.4/2006/71/Add.3, para. 51)

51. The Representative recognizes that some aspects of his recommendations entail resource implications that in part may be beyond the current capacity of the Government of Croatia. A number of them also entail requirements of specific legal, planning and policy formulation and economic and environmental expertise to which the Government may have limited access. In conjunction with those needs as identified by the Government of Croatia after due consultation, the Representative calls on the international community, including notably donor States, regional organizations and relevant agencies of the United Nations, to mobilize the resources and expertise necessary to bring final closure to issues of internal displacement in Croatia. The Representative recommends that:

(a) Relevant actors of the international community, in collaboration with the Government, draw up a comprehensive programme identifying where international financial and expert support is necessary beyond the resources reasonably available to the Government of Croatia to achieve the recommendations set out above, in particular with regard to vulnerable persons in need of durable solutions, and setting out in precise terms the areas where international technical assistance would be of use to the Government in meeting these goals;

(b) International and regional agencies monitor, within their respective mandates, the implementation of the recommendations set out above and inform the authorities at the level of the central Government of obstacles or difficulties that arise in the course of their implementation.

X. Comments from the Government¹⁴

n/a

¹⁴ As published as official documents of the CHR.

CUBA

Introduction

The Personal Representative of the High Commissioner for the Human Rights Situation of human rights in Cuba submitted to the Commission on Human Rights her report E/CN.4/2006/33.

I. Institutional and legal framework for the promotion and protection of human rights

Personal Representative of the High Commissioner for the Human Rights Situation of human rights in Cuba (E/CN.4/2006/33, para. 35 (a), (b), (c), (j))

(a) Halt the prosecution of citizens who are exercising the rights guaranteed under articles 18, 19, 20, 21 and 22 of the Universal Declaration of Human Rights;

(b) Release detained persons who have not committed acts of violence against individuals and property;

(c) Review laws which lead to criminal prosecutions of persons exercising their freedom of expression, demonstration, assembly and association, and in particular Act No. 88 and article 91 of the Criminal Code, in order to bring these provisions of the law into line with the above-mentioned provisions of the Universal Declaration of Human Rights;

(j) Accede to the International Covenant on Civil and Political Rights and its optional protocols and the International Covenant on Economic, Social and Cultural Rights.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Personal Representative of the High Commissioner for the Human Rights Situation of human rights in Cuba (E/CN.4/2006/33, para. 35 (a), (b), (d))

(a) Halt the prosecution of citizens who are exercising the rights guaranteed under articles 18, 19, 20, 21 and 22 of the Universal Declaration of Human Rights;

(b) Release detained persons who have not committed acts of violence against individuals and property;

(d) Uphold, without exceptions, the moratorium on the application of the death penalty introduced in 2000, with a view to the abolition of the death penalty;

IV. Administration of justice and the rule of law

n/a

V. Fundamental freedoms

Personal Representative of the High Commissioner for the Human Rights Situation of human rights in Cuba (E/CN.4/2006/33, para. 35 (e), (f), (g), (h), (i))

(e) Reform the rules of criminal procedure to bring them into line with the requirements of articles 10 and 11 of the Universal Declaration of Human Rights;

(f) Establish a standing independent body with the function of receiving complaints from persons claiming that their fundamental rights have been violated;

(g) Review the regulations relating to travel into and out of Cuba in order to guarantee freedom of movement as defined in article 13 of the Universal Declaration of Human Rights;

(h) Authorize non-governmental organizations to enter Cuba;
(i) Foster pluralism in respect of associations, trade unions, organs of the press and political parties
in Cuba;

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

n/a

X. Comments from the Government¹⁵

n/a

¹⁵ As published as official documents of the CHR.

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Introduction

The Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (DPRK) submitted to the Commission on Human Rights his report E/CN.4/2006/35.

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the situation of human rights in the DPRK (E/CN.4/2006/35, para. 81)

81. The Democratic People's Republic of Korea should take the following measures/actions:

- (a) Abide effectively by human rights, particularly by implementing the four human rights treaties to which it is a party, in addition to acceding to and implementing the totality of human rights instruments, and accord adequate resources to ensure their implementation, especially to reallocate military budgets for this purpose;
- (b) Allow humanitarian agencies to stay in the country to ensure food distribution to target groups with effective monitoring, and promote sustainable agricultural development to ensure food security;
- (c) Reform the national law in order to not require travel permits and prohibit punishment of those who leave the country without permission;
- (d) Initiate reform of its prison system under the concept of the rule of law, with improvement of the criminal justice system, due safeguards for the accused, independent judiciary and access to justice, and abolish sanctions for political dissent;
- (e) Liberalize its laws, policies and practices to ensure respect for the totality of civil, political, economic, social and cultural rights;
- (f) Address the specific concerns of women, children, older persons, those with disabilities and the ethnic dimension by substantively promoting non-discrimination;
- (g) Direct its law enforcers to respect human rights and ensure capacity-building through training and education for human rights promotion and protection;
- (h) Seek assistance from the Office of the United Nations High Commissioner for Human Rights for programmes to enhance human rights promotion and protection;
- (i) Enable the Special Rapporteur and other mechanisms, as appropriate, to visit the country and assist in human rights' promotion and protection; and
- (j) Invite the various human rights monitoring bodies under the four treaties to which the Democratic People's Republic of Korea is a party to visit the country consistently to help monitor the situation and follow-up progress in regard to needed reforms, given that the Democratic People's Republic of Korea has been willing to engage with those bodies at a certain level.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

Special Rapporteur on the situation of human rights in the DPRK (E/CN.4/2006/35, para. 81 (d))

- 81 (d) Initiate reform of its prison system under the concept of the rule of law, with improvement of the criminal justice system, due safeguards for the accused, independent judiciary and access to justice, and abolish sanctions for political dissent;

V. Fundamental freedoms

n/a

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

Special Rapporteur on the situation of human rights in the DPRK (E/CN.4/2006/35, para. 81 (f))

81. (f) Address the specific concerns of women, children, older persons, those with disabilities and the ethnic dimension by substantively promoting non-discrimination;

IX. The right to development and international cooperation

Special Rapporteur on the situation of human rights in the DPRK (E/CN.4/2006/35, para. 82)

82. The rest of the international community should:

(a) Support the various recommendations of the Special Rapporteur submitted above, as well as in his earlier reports for the United Nations;

(b) Continue to provide food aid as necessary, while ensuring complementarity between the different types of aid, access to the target groups and relevant monitoring;

(c) Respect the principle of asylum, particularly non-refoulement, to protect refugees, and discard those arrangements or practices which undermine this principle, while promoting international solidarity to burden-share and address the root causes of the outflows;

(d) Assist the Democratic People's Republic of Korea to reform its prison system and to abide by the rule of law;

(e) Respond in a balanced manner to the Democratic People's Republic of Korea's concerns about "security" by packaging human rights initiatives with security guarantees and incentives for economic and other development, reflective of a comprehensive approach to human rights with practical implementation measures.

X. Comments from the Government¹⁶

¹⁶ As published as official documents of the CHR.

DEMOCRATIC REPUBLIC OF THE CONGO

Introduction

L'expert indépendant sur la situation des droits de l'homme en République Démocratique du Congo (RDC) a visité le pays du 16 au 27 août 2005 (veuillez vous référer au document E/CN.4/2006/113).

I. Cadre institutionnel et légal de promotion et de protection des droits de l'homme

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2006/113, paras. 152, 153)

152. À toutes les parties congolaises, signataires ou non de l'Accord global et inclusif sur la transition, l'expert indépendant recommande:

- De sensibiliser la population à une culture de paix, de tolérance, de réconciliation, de pardon, de fraternité, de cohabitation pacifique, d'intégration, d'unité nationale et de patriotisme; de la convaincre d'œuvrer à la construction nationale, de refuser la discrimination sous toutes ses formes, et de lutter contre le défaitisme, la fatalité et le désespoir;
- De prendre conscience de la nécessité, pour tous les acteurs politiques, de cultiver la culture du dialogue, de refuser la violence ou l'incitation à la violence et à la haine ethnique.

153. Au Gouvernement d'unité nationale et de transition, l'expert indépendant recommande:

- Toutes mesures visant à affirmer et à consolider l'autorité de l'État, sur toute l'étendue du territoire;
- L'intégration effective, la réunification, le renforcement, l'équipement de l'armée et de la police;

II. Non-discrimination et égalité devant la loi

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2006/113, paras. 152, 153)

152. À toutes les parties congolaises, signataires ou non de l'Accord global et inclusif sur la transition, l'expert indépendant recommande:

- De sensibiliser la population à une culture de paix, de tolérance, de réconciliation, de pardon, de fraternité, de cohabitation pacifique, d'intégration, d'unité nationale et de patriotisme; de la convaincre d'œuvrer à la construction nationale, de refuser la discrimination sous toutes ses formes, et de lutter contre le défaitisme, la fatalité et le désespoir;
- De prendre conscience de la nécessité, pour tous les acteurs politiques, de cultiver la culture du dialogue, de refuser la violence ou l'incitation à la violence et à la haine ethnique.

III. Le droit à la vie; le droit à la liberté et à la sécurité de la personne; le droit à l'intégrité physique et morale

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2006/113, para 153)

- La lutte contre tous les crimes qui continuent d'être commis, en particulier les viols et les violences sexuelles contre les femmes et les enfants, qui sont érigés en armes de guerre, et les incendies volontaires contre les habitations et les propriétés;

IV. Administration de la justice et l'état de droit

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2006/113, para 153)

- L'amélioration des conditions matérielles, intellectuelles et d'équipement, présentement trop précaires et insuffisantes, des institutions et des agents de l'État, en particulier de la magistrature, pour pouvoir répondre avec efficacité aux besoins de la justice ainsi qu'à ceux de la lutte contre l'impunité;
- La lutte contre l'impunité qui engendre les crimes;
- La lutte contre tous les crimes qui continuent d'être commis, en particulier les viols et les violences sexuelles contre les femmes et les enfants, qui sont érigés en armes de guerre, et les incendies volontaires contre les habitations et les propriétés;
- L'écart du Gouvernement et des institutions de tous les auteurs présumés de crimes contre l'humanité et de graves violations des droits humains.

V. Libertés fondamentales

n/a

VI. Droits économiques et sociaux

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2006/113, para. 153)

- La lutte contre les trafics et les exploitations illégales des ressources naturelles;
- La lutte contre tous les crimes qui continuent d'être commis, en particulier les viols et les violences sexuelles contre les femmes et les enfants, qui sont érigés en armes de guerre, et les incendies volontaires contre les habitations et les propriétés;

VII. Drois culturels

n/a

VIII. Situation des groupes spécifiques

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2006/113, para. 153)

Enfants

- La lutte contre l'utilisation persistante des enfants dans les conflits armés; la lutte contre les milices et groupes armés privés et leur désarmement;

Femmes

- La lutte pour la revalorisation de la femme, sa protection et son plein épanouissement;

IX. Le droit au développement et la coopération internationale

Expert indépendant sur la situation des droits de l'homme en RDC (E/CN.4/2006/113, para. 154)

154. Au plan international, l'expert indépendant recommande:

a) À la communauté internationale:

- D'apporter son soutien à la transition pour permettre l'instauration de l'État de droit et d'une culture de paix durable;
- D'apporter son appui à la restructuration, à l'intégration, au recrutement, à la formation et à l'équipement de l'armée, de la sécurité et de la police;
- De renforcer son soutien à la MONUC (effectifs, moyens financiers et équipements) pour lui permettre d'être à l'appui des FARDC, d'être à la mesure des différents défis à relever concernant les crimes et troubles constants dans le pays et aux frontières;
- D'appuyer le Bureau du Haut-Commissariat aux droits de l'homme en République démocratique du Congo dans l'exécution de ses programmes et activités;
- De fournir à l'expert indépendant toute l'assistance nécessaire pour qu'il puisse s'acquitter de son mandat, compte tenu de l'immensité du pays et des nombreux domaines relatifs aux droits de l'homme que recouvre son mandat.

b) À la Commission des droits de l'homme, à l'Assemblée générale, au Conseil de sécurité, au Conseil économique et social:

- Vu l'état exsangue de la justice en République démocratique du Congo et vu l'importance des crimes qui s'y perpétuent depuis plus d'une décennie, d'instituer par une décision du Conseil de sécurité un tribunal pénal international pour la République démocratique du Congo ou, à défaut, d'envisager la création de chambres criminelles mixtes au sein des juridictions congolaises déjà existantes pour connaître des crimes commis avant le 1^{er} juillet 2002.

X. Commentaires du Gouvernement¹⁷

n/a

¹⁷ As published as official documents of the CHR.

ECUADOR

Introduction

During the period under review, the Special Rapporteur on the independence of judges and lawyers did a follow-up mission to his first mission in March 2005 that formed the subject of a short preliminary report to the Commission on Human Rights at its sixty-first session (E/CN.4/2005/60/Add.4). His second visit took place in July 2005 (please refer to document E/CN.4/2006/52/Add.2).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.2, para. 36)

36. The report points to the urgent need to reform the whole of the judicial system, in particular by:

- (a) Enacting a new Law on the Organization of the Judiciary;
- (b) Enacting a law laying down standards and safeguards for the judiciary;
- (c) Giving practical effect to the principle that only judicial bodies may perform judicial functions;
- (d) Establishing an effective system of legal aid;
- (e) Promptly appointing a Comptroller General and an Attorney-General.

II. Non-discrimination and equality before the law

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.2, para. 28)

28. The Special Rapporteur regrets that, in the end, it was not possible to give effect to affirmative action to promote gender equality by setting a quota of 20 per cent of members of the court who should be women judges, in accordance with the principles contained in the Ecuadorian Constitution and in international treaties, and he recommends that this point should be borne in mind when applying the mechanism to co-opt members to fill vacant posts in the Supreme Court and in other processes to select judges for high courts in Ecuador. The Special Rapporteur also recommends the adoption of affirmative action to promote the participation of Afro-Ecuadorians or persons from indigenous groups in the above-mentioned institutions.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.2, paras. 26-29; 32-35)

26. The Special Rapporteur draws attention to the significance and originality of the process for selecting the members of the new Supreme Court, a process which combines the particular characteristics of transparency, public oversight, monitoring by international and national bodies and participation of judges from other countries in the region. The novel part played by the United Nations in the evaluation conducted by the Qualifications Committee and in the appointment of the judges of the Court constitutes a real innovation in United Nations activities in this field and, at the same time, it reflects the determination of the highest authorities in the country to ensure transparency.

27. The Special Rapporteur emphasizes the valuable lessons learned from the process of appointing members to the Supreme Court, especially with regard to the dovetailing and coordination of the various components of the United Nations system and the international community in general.

28. The Special Rapporteur regrets that, in the end, it was not possible to give effect to affirmative action to promote gender equality by setting a quota of 20 per cent of members of the court who should be

women judges, in accordance with the principles contained in the Ecuadorian Constitution and in international treaties, and he recommends that this point should be borne in mind when applying the mechanism to co-opt members to fill vacant posts in the Supreme Court and in other processes to select judges for high courts in Ecuador. The Special Rapporteur also recommends the adoption of affirmative action to promote the participation of Afro-Ecuadorians or persons from indigenous groups in the above-mentioned institutions.

29. Congress has announced that it will soon debate the new draft Law on the Organization of the Judiciary. The Special Rapporteur considers that it should give priority to this subject in view of the crisis facing the judiciary. This discussion should be conducted in an open manner so as to obtain the opinions of law officers, lawyers and society in general.

32. The Special Rapporteur proposes to monitor the activities of the new Supreme Court and the implementation of urgently required reforms in the sphere of justice.

33. The Special Rapporteur urges the putting in place of mechanisms to guarantee broad public participation in the process of reforming the administration of justice.

34. One of the first actions of the Supreme Court will be the handing over to Congress of two shortlists for the appointment of the members of the Constitutional Court. It is to be hoped that the Supreme Court, which has itself been elected through a demanding evaluation mechanism, will proceed with equal rigour when it compiles these lists. Assuming that rules and regulations so permit, it would be advisable for the other nominating entities to proceed in the same manner. That would be a step towards the appointment of a Constitutional Court of due standing, where the presence of eminent national jurists would be a safeguard of probity and independence.

35. Regarding the Supreme Electoral Court, and with a view to an electoral reform making it possible to hold the general elections scheduled for 2006, the Special Rapporteur considers that the opportunity should be seized to make headway towards an institutional framework guaranteeing the impartiality and professionalism of the Supreme Electoral Court.

V. Fundamental freedoms

n/a

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.2, paras. 30-31)

30. Important international cooperation projects in the field of justice were suspended after the events at the end of 2004. It is to be hoped that those which have been in abeyance will be resumed quickly, but in a coordinated fashion. At all events, the focus of international cooperation in this respect will have to shift; greater heed will have to be paid to the views of stakeholders inside and outside the system for the administration of justice. The role of the United Nations as facilitator and coordinator might prove very useful.

31. The Special Rapporteur will draw up a specific report on the process of selecting members of the Supreme Court of Ecuador, as it offers valuable lessons for United Nations institutional capacity-building activities and, at the same time, constitutes an example of the beneficial linkage which can be established between the United Nations and other bodies, in this case the Organization of American States, the Andean Community and others.

X. Comments from the Government

n/a

FRANCE

Introduction

Au cours de la période concernée, le Rapporteur spécial sur la liberté de religion ou de conviction a visité le pays du 18 au 29 Septembre 2005 (veuillez vous référer au document E/CN.4/2006/5/Add.4).

I. Cadre institutionnel et légal pour la promotion et la protection des droits de l'homme

Rapporteur spécial sur la liberté de religion ou de conviction (E/CN.4/2006/5/Add.4, paras. 94-95)

94. The Special Rapporteur on freedom of religion or belief was impressed by the expertise that exists in France on the issues relevant to her mandate. The visit was of the highest interest because France is a unique model. However, the complexity of the situation means that it is not easy to draw conclusions. Nevertheless, the Special Rapporteur remains convinced that French society will be able to overcome the obstacles as its commitment to fundamental rights runs deep and is the foundation of the Republic.

95. The Special Rapporteur would first like to highlight that the Government of France generally respects the right to freedom of religion or belief, as it is protected by the international treaties to which France is a party. Furthermore, the strength of its judiciary undoubtedly constitutes a guarantee of these main values. However, she wishes to highlight a number of areas of concern.

II. Non-discrimination et égalité devant la loi

Rapporteur spécial sur la liberté de religion ou de conviction (E/CN.4/2006/5/Add.4, paras. 98-104)

The question of religious symbols in the public school system

98. Law 2004-228 of 15 March 2004 on the wearing of conspicuous religious symbols in public schools is widely supported by the political apparatus as well as by the population. Although the law is intended to apply equally to all persons, the Special Rapporteur is of the opinion that it has mainly affected certain religious minorities, and notably, people of a Muslim background. The Special Rapporteur believes that the wide political support for the law has conveyed a demoralizing message to religious minorities in France.

99. The law is appropriate insofar as it is intended, in accordance with the principle of the best interests of the child, to protect the autonomy of minors who may be pressured or forced to wear a headscarf or other religious symbols. However, the law denies the right of those minors who have freely chosen to wear a religious symbol to school as part of their religious belief.

100. The Special Rapporteur is of the opinion that the direct and, in particular, the indirect consequences of this law may not have been thoroughly considered. Although many interlocutors at the governmental level are satisfied with the results of the implementation of the law, she noticed that the figures are often disputed, including because the criteria used for the assessment vary. Moreover, the Special Rapporteur considers that aside from statistics, the issue is one of principle.

101. The concerns of the Special Rapporteur are more serious with regard to the indirect consequences of Law 2004-228 in the longer term. The implementation of the law by educational institutions has led, in a number of cases, to abuses that have provoked humiliation, in particular amongst young Muslim women. According to many sources, such humiliation can only lead to the radicalization of the persons affected and those associated with them. Moreover, the stigmatization of the headscarf has provoked instances of religious intolerance when women wear it outside school, at university or in the workplace. Although the law was aimed at regulating symbols related to all religions, it appears to mainly target girls from a Muslim background wearing the headscarf.

102. The Special Rapporteur encourages the Government to closely monitor the way educational institutions are implementing the law, in order to avoid the feelings of humiliation that were reported to her during her visit. She also recommends a flexible implementation of the law which would accommodate the schoolchildren for whom the display of religious symbols constitutes an essential part of their faith.

103. In all circumstances, the Government should uphold the principle of the best interests of the child and guarantee the fundamental right of access to education, as has been recommended by several United Nations treaty-monitoring bodies.

104. Moreover, the Government should take appropriate measures to better inform school authorities, and more generally the French population, about the exact nature and purpose of the law. It should be made clear that the wearing or display of religious symbols is an essential part of the right to manifest one's religion or belief that can only be limited under restrictive conditions. The Government should also promptly provide redress in any situation where persons have been the victim of discrimination or other act of religious intolerance because of their religious symbols, including by prosecuting the perpetrators of such acts in the relevant cases.

III. Le droit à la vie; le droit à la liberté et à la sécurité de la personne; le droit à l'intégrité physique et morale

Rapporteur spécial sur la liberté de religion ou de conviction (E/CN.4/2006/5/Add.4, paras. 115-116)

On freedom of religion or belief for persons deprived of their liberties

115. While the Special Rapporteur was not able to make a thorough assessment of the status of religious freedom in prisons and other detention facilities, the information that she has obtained during her visit reveals a generally satisfactory level of respect for the religious rights of persons deprived of their liberty.

116. However, she refers the Government of France to her chapter on the freedom of religion or belief of persons deprived of their liberty in her report to the sixtieth session of the General Assembly (A/60/399) for further details about the applicable international standards. She encourages French authorities to further implement the necessary measures in line with the principles set forth in the said report.

IV. Administration de la justice et l'état de droit

Rapporteur spécial sur la liberté de religion ou de conviction (E/CN.4/2006/5/Add.4, paras.96-97 ; 107-114)

The principle of *laïcité*

96. The Special Rapporteur notes that the situation prevailing today in France is different from the one which existed at the time of the adoption of the 1905 law on the separation of Church and State (*loi concernant la séparation des Eglises et de l'Etat*), which constitutes the basis of the principle of *laïcité* (which is almost equivalent to secularism) in France. While recognizing that the organization of a society according to this principle may not only be healthy, but also guarantees the fundamental right to freedom of religion or belief, she is concerned that, in some circumstances, the selective interpretation and rigid application of the principle has operated at the expense of the right to freedom of religion or belief.

97. The Special Rapporteur welcomes the fact that the one hundredth anniversary of the law of 1905 has prompted an important debate within French society, and considers that a thorough assessment of its application in the present context of religious pluralism is a necessary process in a democratic society based on the rule of law.

The question of cult groups and certain new religious movements or communities of belief

107. The Special Rapporteur understands the legitimate concerns regarding the victims of criminal acts that have been committed by certain religious groups or communities of belief. She considers that, in many cases, the Government of France, and its judicial apparatus, have adopted a responsible attitude and provided an appropriate response to the offences committed.

108. However, she is of the opinion that the policy and measures that have been adopted by the French authorities have provoked situations where the right to freedom of religion or belief of members of these groups has been unduly limited. Moreover, the public condemnation of some of these groups, as well as the stigmatization of their members, has led to certain forms of discrimination, in particular vis-à-vis their children.

109. The Special Rapporteur has observed that the government policy may have contributed to a climate of general suspicion and intolerance towards those communities on the list created by the National Assembly in 1996, of movements and groups classified as *sectes*. Moreover, the campaigns and other actions that have been initiated by associations composed, inter alia, of victims of criminal acts committed by these groups, have often been emotional.

110. The Special Rapporteur notes that in recent times the French authorities have adopted a more balanced approach to this phenomenon by adjusting their policy, including through the transformation of the Inter-ministerial Mission to Combat “Sectes” (MILS) into the Inter-ministerial Mission to monitor and combat abuse by sects (MIVILUDES). A number of improvements nevertheless remain to be carried out in order to ensure that the right to freedom of religion or belief of all individuals is guaranteed, and to avoid the stigmatization of members of certain religious groups or communities of belief, including those whose members have never committed any criminal offence under French law.

111. The Special Rapporteur hopes that future actions of MIVILUDES will be in line with the right to freedom of religion or belief and avoid past mistakes. She will continue to closely monitor the various efforts that are carried out by MIVILUDES.

112. The Special Rapporteur urges the Government to ensure that its mechanisms for dealing with these religious groups or communities of belief deliver a message based on tolerance, freedom of religion or belief and on the principle that no one can be judged for his actions other than through the appropriate judicial channels.

113. Moreover, she recommends that the Government monitor more closely preventive actions and campaigns that are conducted throughout the country by private initiatives or Government-sponsored organizations, in particular within the school system in order to avoid children of members of these groups being negatively affected.

114. She urges judicial and conflict resolution mechanisms to no longer refer to, or use, the list published by Parliament in 1996.

V. Libertés fondamentales

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102. The Special Rapporteur encourages the Government to closely monitor the way educational institutions are implementing the law, in order to avoid the feelings of humiliation that were reported to her during her visit. She also recommends a flexible implementation of the law which would accommodate the schoolchildren for whom the display of religious symbols constitutes an essential part of their faith.

103. In all circumstances, the Government should uphold the principle of the best interests of the child and guarantee the fundamental right of access to education, as has been recommended by several United Nations treaty-monitoring bodies.

104. Moreover, the Government should take appropriate measures to better inform school authorities, and more generally the French population, about the exact nature and purpose of the law. It should be made clear that the wearing or display of religious symbols is an essential part of the right to manifest one's religion or belief that can only be limited under restrictive conditions. The Government should also promptly provide redress in any situation where persons have been the victim of discrimination or other act of religious intolerance because of their religious symbols, including by prosecuting the perpetrators of such acts in the relevant cases.

VII. Droits culturels

n/a

VIII. Situation des groupes spécifiques

Rapporteur spécial sur la liberté de religion ou de conviction (E/CN.4/2006/5/Add.4, paras. 105-106 ;115-116)

Acts of religious intolerance

105. The Jewish community, as well as its members, continue to be the target of a number of acts of religious intolerance. More recently, members of other religious communities, including Muslims, have reported that they were increasingly the victims of acts of religious intolerance. The Special Rapporteur has noted that the Government takes these acts very seriously and rarely underestimates their importance.

106. Regardless of the underlying reasons for these acts, the Special Rapporteur believes that the Government of France should remain, extremely vigilant and continue to take the appropriate measures to prosecute the perpetrators as well as to provide redress vis-à-vis the victims. The Government may consider ways to facilitate the judicial procedures for those victims in order to provide them with an even more appropriate form of redress.

On freedom of religion or belief for persons deprived of their liberties

115. While the Special Rapporteur was not able to make a thorough assessment of the status of religious freedom in prisons and other detention facilities, the information that she has obtained during her visit reveals a generally satisfactory level of respect for the religious rights of persons deprived of their liberty.

116. However, she refers the Government of France to her chapter on the freedom of religion or belief of persons deprived of their liberty in her report to the sixtieth session of the General Assembly (A/60/399) for further details about the applicable international standards. She encourages French authorities to further implement the necessary measures in line with the principles set forth in the said report.

IX. Le droit au développement et la coopération internationale

n/a

X. Comments from the Government¹⁸

n/a

¹⁸ As published as official documents of the CHR.

GEORGIA

Introduction

During the period under review the following special procedures visited the country:

- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment from 19 to 25 February 2005 (please refer to document E/CN.4/2006/6/Add.3).
- Special Representative of the Secretary-General on the human rights of internally displaced persons from 21 to 24 December 2006 (please refer to document E/CN.4/2006/71/Add.7).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on torture (E/CN.4/2006/6/Add.3, para. 60 (a), (o), (p), (q))

Impunity

60.

(a) The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be subject to prosecution;

Prevention

60.

(o) In accordance with the Optional Protocol to the Convention against Torture, a truly independent monitoring mechanism be established, whose members would be appointed for a fixed period and not subject to dismissal, to visit all places where persons are deprived of their liberty throughout the country. In the view of the Special Rapporteur, such a mechanism could be situated in an independent national human rights institution established in accordance with the Paris Principles, the basis of which might be the Public Defender's Office. This national institution should also be vested with investigatory powers in relation to allegations of torture and ill-treatment, and provided with the necessary financial and human resources, and appropriate capacity-building, to carry out its functions effectively;

(p) All investigative law enforcement bodies establish effective procedures for internal monitoring and disciplining of the behaviour of their agents, with a view to eliminating practices of torture and ill-treatment; and

(q) Law enforcement recruits undergo an extensive and thorough training curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of police equipment, and that existing officers receive continuing education.

Special Representative on Internally Displaced Persons (E/CN.4/2006/71/Add.7, paras. 46-47; 57)

46. The main cause of problems encountered by internally displaced persons (IDPs) in Georgia is the absence of political solutions to regional conflicts, as well as the ensuing widespread feelings of insecurity. As a consequence, return movements are slow – or almost non-existent in some areas - and the finding of durable solutions as well as international support for rehabilitation and development investments are hampered. At the same time, sustainable returns and societal integration could contribute to promoting and stabilizing the peace process.

47. The Representative of the Secretary-General on the human rights of internally displaced persons calls on all parties to meet their commitments under previous agreements, in particular the Quadripartite Agreement on voluntary return of refugees and displaced persons. He recommends that they swiftly finalize the envisaged joint declaration on the non-resumption of hostilities and the right to return as an important step towards solving the displacement crisis. He also appeals to all parties to protect the victims of forced displacement from the detrimental effect of ongoing tensions.

57. The Representative:

- (a) Encourages the Government of Georgia to swiftly formalize its envisaged strategy for IDPs. He recommends to the Government that it design and adopt a comprehensive, rights-based policy which would support IDPs as they integrate into society and acquire adequate living conditions, while maintaining their option to return;
- (b) Recommends that such a policy should seek to ensure the full enjoyment of all human rights of IDPs, as restated in the Guiding Principles on Internal Displacement. It should contain the following elements:
- (i) First, the right of IDPs to return to their places of origin should be reaffirmed, together with a commitment to take steps to create sustainable conditions in return areas and provide reliable information to IDPs about those conditions;
- (ii) Second, a comprehensive integration policy should encompass the whole range of political, civil, social, economic and cultural rights of IDPs. Existing legislation which might de jure or de facto negatively affect the welfare and rights of IDPs may need to be revised. In practical terms, integration would mean offering adequate accommodation to IDPs in order to close collective centres, improving access to education and health care, as well as creating economic opportunities allowing them to sustain themselves. Their participation in public life, including elections, needs to be promoted and improved;
- (iii) The third element of the policy should provide for humanitarian assistance to the most vulnerable persons among the displaced and find durable solutions for those who may not be able to live on their own, such as elderly without family support, female-headed households as well as disabled and traumatized persons;
- (iv) Finally, the policy should clarify the roles and responsibilities of all relevant government agencies, national or local, and contain mechanisms to hold them accountable.
- (c) Recommends that the authorities accompany the process of designing the national policy with close consultations with civil society and IDPs themselves. He offers his support to the process upon request;
- (d) Recommends that the new policy should be elaborated and implemented without delay in order not to unnecessarily prolong the suffering of victims. In order to ensure the effective implementation, the necessary budget allocations should be made;

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

Special Rapporteur on torture (E/CN.4/2006/6/Add.3, para 60 (b) to (n))

Impunity

60.

- (b) Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination;
- (c) All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that investigating or prosecuting the case against the alleged victim;
- (d) Plea-bargain agreements made by accused persons be without prejudice to criminal proceedings that may be instituted for allegations of torture and other ill-treatment;
- (e) Forensic medical services be placed under judicial or another independent authority, not under the same governmental authority as the police and the penitentiary system. Public forensic medical services should not have a monopoly on expert forensic evidence for judicial purposes;
- (f) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted;
- (g) Victims receive substantial compensation and adequate medical treatment and rehabilitation;

(h) Necessary measures be taken to establish and ensure the independence of the judiciary in the performance of their duties in conformity with international standards (e.g. the Basic Principles on the Independence of the Judiciary). Measures should also be taken to ensure respect for the principle of the equality of arms between the prosecution and the defence in criminal proceedings;

Conditions of detention

60.

(i) Non-violent offenders be removed from confinement in pretrial detention facilities, subject to non-custodial measures (i.e. guarantees to appear for trial, at any other stage of the judicial proceeding and, should occasion arise, for execution of the judgement);

(j) Recourse to pretrial detention be restricted in the Criminal Procedure Code, particularly for non-violent, minor or less serious offences, and the use of non-custodial measures such as bail and recognizance be increased;

(k) Pretrial and convicted prisoners be strictly separated;

(l) The number of persons confined in detention not exceed the official capacity of the respective facility;

(m) Existing institutions be refurbished to meet basic minimum standards;

(n) To the extent that the use of non-custodial measures will not eliminate the overcrowding problem, new remand centres be built with sufficient accommodation for the anticipated population;

Special Representative on Internally Displaced Persons (E/CN.4/2006/71/Add.7, para 49 (b))

49. The Representative:

(b) Appeals to the Abkhaz de facto authorities to do everything in their power to prevent and punish acts of violence against returnees and other violations of their human rights, including through close cooperation with the authorities on the other side of the ceasefire line. He urges them to admit United Nations civilian police and cooperate in the establishment of a permanent human rights office in Gali without further delay;

V. Fundamental freedoms

Special Rapporteur on torture (E/CN.4/2006/6/Add.3, para. 61)

Territories of Abkhazia and South Ossetia

61. Many of the above recommendations apply, mutatis mutandis, to the de facto authorities in the territories of Abkhazia and South Ossetia, especially those in relation to conditions of detention. With particular reference to Abkhazia, the Special Rapporteur recommends that the death penalty be abolished.

Special Representative on Internally Displaced Persons (E/CN.4/2006/71/Add.7, para. 49 (a))

49. The Representative: (a) Urges the Abkhaz de facto authorities to allow persons displaced from Abkhazia to return to their homes in the Gali district and elsewhere in the territory under their control. He also urges them to refrain from adopting measures incompatible with the right to return and with relevant international and European human rights standards, and which would endanger the sustainability of returns. Such measures include imposing Abkhaz “citizenship” on returnees, disproportionately disadvantaging returnees not willing to give up their Georgian citizenship, as well as diminishing their civil rights or creating administrative obstacles;

VI. Economic and social rights

Special Representative on Internally Displaced Persons (E/CN.4/2006/71/Add.7, para. 49 (c), 50, 51, 55 (a), (b))

(c) Calls on the Abkhaz de facto authorities to respect the right of returning IDPs to use their own language, including in educational institutions, as enshrined in guiding principle 23 of the Guiding Principles on Internal Displacement. He further calls on the authorities concerned to avoid interruptions

and disturbances of the education of IDP and returnee children, and make the necessary budget allocations;

50. The right to return in safety and dignity also applies to persons displaced during the conflicts with the Tskhinvali Region/South Ossetia. Fears regarding their safety and instances of discrimination in areas of origin, as well as the lack of property restitution mechanisms strongly discourages Ossetians who fled from Georgia from returning.

51. The Representative urges the Government of Georgia to take effective measures to ensure safety and non-discrimination for Ossetians willing to return to their homes. He urges the Government and Parliament to pass, in accordance with relevant international standards, envisaged legislation on the rehabilitation and restitution of the property of conflict victims, and implement it without delay. The repossession of property by rightful owners should be promoted and facilitated, and the free choice of IDPs to return to their property or sell it should be acknowledged. Precautions should be taken so as to avoid placing unrealistic obstacles in the way of IDPs seeking trials to reclaim their property through the courts.

55. The Representative:

(a) Encourages the Government to implement its plans to improve the living conditions of IDPs, in particular by closing collective centres, raising the monthly financial allowance to which IDPs are entitled on the basis of up-to-date needs assessments, and by offering income-generation projects and providing land plots;

(b) Urges national and local authorities, in coordination with international agencies and donors, to seek durable solutions targeting particularly vulnerable persons among IDPs, including the creation of adequate housing and appropriate institutional arrangements throughout Georgia;

VII. Cultural rights

Special Representative on Internally Displaced Persons (E/CN.4/2006/71/Add.7, para. 48)

48. Persons displaced by past conflicts in Abkhazia, Georgia, have the right to return voluntarily to their former homes in safety and dignity. Sustainable return to the Gali district is largely obstructed by administrative measures directed against returnees, attacks and harassment, as well as widespread impunity for perpetrators. The Representative is concerned about the difficulties which the “Law of the Republic of Abkhazia on Citizenship of the Republic of Abkhazia” may create for returnees unwilling to accept Abkhaz “citizenship” even if it were not imposed on them and has no international significance. The Representative is also concerned about reports of restrictions of the use of the Georgian language in schools on the Abkhaz side of the ceasefire line, which has detrimental effects on the sustained provision and quality of education.

VIII. Situation of specific groups

IDPs

Special Representative on Internally Displaced Persons (E/CN.4/2006/71/Add.7, paras. 48-56)

48. Persons displaced by past conflicts in Abkhazia, Georgia, have the right to return voluntarily to their former homes in safety and dignity. Sustainable return to the Gali district is largely obstructed by administrative measures directed against returnees, attacks and harassment, as well as widespread impunity for perpetrators. The Representative is concerned about the difficulties which the “Law of the Republic of Abkhazia on Citizenship of the Republic of Abkhazia” may create for returnees unwilling to accept Abkhaz “citizenship” even if it were not imposed on them and has no international significance. The Representative is also concerned about reports of restrictions of the use of the Georgian language in schools on the Abkhaz side of the ceasefire line, which has detrimental effects on the sustained provision and quality of education.

49. The Representative:

(a) Urges the Abkhaz de facto authorities to allow persons displaced from Abkhazia to return to their homes in the Gali district and elsewhere in the territory under their control. He also urges them to refrain from adopting measures incompatible with the right to return and with relevant international and European human rights standards, and which would endanger the sustainability of returns. Such measures include imposing Abkhaz “citizenship” on returnees, disproportionately disadvantaging returnees not willing to give up their Georgian citizenship, as well as diminishing their civil rights or creating administrative obstacles;

(b) Appeals to the Abkhaz de facto authorities to do everything in their power to prevent and punish acts of violence against returnees and other violations of their human rights, including through close cooperation with the authorities on the other side of the ceasefire line. He urges them to admit United Nations civilian police and cooperate in the establishment of a permanent human rights office in Gali without further delay;

(c) Calls on the Abkhaz de facto authorities to respect the right of returning IDPs to use their own language, including in educational institutions, as enshrined in guiding principle 23 of the Guiding Principles on Internal Displacement. He further calls on the authorities concerned to avoid interruptions and disturbances of the education of IDP and returnee children, and make the necessary budget allocations;

(d) Urges Abkhaz de facto authorities not to take any other actions which may have a discriminatory effect against IDPs and returnees or prevent the willingness of persons in displacement to return to their places of origin, including the forced recruitment of ethnic Georgians into Abkhaz military forces.

50. The right to return in safety and dignity also applies to persons displaced during the conflicts with the Tskhinvali Region/South Ossetia. Fears regarding their safety and instances of discrimination in areas of origin, as well as the lack of property restitution mechanisms strongly discourages Ossetians who fled from Georgia from returning.

51. The Representative urges the Government of Georgia to take effective measures to ensure safety and non-discrimination for Ossetians willing to return to their homes. He urges the Government and Parliament to pass, in accordance with relevant international standards, envisaged legislation on the rehabilitation and restitution of the property of conflict victims, and implement it without delay. The repossession of property by rightful owners should be promoted and facilitated, and the free choice of IDPs to return to their property or sell it should be acknowledged. Precautions should be taken so as to avoid placing unrealistic obstacles in the way of IDPs seeking trials to reclaim their property through the courts.

52. IDPs have the right to freely choose whether they want to return, integrate locally or resettle in another part of the country.

53. The Representative welcomes the recognition by officials of the Government of Georgia of this right of IDPs, as citizens of their country. He calls on all relevant authorities to raise awareness of and promote this right so as to render the choice meaningful for IDPs. In practice, this includes ensuring access to relevant information, as well as the creation of income-generation and training projects in order to provide IDPs with the possibility of sustaining themselves.

54. The right of IDPs to a life in safety and dignity at the site of their displacement must be equally ensured by the authorities. The Representative is concerned about the deplorable living conditions of IDPs who are still accommodated in collective centres throughout Georgia. He is especially concerned about the situation of those belonging to particularly vulnerable groups, such as the elderly without family support, traumatized victims, disabled or sick persons, female-headed households and families of missing persons.

55. The Representative:

(a) Encourages the Government to implement its plans to improve the living conditions of IDPs, in particular by closing collective centres, raising the monthly financial allowance to which IDPs are entitled on the basis of up-to-date needs assessments, and by offering income-generation projects and providing land plots;

- (b) Urges national and local authorities, in coordination with international agencies and donors, to seek durable solutions targeting particularly vulnerable persons among IDPs, including the creation of adequate housing and appropriate institutional arrangements throughout Georgia;
- (c) Encourages the international community and donors to support these efforts and ensure that development projects are run in parallel with humanitarian assistance to the needy, including host communities shouldering an additional burden while in a similarly desperate situation.

56. Integration and return are not mutually exclusive but complementary. The Representative welcomes the intention of relevant Georgian Ministries to support more effectively the local integration of IDPs, whether or not the latter wish to return to their pre-war homes once this becomes possible. He is pleased with concrete plans to design a national policy addressing the displacement crisis, in line with his predecessor's recommendations at the fifty-seventh session of the Commission on Human Rights.

IX. The right to development and international cooperation

Special Rapporteur on torture (E/CN.4/2006/6/Add.3, para. 62)

International cooperation

62. The Special Rapporteur recommends that relevant international organizations be requested to provide, in a coordinated manner, assistance in the follow-up to the above recommendations, including considering incorporating the recommendations in a future plan of action against torture in Georgia. To this end, the Office of the United Nations High Commissioner for Human Rights should continue its efforts to establish a permanent human rights presence within the United Nations Country Team in Georgia, and it should ensure that adequate attention is paid to South Ossetia.

Special Representative on Internally Displaced Persons (E/CN.4/2006/71/Add.7, paras. 55 (b), (c), 57 (e), 58, 59)

55. The Representative:

- (b) Urges national and local authorities, in coordination with international agencies and donors, to seek durable solutions targeting particularly vulnerable persons among IDPs, including the creation of adequate housing and appropriate institutional arrangements throughout Georgia;
- (c) Encourages the international community and donors to support these efforts and ensure that development projects are run in parallel with humanitarian assistance to the needy, including host communities shouldering an additional burden while in a similarly desperate situation.

57. (e) Recommends that the international community, in particular the Office of the United Nations High Commissioner for Refugees (UNHCR), support the Government in the process of designing such a policy.

58. The Government of Georgia conveyed to the Representative its need for external support if its ambitions to create opportunities and adequate living conditions for IDPs are to be translated into reality. Due to past mismanagement, lack of political will and insecurity which undermined sustainable responses to the displacement crisis, international organizations and donors have largely disengaged from humanitarian assistance or focused predominantly in development investments.

59. The Representative: Calls upon the Government to demonstrate their genuine commitment to resolving the displacement crisis, by proactively initiating efforts to implement their plans and the Representative's recommendations in a transparent and consultative manner, and by mobilizing adequate national resources; Recommends that donors stand ready to strongly support efforts undertaken by the Government to implement its IDP policy.

X. Comments from the Government

n/a

GREECE

Introduction

During the period under review the Special Rapporteur on the sale of children visited the country from 8 to 14 November 2005 (please refer to document E/CN.4/2006/67/Add.3)

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the sale of children (E/CN.4/2006/67/Add.3, paras. 111; 117; 120)

111. In regard to international standards, legislation and agreements, the Special Rapporteur recommends that the Government:

(a) Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

(b) Take all the necessary measures to fully implement the bilateral agreement with Albania for the protection and assistance of child victims of trafficking;

(c) Fill the gaps in the legislation on the identification of newly-arrived persons (accompanied or unaccompanied) below the age of 18, appoint a legal guardian and provide assistance for and search for durable solutions for separated children in accordance with the Committee on the Rights of the Child's general comment No. 6 (2005) on "the treatment of unaccompanied and separated children outside their country of origin" (CRC/GC/2005/6);

(d) Decriminalize begging;

(e) Adopt and implement the guidelines prepared by the Office of the United Nations High Commissioner for Refugees and the Deputy Ombudsman on the treatment of separated children seeking asylum, including a system that will ensure their early referral to competent service providers in Greece.

117. It is crucial to establish a more efficient and cooperative relationship with NGOs to make children a recognized priority for the country beyond political, institutional and ideological disputes. An advisory board of civil society and public authorities to advise on the design of policies and on priority areas can be instrumental in giving an institutional framework to the participation of civil society.

120. The Special Rapporteur notes with concern the lack of an overarching institutional body for child protection. Institutional responsibilities are spread among different ministries without a coordinating entity. Such a coordinating body is very much needed to improve the institutional capacity to respond to problems affecting children.

II. Non-discrimination and equality before the law

Special Rapporteur on the sale of children (E/CN.4/2006/67/Add.3, para. 121)

121. In accordance with Law 1920/1991, the Greek courts should not enforce decisions of the muftis allowing child marriage. The Special Rapporteur urges the Government to accelerate its efforts aimed at improving Muslim women's education and employment opportunities and increasing the awareness of Muslim women of their rights and the availability of remedies, and ensuring that they benefit from the provisions of Greek civil law.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on the sale of children (E/CN.4/2006/67/Add.3, paras. 112-115; 119)

112. The Special Rapporteur recommends that clear rules and standards for identifying victims of child trafficking be established and urges the authorities to ensure systematic verification of identity and centralized recording of alien minors who are found unaccompanied in Greece. The prosecutor for minors should be rapidly informed to be in a position to give appropriate protection. Separated children should be provided with suitably trained interpreters, receive legal representation and be informed of their entitlements, the services available, the asylum process, family tracing and the situation in their country of origin.

113. The authorities should end the detention of alien minors for illegal entry into the country and refer the children to institutions of special care.

114. In relation to the detention centre for irregular migrants awaiting deportation of Petrou Ralli, the Special Rapporteur recommends taking appropriate measures to improve the conditions of detention of migrants and striking a better balance between security concerns and the dignity and protection needs of detained migrants.

115. Specialized staff with adequate expertise to work with foreign unaccompanied minors, street children, and victims of trafficking is needed to ensure the child's physical and psychological health, protection against exploitation and access to educational and vocational skills and opportunity. In this regard, the good cooperation between all concerned actors in Thessaloniki should serve as a model for the future.

119. The Government is urged to prohibit all forms of violence against children wherever it occurs, including corporal punishment in the schools, and undertake public information efforts with respect to appropriate protection of children from violence. The Government should ensure that all children and young people have access to domestic violence preventive education programmes. A referral procedure should be established.

IV. Administration of justice and the rule of law

Special Rapporteur on the sale of children (E/CN.4/2006/67/Add.3, paras. 112-114;121)

112. The Special Rapporteur recommends that clear rules and standards for identifying victims of child trafficking be established and urges the authorities to ensure systematic verification of identity and centralized recording of alien minors who are found unaccompanied in Greece. The prosecutor for minors should be rapidly informed to be in a position to give appropriate protection. Separated children should be provided with suitably trained interpreters, receive legal representation and be informed of their entitlements, the services available, the asylum process, family tracing and the situation in their country of origin.

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121. In accordance with Law 1920/1991, the Greek courts should not enforce decisions of the muftis allowing child marriage. The Special Rapporteur urges the Government to accelerate its efforts aimed at improving Muslim women's education and employment opportunities and increasing the awareness of Muslim women of their rights and the availability of remedies, and ensuring that they benefit from the provisions of Greek civil law.

V. Fundamental freedoms

n/a

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

Special Rapporteur on the sale of children (E/CN.4/2006/67/Add.3, paras. 116;118; 121)

Aghia Varvara children's home

116. With regard to the case of the Aghia Varvara children's home, the Special Rapporteur recommends that the Government consider the possibility of creating a bilateral commission composed of relevant Greek and Albanian authorities, the Ombudsmen of both countries and NGOs which have worked on the case, so as to coordinate the efforts to locate the children whose whereabouts remain unknown and identify institutional responsibilities. The authorities should also draw the lessons from the Aghia Varvara case in order to prevent its recurrence and set up a monitoring system for early warning if and when a programme is not working. More broadly, the Commission can be the institutional framework to handle in a cooperative manner issues related to unaccompanied children and child victims of trafficking.

Roma children

118. Regarding the situation of Roma children, the authorities are called upon to take specific measures to improve the living conditions and the possibilities for development of Roma communities to give Roma children alternatives other than work on the streets or prostitution, as survival strategies for them and their families. The implementation of public policies which secure the access to basic rights, such as education, minimum living standards, housing and health, is needed.

Muslim women

121. In accordance with Law 1920/1991, the Greek courts should not enforce decisions of the muftis allowing child marriage. The Special Rapporteur urges the Government to accelerate its efforts aimed at improving Muslim women's education and employment opportunities and increasing the awareness of Muslim women of their rights and the availability of remedies, and ensuring that they benefit from the provisions of Greek civil law.

IX. The right to development and international cooperation

X. Comments from the Government¹⁹

n/a

¹⁹ As published as official documents of the CHR.

GUATEMALA

Introduction

During the period under review the Special Rapporteur on the right to food visited the country from 26 January to 4 February 2005 (please refer to document E/CN.4/2006/44/Add.1)

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the right to food (E/CN.4/2006/44/Add.1, paras. 57-58)

57. The Special Rapporteur is very encouraged by the commitment of the current Government towards making the right to food a priority. However, he remains concerned that child malnutrition is so high and more than 60 per cent of Guatemalans survive with an income that does not cover their basic food needs, preventing them from exercising their right to food. The Special Rapporteur therefore urges the full implementation of the new legal and policy framework to fully realize the right to food of all Guatemalans, including indigenous peoples. He believes that this should be implemented within the framework of the Peace Accords, promoting social justice, equity, participation and respect for human rights.

58. The Special Rapporteur also makes the following specific recommendations:

- (a) Given the situation of hunger and extreme poverty, the realization of the right to food must become an urgent priority in Guatemala. Any violation of the right to food should be considered to be fully justiciable under the new Law on the National System for Food and Nutrition Security. In the application of this law by the judiciary, violations should be understood to include both de jure and de facto discrimination in access to food and to the means to obtain food, as well as violations of the specific obligations to respect, to protect and to fulfil the right to food;
- (b) The right to land of indigenous communities must be recognized, and communities should be protected from the forcible expropriation of their lands. Any evictions that take place should be conducted in accordance with human rights law. Impunity for violations of the right to food must be challenged, and all Guatemalans should be treated equally before the law. Legitimate peaceful protest should be permitted without repression. The detention and killing of peasant leaders and human rights defenders should be stopped. The Government should adopt a policy to decriminalize social and land conflicts and provide training and tools to the security forces, the Ombudsman and the judiciary to deal with those conflicts within a framework that respects the right to food. The right to property should not be placed above the right to life and the right to food;
- (c) The commitments under the Peace Accords toward land rights, labour rights, and fiscal reform should be fully implemented to promote a more inclusive society based on human rights and social justice. Land rights, labour rights and non-discrimination must be fully respected;
- (d) Racial discrimination against indigenous communities is not acceptable and must be urgently addressed through a broad national campaign. "Land-grabbing" of indigenous lands, as in the *La Perla* case, must be stopped;
- (e) Pervasive discrimination against women, particularly indigenous women, must be addressed, and the rights of women must be recognized, including in the access to and ownership of productive resources. The Labour Code should be amended to eliminate discrimination against rural women;
- (f) The Law on Land Registry should be implemented without delay and an Agrarian Code to regulate the access, use and tenure of land should be elaborated, which recognizes indigenous forms of land ownership and respects the right to food. The establishment of an agrarian jurisdiction for the resolution of land conflicts should become the first priority of the Government, and must be given adequate funding and a mandate to enforce law against land-grabbing. The draft water legislation should contain provisions setting out institutional responsibility, establishing an institution for the resolution of conflicts and providing redress for victims of violations of the right to water. The Law on Mining should be amended to ensure protection of the rights of indigenous people over their natural resources, as provided by ILO Convention No. 169, and the mining policy should be reviewed to bring it into accordance with human rights law;
- (g) A special unit, with adequate human and financial resources, should be established within the Office of the Human Rights Ombudsman to monitor the realization of the right to food and the obligations of the

State to respect, protect and fulfil the right to food, as required by the new Law on the National System for Food and Nutritional Security. Better funding and protection should also be accorded to the human rights institutions, including the Office of the Defender of Indigenous Women of the residential Commission for the Coordination of Human Rights Policies (COPREDEH);

(h) Workers' rights should be respected, including the right of association, and the national minimum wage should be increased to cover the basic food basket;

(i) Participation of indigenous peoples should be included in the institutional and policy framework for the fight against hunger, as it is already in the Commission on Food Security;

(j) To overcome hunger and malnutrition, which are predominantly prevalent in rural areas, a comprehensive rural development strategy should be agreed with all social sectors and put in place. The model of exclusionary development and export-orientated agriculture that has created and is deepening extreme inequality in the ownership of resources must be reversed with a comprehensive strategy that directly improves food security and access to resources, through the implementation of agrarian reform and the promotion of investment in small-scale peasant agriculture;

(k) The "National Policy on Food and Nutrition Security" should be revised to ensure that it reflects the obligations of the State to respect, protect, and fulfil the right to food. Due consideration should be given to Committee on Economic, Social and Cultural Rights general comment No. 12 on the right to adequate food and the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security;

(l) It should be ensured that the obligations of the Central American Free Trade Agreement (CAFTA) are consistent with Guatemala's human rights obligations. A full study on the potential impacts of CAFTA should be carried out, and safety nets should be established prior to measures being implemented, to protect the national production of staple foods (including maize and beans) and the right to food of rural communities that are likely to be negatively affected, otherwise free trade will bring greater hunger;

(m) The progressive realization of the right to food should be monitored as part of the Government's national policy. Indicators should include not only statistics on malnutrition, but also statistics on undernourishment, poverty and inequality and should be linked to the Millennium Development Goals. Implementation of policies and programmes on food and nutrition should address the structural causes of hunger and poverty, and should take care not to create aid dependency or "clientelistic" relations;

(n) Finally, the Special Rapporteur recognizes the important progress that is being made by the current Government in its fight against hunger and malnutrition. The Special Rapporteur is particularly supportive of the Government of Guatemala's efforts to catalyze action at the international and regional levels, including through the Latin America Conference on Chronic Hunger within the context of the Millennium Development Goals that was held on 11 and 12 September 2005 and which launched a new campaign for Hunger-free Latin America by 2020.

II. Non-discrimination and equality before the law

58. The Special Rapporteur also makes the following specific recommendations:

(a) Given the situation of hunger and extreme poverty, the realization of the right to food must become an urgent priority in Guatemala. Any violation of the right to food should be considered to be fully justiciable under the new Law on the National System for Food and Nutrition Security. In the application of this law by the judiciary, violations should be understood to include both de jure and de facto discrimination in access to food and to the means to obtain food, as well as violations of the specific obligations to respect, to protect and to fulfil the right to food;

(b) The right to land of indigenous communities must be recognized, and communities should be protected from the forcible expropriation of their lands. Any evictions that take place should be conducted in accordance with human rights law. Impunity for violations of the right to food must be challenged, and all Guatemalans should be treated equally before the law. Legitimate peaceful protest should be permitted without repression. The detention and killing of peasant leaders and human rights defenders should be stopped. The Government should adopt a policy to decriminalize social and land conflicts and provide training and tools to the security forces, the Ombudsman and the judiciary to deal with those conflicts within a framework that respects the right to food. The right to property should not be placed above the right to life and the right to food;

(j) To overcome hunger and malnutrition, which are predominantly prevalent in rural areas, a comprehensive rural development strategy should be agreed with all social sectors and put in place. The

model of exclusionary development and export-orientated agriculture that has created and is deepening extreme inequality in the ownership of resources must be reversed with a comprehensive strategy that directly improves food security and access to resources, through the implementation of agrarian reform and the promotion of investment in small-scale peasant agriculture;

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

n/a

V. Fundamental freedoms

n/a

VI. Economic and social rights

57. The Special Rapporteur is very encouraged by the commitment of the current Government towards making the right to food a priority. However, he remains concerned that child malnutrition is so high and more than 60 per cent of Guatemalans survive with an income that does not cover their basic food needs, preventing them from exercising their right to food. The Special Rapporteur therefore urges the full implementation of the new legal and policy framework to fully realize the right to food of all Guatemalans, including indigenous peoples. He believes that this should be implemented within the framework of the Peace Accords, promoting social justice, equity, participation and respect for human rights.

58. The Special Rapporteur also makes the following specific recommendations:

(a) Given the situation of hunger and extreme poverty, the realization of the right to food must become an urgent priority in Guatemala. Any violation of the right to food should be considered to be fully justiciable under the new Law on the National System for Food and Nutrition Security. In the application of this law by the judiciary, violations should be understood to include both de jure and de facto discrimination in access to food and to the means to obtain food, as well as violations of the specific obligations to respect, to protect and to fulfil the right to food;

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(c) The commitments under the Peace Accords toward land rights, labour rights, and fiscal reform should be fully implemented to promote a more inclusive society based on human rights and social justice. Land rights, labour rights and non-discrimination must be fully respected;

(d) Racial discrimination against indigenous communities is not acceptable and must be urgently addressed through a broad national campaign. “Land-grabbing” of indigenous lands, as in the *La Perla* case, must be stopped;

(e) Pervasive discrimination against women, particularly indigenous women, must be addressed, and the rights of women must be recognized, including in the access to and ownership of productive resources. The Labour Code should be amended to eliminate discrimination against rural women;

(f) The Law on Land Registry should be implemented without delay and an Agrarian Code to regulate the access, use and tenure of land should be elaborated, which recognizes indigenous forms of land ownership and respects the right to food. The establishment of an agrarian jurisdiction for the resolution of land conflicts should become the first priority of the Government, and must be given adequate funding and a mandate to enforce law against land-grabbing. The draft water legislation should contain provisions setting

out institutional responsibility, establishing an institution for the resolution of conflicts and providing redress for victims of violations of the right to water. The Law on Mining should be amended to ensure protection of the rights of indigenous people over their natural resources, as provided by ILO Convention No. 169, and the mining policy should be reviewed to bring it into accordance with human rights law;

(g) A special unit, with adequate human and financial resources, should be established within the Office of the Human Rights Ombudsman to monitor the realization of the right to food and the obligations of the State to respect, protect and fulfil the right to food, as required by the new Law on the National System for Food and Nutritional Security. Better funding and protection should also be accorded to the human rights institutions, including the Office of the Defender of Indigenous Women of the residential Commission for the Coordination of Human Rights Policies (COPREDEH);

(h) Workers' rights should be respected, including the right of association, and the national minimum wage should be increased to cover the basic food basket;

(i) Participation of indigenous peoples should be included in the institutional and policy framework for the fight against hunger, as it is already in the Commission on Food Security;

(j) To overcome hunger and malnutrition, which are predominantly prevalent in rural areas, a comprehensive rural development strategy should be agreed with all social sectors and put in place. The model of exclusionary development and export-orientated agriculture that has created and is deepening extreme inequality in the ownership of resources must be reversed with a comprehensive strategy that directly improves food security and access to resources, through the implementation of agrarian reform and the promotion of investment in small-scale peasant agriculture;

(k) The "National Policy on Food and Nutrition Security" should be revised to ensure that it reflects the obligations of the State to respect, protect, and fulfil the right to food. Due consideration should be given to Committee on Economic, Social and Cultural Rights general comment No. 12 on the right to adequate food and the FAO Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security;

(l) It should be ensured that the obligations of the Central American Free Trade Agreement (CAFTA) are consistent with Guatemala's human rights obligations. A full study on the potential impacts of CAFTA should be carried out, and safety nets should be established prior to measures being implemented, to protect the national production of staple foods (including maize and beans) and the right to food of rural communities that are likely to be negatively affected, otherwise free trade will bring greater hunger;

(m) The progressive realization of the right to food should be monitored as part of the Government's national policy. Indicators should include not only statistics on malnutrition, but also statistics on undernourishment, poverty and inequality and should be linked to the Millennium Development Goals. Implementation of policies and programmes on food and nutrition should address the structural causes of hunger and poverty, and should take care not to create aid dependency or "clientelistic" relations;

(n) Finally, the Special Rapporteur recognizes the important progress that is being made by the current Government in its fight against hunger and malnutrition. The Special Rapporteur is particularly supportive of the Government of Guatemala's efforts to catalyze action at the international and regional levels, including through the Latin America Conference on Chronic Hunger within the context of the Millennium Development Goals that was held on 11 and 12 September 2005 and which launched a new campaign for Hunger-free Latin America by 2020.

VII. Cultural rights

VIII. Situation of specific groups

57. The Special Rapporteur is very encouraged by the commitment of the current Government towards making the right to food a priority. However, he remains concerned that child malnutrition is so high and more than 60 per cent of Guatemalans survive with an income that does not cover their basic food needs, preventing them from exercising their right to food. The Special Rapporteur therefore urges the full implementation of the new legal and policy framework to fully realize the right to food of all Guatemalans, including indigenous peoples. He believes that this should be implemented within the framework of the Peace Accords, promoting social justice, equity, participation and respect for human rights.

58. The Special Rapporteur also makes the following specific recommendations:

(b) The right to land of indigenous communities must be recognized, and communities should be protected from the forcible expropriation of their lands. Any evictions that take place should be conducted in accordance with human rights law. Impunity for violations of the right to food must be challenged, and all Guatemalans should be treated equally before the law. Legitimate peaceful protest should be permitted without repression. The detention and killing of peasant leaders and human rights defenders should be stopped. The Government should adopt a policy to decriminalize social and land conflicts and provide training and tools to the security forces, the Ombudsman and the judiciary to deal with those conflicts within a framework that respects the right to food. The right to property should not be placed above the right to life and the right to food;

(c) The commitments under the Peace Accords toward land rights, labour rights, and fiscal reform should be fully implemented to promote a more inclusive society based on human rights and social justice. Land rights, labour rights and non-discrimination must be fully respected;

(d) Racial discrimination against indigenous communities is not acceptable and must be urgently addressed through a broad national campaign. “Land-grabbing” of indigenous lands, as in the *La Perla* case, must be stopped;

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(f) The Law on Land Registry should be implemented without delay and an Agrarian Code to regulate the access, use and tenure of land should be elaborated, which recognizes indigenous forms of land ownership and respects the right to food. The establishment of an agrarian jurisdiction for the resolution of land conflicts should become the first priority of the Government, and must be given adequate funding and a mandate to enforce law against land-grabbing. The draft water legislation should contain provisions setting out institutional responsibility, establishing an institution for the resolution of conflicts and providing redress for victims of violations of the right to water. The Law on Mining should be amended to ensure protection of the rights of indigenous people over their natural resources, as provided by ILO Convention No. 169, and the mining policy should be reviewed to bring it into accordance with human rights law;

(g) A special unit, with adequate human and financial resources, should be established within the Office of the Human Rights Ombudsman to monitor the realization of the right to food and the obligations of the State to respect, protect and fulfil the right to food, as required by the new Law on the National System for Food and Nutritional Security. Better funding and protection should also be accorded to the human rights institutions, including the Office of the Defender of Indigenous Women of the residential Commission for the Coordination of Human Rights Policies (COPREDEH);

(h) Workers’ rights should be respected, including the right of association, and the national minimum wage should be increased to cover the basic food basket;

(i) Participation of indigenous peoples should be included in the institutional and policy framework for the fight against hunger, as it is already in the Commission on Food Security;

IX. The right to development and international cooperation

n/a

X. Comments from the Government²⁰

n/a

²⁰ As published as official documents of the CHR.

HAÏTI

Introduction

Au cours de la période concernée, l'Expert indépendant sur la situation des droits de l'homme en Haïti a effectué trois visites dans le pays (veuillez vous référer au document E/CN.4/2006/115).

I. Cadre institutionnel et légal de promotion et de protection des droits de l'homme

Expert indépendant sur la situation des droits de l'homme en Haïti (E/CN.4/2006/115, para. 83 (e), (f))

83.

(e) Création effective de l'Office national d'identification, à partir du dispositif des cartes électorales infalsifiables;

(f) Réforme du cadastre: dresser l'inventaire des études effectuées et des expériences réalisées dans ce domaine, puis créer une commission de réforme en liaison avec la coopération internationale.

II. Non-discrimination et égalité devant la loi

n/a

III. Le droit à la vie; le droit à la liberté et la sécurité de la personne; le droit à l'intégrité physique et morale

Expert indépendant sur la situation des droits de l'homme en Haïti (E/CN.4/2006/115, para. 83 (a))

83.

(a) Priorité doit être donnée à la lutte contre l'insécurité et par conséquent contre la pauvreté, cause principale de la violence subie le plus souvent par les plus pauvres. Parallèlement aux programmes de développement à long terme (mais existent-ils?), il importe d'intensifier la réalisation de microprogrammes suffisamment conséquents, afin que les plus défavorisés perçoivent à bref délai et au quotidien (on pense à Cité Soleil) des signes tangibles de changement, car il n'est pas possible de rétablir une suffisante sécurité sans l'adhésion participative d'une population actuellement en désespérance;

IV. Administration de la justice et état de droit

Expert indépendant sur la situation des droits de l'homme en Haïti (E/CN.4/2006/115, para. 83. (b) et (c)).

83.

(b) En matière de justice, les mesures suivantes sont à prendre à court terme:

- Détenition provisoire prolongée:
 - Créer une commission de prévention de la détention provisoire prolongée selon les modalités ci-dessus exposées;
 - Recentrer les audiences supplémentaires organisées à Port-au-Prince sur leur objectif initial: favoriser la comparution immédiate; organiser pour les policiers, compte tenu de leurs réticences, de courtes sessions de formation déconcentrées en y associant les magistrats du parquet, dont le rôle d'impulsion est déterminant dans ce domaine;
 - Prévoir la possibilité d'assortir les peines du sursis;
 - Sensibiliser les juges, par une formation adaptée, à un recours plus fréquent à la mise en liberté sous caution (art. 96 du Code d'instruction criminelle) sous réserve de bien veiller à l'adapter au niveau de vie de l'intéressé;
 - Finaliser le projet de réforme de la garde à vue sous réserve des suggestions ci-dessus exposées;
 - Mettre un terme à la pratique de certains parquets qui détournent la procédure d'*exequatur* en tenant en échec des décisions de mise en liberté ordonnées par les juges.

- Réforme de l'École de la magistrature: restitution de ses locaux et reprise de ses activités pédagogiques *in situ* combinées, notamment pour la formation permanente, avec la formation décentralisée;
 - Mise au point d'un statut de la magistrature basé sur la transparence, assorti de garanties précises de carrière (recrutement, nominations, promotions, renouvellement des mandats, dessaisissement et mises à la retraite) et clarifiant le statut hybride des juges de paix, dont la fonction relève tout à la fois du siège et du parquet;
 - Création du Conseil national du pouvoir judiciaire, clef de voûte d'un pouvoir judiciaire autonome par rapport au pouvoir politique;
 - Finalisation du statut d'autonomie de l'Institut médico-légal et de son fonctionnement;
- (c) En partenariat avec l'Organisation des États américains, organisation d'un séminaire sur les mécanismes juridiques visant à la prise en compte en droit interne, y compris en jurisprudence, de la Convention interaméricaine des droits de l'homme en considération de l'article 276.2 de la Constitution, qui prévoit la primauté des traités sur la loi interne.

V. Libertés fondamentales

Expert indépendant sur la situation des droits de l'homme en Haïti (E/CN.4/2006/115, para. 83 (e), (f))

83.

(e) Création effective de l'Office national d'identification, à partir du dispositif des cartes électorales infalsifiables;

(f) Réforme du cadastre: dresser l'inventaire des études effectuées et des expériences réalisées dans ce domaine, puis créer une commission de réforme en liaison avec la coopération internationale.

VI. Droits économiques et sociaux

Expert indépendant sur la situation des droits de l'homme en Haïti (E/CN.4/2006/115, para. 83 (a))

83.

(a) Priorité doit être donnée à la lutte contre l'insécurité et par conséquent contre la pauvreté, cause principale de la violence subie le plus souvent par les plus pauvres. Parallèlement aux programmes de développement à long terme (mais existent-ils?), il importe d'intensifier la réalisation de microprogrammes suffisamment conséquents, afin que les plus défavorisés perçoivent à bref délai et au quotidien (on pense à Cité Soleil) des signes tangibles de changement, car il n'est pas possible de rétablir une suffisante sécurité sans l'adhésion participative d'une population actuellement en désespérance;

VII. Droits culturels

n/a

VIII. Situation des groupes spécifiques

Expert indépendant sur la situation des droits de l'homme en Haïti (E/CN.4/2006/115, para. 83 (d))

83.

(d) Promotion des droits de la femme:

- Réinscription à l'ordre du jour du Parlement des projets en instance concernant la dépenalisation de l'avortement, la recherche en paternité, le statut du plaçage et la réglementation du travail domestique;
- Approfondissement par des débats, en partenariat avec les ONG, juristes et milieux médicaux intéressés, de la réflexion sur le thème: «rapport entre l'avortement et ses séquelles, y compris mortelles, et sa prise en compte dans les politiques de santé publique»;

IX. Le droit au développement et la coopération internationale

83.

(c) En partenariat avec l'Organisation des États américains, organisation d'un séminaire sur les mécanismes juridiques visant à la prise en compte en droit interne, y compris en jurisprudence, de la Convention interaméricaine des droits de l'homme en considération de l'article 276.2 de la Constitution, qui prévoit la primauté des traités sur la loi interne;

(f) Réforme du cadastre: dresser l'inventaire des études effectuées et des expériences réalisées dans ce domaine, puis créer une commission de réforme en liaison avec la coopération internationale.

X. Commentaires reçus du Gouvernement²¹

n/a

²¹ As published as official documents of the CHR.

INDIA

Introduction

During the period under review, the Special Rapporteur on the right to food visited the country from 20 August to 2 September 2005 (please refer to document E/CN.4/2006/44/Add.2)

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the right to food (E/CN.4/2006/44/Add.2, para. 48 (a), (b), (f), (g), (h), (i), (k))

48. The Special Rapporteur makes the following specific recommendations:

(a) The right to food is a human right and an essential part of the right to life. Even as substantial progress is being achieved in ensuring food security, monitoring of the severity of chronic undernourishment and malnutrition and accountability for starvation or malnutrition deaths must be instituted, including by the national and state human rights commissions and the local *panchayat* bodies. As suggested by the Supreme Court, independent Public Service Commissions could contribute to this monitoring. All public administration officers should be trained with respect to human rights and the right to food;⁷³

(b) A framework law with a national strategy for the implementation of the right to food should be instituted, in accordance with Committee on Economic, Social and Cultural Rights general comment No. 12 on the right to food. This should establish benchmarks and indicators for the investment of the right to food;

(f) Land and agrarian reform should be implemented to strengthen smallholder agricultural livelihoods. Existing agrarian reform legislation should not be undermined to serve the interests of large landholdings of landlords and agribusiness;

(g) The Land Acquisition Act should be amended, or new legislation adopted, to recognize a justiciable right to resettlement and rehabilitation for all displaced or evicted persons, including those without formal land titles and including women;⁷⁴

(h) Minimum wage legislation and the Employment Guarantee Act should be fully enforced. Decisive action must be taken against widespread evasion, particularly for agricultural labour and the informal sector. The minimum wage should be indexed to the cost of a basic food basket, which must be sufficient to purchase the minimum daily calorie requirement;

(i) The Right to Information Act should be respected in relation to all programmes, including making publicly available all information on entitlements. This should include eligibility criteria under the Public Food Distribution System at the level of the fair price shops. Corruption must be challenged at all levels of the system and all public officials and shop licensees held accountable for any diversion of resources;

(k) A national early-warning system should be established that records starvation deaths to generate emergency response and improve accountability. Proper methods of documenting starvation and malnutrition-related deaths should be developed with the participation of the civil society;

II. Non-discrimination and equality before the law

Special Rapporteur on the right to food (E/CN.4/2006/44/Add.2, para. 48 (e), (m))

(e) All Indians should be treated equally before the law. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, should be fully implemented, and atrocities committed should be prosecuted and brought to justice;

(m) Implementation of all food-based schemes must be improved by incorporating the human rights principles of non-discrimination, participation, transparency and accountability. Monitoring of all food-based programmes, including PDS, must include monitoring of impacts on malnutrition and undernourishment;

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

Special Rapporteur on the right to food (E/CN.4/2006/44/Add.2, para. 48 ©, (d), (l))

(c) All Union and state governments must follow and implement all orders and judgements of the Supreme Court. Non-implementation of the food-based schemes enshrined as entitlements amounts to a violation of the right to food. In the case of Bhopal, the state authorities should ensure a regular supply of adequate safe water for all affected communities. Access to justice, including to the Supreme Court for victims of violations of the obligations to respect, protect and fulfil the right to food must be ensured;

(d) The human rights courts and the special courts required under the Protection of Human Rights Act, 1993, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, should be established in all states with a mandate that protects their independence and includes the right to food;

(l) PDS must be strengthened to ensure that it reaches all those in need and that the prices do not make it impossible for the poor to buy the subsidized rations. Cash transfers could also be introduced to improve access to food. In the context of a more market-oriented economy, programmes and social transfers must remain in place to prevent starvation deaths and continue investment in the right to food. Such programmes must be implemented as a matter of right and not as benevolence and must be subject to review by the courts;

V. Fundamental freedoms

n/a

VI. Economic and social rights

Special Rapporteur on the right to food (E/CN.4/2006/44/Add.2, para. 48 (b), (j), (n), (o))

(b) A framework law with a national strategy for the implementation of the right to food should be instituted, in accordance with Committee on Economic, Social and Cultural Rights general comment No. 12 on the right to food. This should establish benchmarks and indicators for the investment of the right to food;

(j) Dams, mining and infrastructure projects must not be implemented if this entails displacement and irreversible destruction of people's livelihoods. Such projects should only be carried out with the consent of communities and on the condition that due legal process, proper resettlement, rehabilitation (under the "land for land" principle) and compensation to all victims is guaranteed;

(n) Food security programmes should include elements to ensure nutritional security and to address micronutrient deficiencies. National initiatives for fortification of salt and flour should be complemented by low-cost local initiatives, including promoting small-scale horticulture production and supplementary food being distributed to children and women under ICDS and the Mid-Day Meals Scheme;

(o) Food security programmes must also place more emphasis on protecting and promoting sustainable livelihoods. Public investment in smallholder agriculture is essential, given that two thirds of the population still depends on agriculture, and employment is currently only being generated in the high-tech sector that will not be able to absorb all those left unemployed, if public investment in agriculture is abandoned;

VII. Cultural rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

Special Rapporteur on the right to food (E/CN.4/2006/44/Add.2, para. 48(p))

(p) Finally, the Special Rapporteur believes that greater liberalization of trade in basic staple foods should not be pursued as long as subsidies in the developed countries keep international prices at artificially low levels, otherwise India will suffer from competition from dumped agricultural products that will undermine its own production, especially of rice and wheat.

X. Comments from the Government²²

n/a

²² As published as official documents of the CHR.

ISLAMIC REPUBLIC OF IRAN

Introduction

During the period under review, the following special procedures visited the country:

- Special Rapporteur on violence against women from 29 January to 6 February 2005 (please refer to document E/CN.4/2006/61/Add.3).
- Special Rapporteur on adequate housing from 19 to 30 July 2005 (please refer to document E/CN.4/2006/41/Add.2).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.3, para. 72)

72. With a view to the adoption and observation of international human rights standards the Special Rapporteur recommends that the Government:

- (a) Implement the provisions of the Declaration on the Elimination of Violence against Women;
- (b) Ratify the Convention on the Elimination of All Forms of Discrimination against Women without reservations as soon as possible, and bring national laws into conformity with the Convention;
- (c) Ensure full respect for all human rights, as guaranteed in international human rights treaties ratified by Iran, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which, inter alia, guarantee the right to non-discrimination based on sex;
- (d) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and protect women victims of trafficking, ensure accountability of the traffickers and provide compensation to the victims;
- (e) Fully implement the recommendations of the Committee on the Rights of the Child (CRC/C/15/Add.254) and of the Special Rapporteur on adequate housing, contained in the report on his mission to Iran (E/CN.4/2006/41/Add.2);
- (f) Implement the provisions of the Declaration on Human Rights Defenders in order to ensure that women human rights defenders are able to carry out their work with full autonomy and without being subjected to retaliation by the State or other actors.

Special Rapporteur on adequate housing (E/CN.4/2006/41/Add.2, para. 105)

105. The Government should:

- (a) Fully implement the Constitutional provision which establishes the right to adequate housing for all Iranians, despite their ethnic or religious origins, resulting in equal distribution of development resources, respect for human rights over traditional lands, and elaboration of culturally sensitive housing policies;
- (b) Re-examine the functioning of the “eminent domain” doctrine that governs State acquisition of land, without giving recourse to affected communities to file an appeal to challenge the State authority, and to consider amendments to article 49 of the Constitution to ensure that abuse of this article does not continue in the judiciary;
- (c) Harmonize the work of the different governmental and government-related organizations carrying out housing programmes, with clearer identification of responsibilities, overall observation of human rights standards, targeting specially disadvantaged groups, and setting up of monitoring and accountability mechanisms;
- (d) Strengthen public participation in the elaboration of development plans and in the preparation and assessment of housing projects, taking into account the important role played in democratic societies by NGOs, whose independent work should be supported and facilitated by the Government;
- (e) Be increasingly transparent in the development of policies, including by the publication of data concerning not only beneficiaries, but also the population not yet covered by the programmes, and open in the assessment of priorities and results, with space for public monitoring, including full participation of the intended population;

(g) Monitor, evaluate and adapt current housing policies to guarantee they will effectively reach the targeted beneficiaries, improving impact of programmes designed to facilitate access to adequate housing by low-income individuals;

II. Non-discrimination and equality before the law

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.3, para. 75)

75. In order to promote and support the empowerment of women in all spheres of life, it is recommended that the Government:

Promote women's participation in the formal labour market by ensuring equality of opportunity and eliminating discriminatory laws and practices related to women's work;

Institute special measures to increase women's political participation and appoint more women to high-level government positions;

Provide special programmes for women from minority groups who suffer multiple forms of discrimination;

Ensure that women have equal rights to enter into marriage and during the marriage relationship, as well as at its dissolution;

Ensure that women enjoy full freedom and rights to become equal partners in decision-making in the home, at work and in society at large;

Support research on the linkages between discrimination and violence against women and family and societal well-being;

Listen to the voices of women.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.3, para. 74)

74. To prioritize the elimination of violence against women as a public policy issue and to prevent, investigate and punish all acts of violence against women, whether perpetrated by private or State actors, it is recommended that the Government:

Provide effective protection to women who have experienced violence by ensuring that they are able to approach the police, to secure alternative housing and to access medical care;

Establish and support more shelters for women who have been subjected to violence and to ensure that women are able to access information about these shelters through the police, judicial personnel and medical staff as well as women's non-governmental organizations;

Conduct research on violence against women and to collect data concerning its prevalence;

Conduct a full investigation into suicides of young women and their relationship to diverse forms of violence against women, to design preventive and protective measures to address these suicides, and to prevent the development of prejudice in public opinion that would revictimize survivors of suicide attempts and/or their families;

Ensure that all institutions and individuals engaged in law enforcement activities are accountable to the Government and that they respect all human rights and fundamental freedoms as laid out in international human rights instruments;

Vigorously enforce the prohibition on torture, to investigate fully and publicly all allegations of torture, including the case of Zahra Kazemi, to hold perpetrators accountable and to ensure that victims of torture receive compensation and rehabilitation;

Investigate publicly all allegations of arbitrary detention and to ensure that victims of arbitrary detention receive compensation;

Strengthen the capacity of the Centre for Women's Participation (financially and politically) to develop policies and projects to address violence against women, to support research on the causes and consequences of violence against women, including suicides, and to effectively undertake its important advisory role in directing State policy and action concerning violence against women.

IV. Administration of justice and the rule of law

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.3, para. 73)

73. In order to enhance women's access to justice through a transparent legal and judiciary reform it is recommended that the Government:

Prevent early and forced marriages;

Remove obstacles to women's rights with regard to child custody, divorce, inheritance and freedom of movement;

Raise the age of majority for girls and boys to 18 in conformity with the Convention on the Rights of the Child;

Eliminate all obstruction to justice on the grounds of sex, class and religion emanating from the practice of *diyah*;

Prohibit by law cruel corporal punishments such as stoning and flogging;

Ensure that the right to a fair trial is fully respected and that all women detainees are brought to trial, with access to a lawyer and legal aid where necessary, without undue delay;

Ensure that punishments do not discriminate against women, that they are proportionate to the offence, and that they are determined by a court of law in accordance with the principles of equality and non-discrimination;

Institute proper investigation procedures for rape cases and ensure that rape victims are not subject to prosecution under adultery provisions where they are unable to prove rape;

Abolish requirements that women present eyewitnesses in order to prove that they have been subjected to violence and allow women to prove violence through medical or police reports and other credible evidence;

Establish procedures whereby custody rights are determined by a judicial process in accordance with the principle of the best interests of the child;

Review all cases of women currently being detained for crimes related to sexual and moral conduct who did not have a fair trial or enjoy guarantees of due process with a view to retrying the case or releasing the accused woman.

V. Fundamental freedoms

n/a

VI. Economic and social rights

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.3, para. 75)

75. In order to promote and support the empowerment of women in all spheres of life, it is recommended that the Government:

Promote women's participation in the formal labour market by ensuring equality of opportunity and eliminating discriminatory laws and practices related to women's work;

Institute special measures to increase women's political participation and appoint more women to high-level government positions;

Provide special programmes for women from minority groups who suffer multiple forms of discrimination;

Ensure that women have equal rights to enter into marriage and during the marriage relationship, as well as at its dissolution;

Ensure that women enjoy full freedom and rights to become equal partners in decision-making in the home, at work and in society at large;

Support research on the linkages between discrimination and violence against women and family and societal well-being;

Listen to the voices of women.

Special Rapporteur on adequate housing (E/CN.4/2006/41/Add.2, para. 105)

105. The Government should:

- (a) Fully implement the Constitutional provision which establishes the right to adequate housing for all Iranians, despite their ethnic or religious origins, resulting in equal distribution of development resources, respect for human rights over traditional lands, and elaboration of culturally sensitive housing policies;
- (b) Re-examine the functioning of the “eminent domain” doctrine that governs State acquisition of land, without giving recourse to affected communities to file an appeal to challenge the State authority, and to consider amendments to article 49 of the Constitution to ensure that abuse of this article does not continue in the judiciary;
- (c) Harmonize the work of the different governmental and government-related organizations carrying out housing programmes, with clearer identification of responsibilities, overall observation of human rights standards, targeting specially disadvantaged groups, and setting up of monitoring and accountability mechanisms;
- (d) Strengthen public participation in the elaboration of development plans and in the preparation and assessment of housing projects, taking into account the important role played in democratic societies by NGOs, whose independent work should be supported and facilitated by the Government;
- (e) Be increasingly transparent in the development of policies, including by the publication of data concerning not only beneficiaries, but also the population not yet covered by the programmes, and open in the assessment of priorities and results, with space for public monitoring, including full participation of the intended population;
- (h) Consider intervening in the housing and land market to address the inordinate increase in rental and ownership costs that are preventing access to adequate housing, particularly for the lower-income groups;
- (i) Accelerate the titling of housing and land acquired according to traditional practices in rural areas and the regularization and upgrading of informal settlements in urban areas;
- (j) Halt immediately all forced evictions carried out in disregard of international human rights law and plan resettlement programmes aiming at avoiding displacement caused by development projects;
- (k) Conduct in-depth investigation of property confiscation cases, especially when involving ethnic and religious minorities and ensure that no abuses were or will be committed against those groups;
- (l) Improve the quality of basic services provided to poor neighbourhoods, including access to drinking water, taking note of the CESCR general comment No. 15, which lists the elements to the right to water as including availability and quality;
- (m) Develop specific policies to expand access to basic amenities to distant and minority predominant regions;
- (n) Increase attention to the situation of the people affected by the earthquake in Bam who are still living in camps where sanitation and water conditions continue to be grave and their inclusion in the reconstruction planning and development;
- (o) Decentralize reconstruction efforts and remove bureaucratic obstacles to the work of international organizations, as well as disclose information on timetables and on existing housing and living conditions;

VII. Cultural rights

n/a

VIII. Situation of specific groups

Special Rapporteur on adequate housing (E/CN.4/2006/41/Add.2, para. 105)

105.

Ethnic and religious minorities

- (q) Reinforce, expand and duly implement housing policies aimed at groups in vulnerable situations and ethnic and religious minorities (such as Kurds, the Baha’i, Laks,

Arabs

(r) Investigate forced eviction cases and development-induced displacement, to ensure that evictions are only carried out as a last resort and in accordance with international standards, making certain that religious and ethnic minorities are not disproportionately affected by development projects, and that they have recourse to legal remedies to challenge State acquisition of homes and lands;

Women

(f) Take steps to ensure that, both at the policy and legislative levels, there is harmonization between provisions in international human rights instruments and Islamic law and practice in relation to women's equal rights to housing, land, property and inheritance;

(s) Develop further policies to address discrimination against women in relation to equal access to housing, land, property and inheritance, including the urgent creation of safe houses for women subject to violence, runaway girls and streetwomen;

(t) Introduce human rights education across the country to ensure that traditional practices do not lead to the violation of women's equal rights to housing, land, property and inheritance;

(u) Consider ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol.

Marginalized provinces

(m) Develop specific policies to expand access to basic amenities to distant and minority predominant regions;

(p) Focus on historically marginalized provinces, such as Ilam, Khuzestan and Sistan-Baluchestan, with budget allocation aiming at ensuring the realization of human rights, including provision of civic services to people and communities in the region;

IX. The right to development and international cooperation

Special Rapporteur on adequate housing (E/CN.4/2006/41/Add.2, para. 105)

106. The existing obstacles against the implementation of the right to adequate housing are enormous and facing these challenges will require joint efforts by not only the Government but also by national non-governmental actors and the international community alike. In this sense, the Special Rapporteur would also like to call on the international community to:

(a) Provide technical cooperation to facilitate an increase in the construction of earthquake-proof houses and cooperation in the area of disaster prevention across the country; collaborate in the immediate improvement of the living conditions in the survivor camps in Bam and accelerate the reconstruction efforts in the city;

(b) Increase funding to housing projects, especially those aimed at groups in vulnerable situations, such as women heads of households and people with disabilities;

(c) Ensure monitoring and reporting of all funding provided;

(d) Increase support, including training and capacity-building programmes, to civil society carrying out human rights and community development projects in the Islamic Republic of Iran.

X. Comments from the Government²³

n/a

²³ As published as official documents of the CHR.

ISRAEL

Introduction

During the period under review, the Special Representative of the Secretary-General on the situation of human rights defenders visited Israel and the Occupied Palestinian Territory from 5 to 11 October 2005 (please refer to document E/CN.4/2006/95/Add.3)

I. Institutional and legal framework for the promotion and protection of human rights

Special Representative of the Secretary-General on the situation of human rights defenders (E/CN.4/2006/95/Add.3, paras. 76; 80; 83-86)

76. Israel's legal system makes security-related provisions that have been used or abused to prevent the enforcement of the rights of Palestinians brought before the judicial forums. The Government may consider a comprehensive review of the system in order to ensure that its security concerns are met within the boundaries of international law. The Government must show its commitment to human rights, democracy and to peace and security by undertaking this exercise in collaboration with independent experts to give credibility to the results of such examination.

80. The Special Representatives recommends that the Government issue invitations to the Special Rapporteurs of the Commission on Human Rights mandated by the Commission to carry out immediate missions in the Occupied Palestinian Territory in its resolution of 19 October 2000.

83. The Government must cooperate with the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

84. Given the degree of cooperation that exists between the Government and United Nations agencies, the Special Representative recommends that any elements of obstruction to allow these agencies working under different mandates to protect the civil, political, economic, social and cultural rights of the Palestinian people be removed. It must grant opportunities to these agencies to communicate their concerns to the Government and to hold a meaningful dialogue on these issues. In particular, channels of communications with the Office of the High Commissioner for Human Rights in the West Bank should be established. The Office should have the opportunity to discuss its concerns with the Government and to put forward recommendations for the protection of activities for the defence of human rights in the areas of the Occupied Palestinian Territory under Israeli control or on its policies that affect the situation in the "A Areas".

85. The Special Representative strongly recommends the Government to address the issue of settler violence and the impunity for such incidents. She requests the Government to keep her informed on initiatives taken by the inter-ministerial committee set up in this regard.

2. To the Palestinian Authority

86. The Palestinian Authority must ensure respect for human rights and the rule of law. It must also ensure that fundamental freedoms of the Palestinian population are fully restored and protected in the areas of their authority and control. Incorporation of the principles set forth in the Declaration on Human Rights Defenders and their observance in all aspects of governance would be a step forward in this direction.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Representative of the Secretary-General on the situation of human rights defenders (E/CN.4/2006/95/Add.3, paras. 76-79)

76. Israel's legal system makes security-related provisions that have been used or abused to prevent the enforcement of the rights of Palestinians brought before the judicial forums. The Government may consider a comprehensive review of the system in order to ensure that its security concerns are met within the boundaries of international law. The Government must show its commitment to human rights, democracy and to peace and security by undertaking this exercise in collaboration with independent experts to give credibility to the results of such examination.

77. The Special Representative suggests that the Government also give serious consideration to the incorporation of the principles set out in the Declaration to ensure protection of human rights defenders and strict accountability for violation of their right to defend human rights. In particular, the right of victims of human rights violations to an effective remedy, including compensation, in accordance with article 9 of the Declaration must be protected. In this regard, repeal of the provision of the Civil Wrongs (Liability of the State) Law, as amended in July 2005, should be considered.

78. The Special Representative joins other human rights bodies and mechanisms of the United Nations in recommending that the Government abandon the practice of administrative detention. The accuracy of information leading to charges, partiality and transparency of investigation and fairness of procedures in prosecution of these cases is questionable. By not allowing Palestinian lawyers to appear before Israeli courts, many of the Palestinian detainees are deprived of their right to a counsel of their choice. Orders of detention and extension of the period are usually based on secret evidence not disclosed to the accused or, sometimes, even to any judicial authority. Several human rights defenders have been placed under administrative detention in this manner. The bona fides of these detentions on the basis of security is disputed and the Government has not put forward any responses that inspire confidence in the accusations or the procedures employed against the defenders in question.

79. In view of the allegation of torture and mistreatment of detainees, the Special Representative recommends that the Government accept independent monitoring of the detention facilities and allow independent observers immediate access to human rights defenders under administrative detention. The Government told the Special Representative that the Israel Bar Association had access to prisons, but other sources, including Israeli lawyers, have informed her that this access is only to clients and not for assessing conformity of practices of the authorities to international human rights and humanitarian law and standards.

IV. Administration of justice and the rule of law

Special Representative of the Secretary-General on the situation of human rights defenders (E/CN.4/2006/95/Add.3, paras. 76-79; 87-89)

76. Israel's legal system makes security-related provisions that have been used or abused to prevent the enforcement of the rights of Palestinians brought before the judicial forums. The Government may consider a comprehensive review of the system in order to ensure that its security concerns are met within the boundaries of international law. The Government must show its commitment to human rights, democracy and to peace and security by undertaking this exercise in collaboration with independent experts to give credibility to the results of such examination.

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87. The Special Representative urges the Palestinian Authority to maintain a respect for the freedom of association in the law and refrain from any changes that infringe the independence of NGOs or restrict the scope of their activities for the defence of human rights. Likewise, the independence of the media and the freedom to report on human rights violations must be protected, not only in the law but also in practice.

88. The Palestinian Authority must take immediate measures to end impunity for human rights violations. Investigation of complaints against officials and private entities threatening human rights defenders, including those defending women's rights, must be conducted with diligence and responsibility. The Special Representative recommends the creation of an independent commission to inquire into all allegations of human rights violations against the security services, including torture, kidnappings and illegal detention of human rights defenders.

89. The mandate of the Palestinian Independent Commission on Citizens Rights must be strengthened and reforms of the institution undertaken to improve its capacity to hold accountability for human rights violations by the Authority.

V. Fundamental freedoms

Special Representative of the Secretary-General on the situation of human rights defenders (E/CN.4/2006/95/Add.3, paras. 74-75; 81-82; 87-88)

1. To the Government of Israel

74. Israel must end the occupation of the Palestinian Territory, as the situation of occupation itself is a gross violation of the human rights of the Palestinian people. Until the end of the occupation, Israel must respect the resolutions of the United Nations bodies, and accept its obligations under international human rights and humanitarian law, in particular the two main International Covenants and the Fourth Geneva Convention relative to the protection of civilian persons in time of war, of 12 August 1949. In the context of defenders, Israel's defiance of international law has caused serious harm, including killings, to human rights defenders and affects their freedom of expression, their access to places of violations and their ability to seek justice for victims and to provide humanitarian assistance.

75. Resistance to the occupation is a legitimate right of the Palestinian people. Any peaceful action undertaken in this regard, collectively or individually, is, therefore, protected under article 12 of the Declaration. Article 2 of the Declaration places the Government of Israel under the obligation "to adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed". The Government must amend laws,

regulations and policies and refrain from taking action that obstructs or punishes the exercising of the freedom of assembly, and the right to protest or resist violations.

81. The Israeli authorities must refrain from imposing restrictions on travel of human rights defenders to or from Israel and the Occupied Palestinian Territory. Other restrictions on freedom of movement must be removed, and access of defenders in order to carry out their work must be ensured. Measures must be adopted, in consultation with human rights organizations both in the Occupied Palestinian Territory and Israel, to facilitate the movement of defenders.

82. The executive, judicial and security authorities in Israel must inculcate a better understanding of the application of human rights norms to the situation of occupation and, for this purpose, create opportunities of interaction with defenders who are engaged with the protection of human rights and humanitarian law. The Government must refrain from making statements alleging wrongdoing against human rights or humanitarian operations. The Government must establish its good faith in voicing any suspicions by producing unequivocal evidence to that effect.

87. The Special Representative urges the Palestinian Authority to maintain a respect for the freedom of association in the law and refrain from any changes that infringe the independence of NGOs or restrict the scope of their activities for the defence of human rights. Likewise, the independence of the media and the freedom to report on human rights violations must be protected, not only in the law but also in practice.

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89. The mandate of the Palestinian Independent Commission on Citizens Rights must be strengthened and reforms of the institution undertaken to improve its capacity to hold accountability for human rights violations by the Authority.

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

Special Representative of the Secretary-General on the situation of human rights defenders (E/CN.4/2006/95/Add.3, paras. 81-82; 87-88)

Defenders

81. The Israeli authorities must refrain from imposing restrictions on travel of human rights defenders to or from Israel and the Occupied Palestinian Territory. Other restrictions on freedom of movement must be removed, and access of defenders in order to carry out their work must be ensured. Measures must be adopted, in consultation with human rights organizations both in the Occupied Palestinian Territory and Israel, to facilitate the movement of defenders.

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IX. The right to development and international cooperation

Special Representative of the Secretary-General on the situation of human rights defenders (E/CN.4/2006/95/Add.3, paras. 90-92)

3. To the United Nations

90. The General Assembly, the Security Council, the Commission on Human Rights and its special procedure mechanisms have taken note of and have largely condemned the practices of the occupation. Nevertheless, concrete measures need to be adopted to secure the rights of the Palestinian population. In consultation with human rights experts and fully utilizing the information documented by its mechanisms, the United Nations must devise concrete action to enforce compliance with international law in the Occupied Palestinian Territory, as expounded in the Advisory Opinion of the International Court of Justice, and in accordance with the Charter of the United Nations.

91. The Special Representative calls upon the United Nations to prioritize its support for human rights defenders and the OHCHR with the full cooperation of the Government of Israel and the Palestinian Authority.

92. The Special Representative calls upon the Commission to take particular note of the situation of human rights defenders in the Occupied Palestinian Territory and to adopt measures for their protection and for facilitating their work.

X. Comments from the Government²⁴

n/a

²⁴ As published as official documents of the CHR.

JAPAN

Introduction

During the period under review, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited the country from 3 to 11 July 2005 (please refer to document E/CN.4/2006/16/Add.2).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2006/16/Add.2, paras. 79-80)

79. A national commission for equality and human rights should be established, in conformity with the Paris Principles, in particular with the requirement of its independence. Given the interlinkage between all forms of discrimination, and for the purposes of efficiency and empowerment, this Commission's mandate should bring together in a holistic way the most important and indeed related fields of contemporary discrimination, namely: race, colour, gender, descent, nationality, ethnic origin, disability, age, religion and sexual orientation. This Commission should be attached to the Office of the Prime Minister and not to the Ministry of Justice, since this Ministry is the governmental office in charge of implementing the human rights policy that such an independent organ would be responsible of reviewing. Such a commission should also have offices at the municipal level since around 20,000 cases are currently submitted yearly to the Ministry of Justice which concern human rights violations all around the country. Moreover, there should be no Japanese nationality clause to become investigator of this commission, as such a clause would be discriminatory. It is also recommended that the Government establish an appropriate administrative function that specifically deals the problem of discrimination, including Buraku discrimination.

80. The commission on equality and human rights should as a matter of urgency draft, in close consultation with the minorities concerned, and then submit to the Government a national plan of action to fight against racism, racial discrimination and xenophobia. The national plan of action should be based on the Durban Declaration and Plan of Action.

II. Non-discrimination and equality before the law

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2006/16/Add.2, paras. 74-80)

74. The Government, at the highest levels, should officially and publicly recognize the existence of racial discrimination and xenophobia in Japanese society. It should be done by conducting a survey to find out the present conditions of each discriminated group in Japan. The Government, at the highest levels, should also officially and publicly recognize historical and cultural roots of racial discrimination and xenophobia in the Japanese society, and express in clear and strong terms its political will to combat it. Such a message will not only create the political conditions of combating discrimination and xenophobia at all levels of society, but also facilitate the promotion of the complex but profound process of multiculturalism in Japanese society. Moreover, in the context of globalization, such a message will undoubtedly enhance the standing and image of Japan in the world and in particular in the countries economically related to Japan and whose citizens or people migrate or visit Japan. Japanese citizens, who are increasingly visiting foreign countries for tourism or business-related reasons, will be in a stronger moral position not only to combat the manifestations of discrimination they may be subjected to, but also to promote the image of their country.

75. The Government should strongly condemn and oppose to any statement by public officials which tolerates or even encourages racial discrimination and xenophobia, in accordance with article 4 of the

International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Japan, and in particular its paragraph (c), which provides that States “shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination”, and in accordance with article 20 of the International Covenant on Civil and Political Rights, also ratified by Japan, which prohibits “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.

76. The Government and the parliament (Diet) should as a matter of urgency proceed to the adoption of a national law against racism, discrimination and xenophobia, giving effect into its domestic legal order to the provisions of its Constitution and of the international instruments to which Japan is a party, which include the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Such a domestic law should:

- Penalize racial discrimination in all its forms, and specifically discrimination in the field of employment, housing and marriage, and guarantee access to effective protection and remedies, including compensation, to victims;
- Declare an offence all propaganda and all organizations which are based on racial superiority or hatred and promote or incite racial discrimination, as provided for in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. In this regard, the Special Rapporteur shares the view of the Committee on the Elimination of Discrimination that the reservation made by Japan to article 4 (a) and (b) of the Convention is in conflict with Japan’s obligations under article 4, which is of a mandatory nature, and that the prohibition of the dissemination of all ideas based upon racial superiority and hatred is compatible with the rights to freedom of opinion and expression. Therefore, the inclusion in the domestic legal system of a prohibition of all propaganda and all organizations which promote or incite racial discrimination cannot validly be avoided by invoking the rights to freedom of opinion and expression.

The communities concerned should be consulted and should participate in the process of elaboration of this law.

77. Appropriate legal provisions should be adopted that prohibit any lists and enquiries as to the origins of a person which could be used to discriminate against a person in relation to recruitment, renting or selling of an accommodation or the exercise of any other right of that person. The Osaka Prefecture Ordinance to Restrict Buraku Discriminatory Investigation of 1985 could be taken as a basis, but its scope should be expanded. It is also recommended that Japan ratify ILO Convention No. 111 (1958); which prohibits discrimination regarding employment and occupation.

78. Concerning the draft human rights bill, the Special Rapporteur considers that it needs to include a clear ban of racism, racial discrimination and xenophobia. He reiterates the urgency of adopting such provisions and urges the Diet to proceed without delay, as a matter of priority, to the discussion and adoption of such a law.

79. A national commission for equality and human rights should be established, in conformity with the Paris Principles, in particular with the requirement of its independence. Given the interlinkage between all forms of discrimination, and for the purposes of efficiency and empowerment, this Commission’s mandate should bring together in a holistic way the most important and indeed related fields of contemporary discrimination, namely: race, colour, gender, descent, nationality, ethnic origin, disability, age, religion and sexual orientation. This Commission should be attached to the Office of the Prime Minister and not to the Ministry of Justice, since this Ministry is the governmental office in charge of implementing the human rights policy that such an independent organ would be responsible of reviewing. Such a commission should also have offices at the municipal level since around 20,000 cases are currently submitted yearly to the Ministry of Justice which concern human rights violations all around the country. Moreover, there should be no Japanese nationality clause to become investigator of this

commission, as such a clause would be discriminatory. It is also recommended that the Government establish an appropriate administrative function that specifically deals the problem of discrimination, including Buraku discrimination.

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III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

n/a

V. Fundamental freedoms

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2006/16/Add.2, para. 88)

88. The Government should request the Diet to carry out a thorough investigation on the issue of whether the continued existence of the United States of America's military bases in Okinawa is compatible with the respect of the fundamental human rights of the people of Okinawa. It is also encouraged to establish a joint body composed of representatives of the people of Okinawa and of the Government to monitor the existence of discrimination in relation to the situation of the people of Okinawa. Such a body would formulate recommendations on appropriate measures and policies for adoption by the Government.

VI. Economic and social rights

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2006/16/Add.2, paras 91; 94)

91. The Government should adopt remedial measures for Koreans who are more than 70 years old and who have no access to pension benefits because of the existence of the nationality clause when they were of working age.

94. The Government should adopt appropriate measures to guarantee that foreigners are treated equally in Japan. It should avoid the adoption of any measure that would discriminate against them in the fields of employment, social security, housing, etc., as well as in the exercise of all their rights and freedoms, in particular their freedom to move, to access public places and their right not to be persecuted and perceived as potentially more dangerous than the Japanese. Situations such as blatant refusal to foreigners for them to access public places are totally unacceptable in a democratic country and should not be allowed.

VII. Cultural rights

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2006/16/Add.2, paras 82- 87; 95)

82. The Government should revise history textbooks in order to better reflect, with objectivity and accuracy, the history of minorities and the relations with neighbouring countries. The Special Rapporteur noticed with concern that the parts of the history books dedicated to the history of the Buraku people, the Ainu, the people of Okinawa, the Koreans and the Chinese have been particularly reduced, and therefore

urges the Government to proceed to the revision of such textbooks in order to include a detailed section on the history and culture of these groups, in the perspective of the long memory of history, the relations and interactions with the people and communities concerned, and the origins and reasons of the discrimination to which they were subjected. Their important contribution to the construction of the Japanese identity should also be highlighted. Textbooks should also include explanations of the crimes linked to the colonial era and wartime committed by Japan, including a recognition of its responsibility, and for the establishment of the “comfort women” system. The Special Rapporteur is concerned that decisions on the content of the school textbooks can be taken locally without any capacity of control at the national level. He therefore recommends the adoption of a legal provision at the national level which guarantees that the above-mentioned minimum content requirements be included in school textbooks. Moreover, given the fundamental impact of the drafting and teaching of history in the actual and future relations between the countries of the region, the Special Rapporteur recommends that, in the spirit and the scientific methodology of the drafting by UNESCO of the regional histories of Africa, Latin America, the Caribbean countries and Central Asia, Japan in consultation and with the agreement of all the countries of the region invite UNESCO to start the process of drafting the general history of the region.

83. The Government should consult with minority groups on policies and legislation to be adopted that concern them.

84. The Government is invited to launch a programme of promotion on the culture of discriminated groups: for example, the contribution Buraku work and knowledge gave to society should be recognized and valued, and Buraku cultural specificities disseminated, in order to transform the perception of Buraku people by Japanese society through culture. The creation of cultural centres for minorities in the main Japanese cities would be a very welcome step.

85. Japan should recognize the Ainu as an indigenous people. A number of specific indigenous rights should be recognized to the Ainu people, in accordance with international law and standards. In this context, Japan is encouraged to ratify the ILO Convention No. 169 (1989) concerning indigenous and tribal peoples. In particular, stunned by the fact that the Ainu have been deprived of their right to access their traditional food, the Special Rapporteur urges the Government to return to the Ainu the freedom to fish for salmon in their territories.

86. Political representation of minorities should be guaranteed in State institutions. The Government should accede to the request of the Ainu community to have a quota in the Diet for Ainu representatives. The same could be envisaged for the people of Okinawa.

87. The Government should facilitate the creation of independent Ainu media, managed by the Ainu and financed by public funds, in order to guarantee effective pluralism in the Japanese media and give the Ainu an additional and truly effective means to promote their culture and identity.

95. The Government should also adopt measures to combat prejudices against foreigners through culture, in particular through promoting the knowledge of depth of the culture of the other. This could be most effectively achieved by promoting a vast programme of intercultural and interreligious dialogue, the organization of foreign cultural festivals and by creating dynamic cultural centres, of African, Arab, European and other countries, and developing Japanese cultural centres, in particular in the countries of the new migrants’ population, where prejudices are combated by knowing, understanding and appreciating the culture and history of others.

VIII. Situation of specific groups

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2006/16/Add.2, paras. 81-97)

Migrants

81. The system put in place by the Immigration Bureau of the Ministry of Justice urging citizens to report suspected illegal migrants anonymously on its website is an incitement to racism, racial

discrimination and xenophobia: it is essentially based on the criminalization of foreigners and promotes a climate of suspicion and rejection towards foreigners. This reporting system should therefore be abolished without delay.

Minorities

82. The Government should revise history textbooks in order to better reflect, with objectivity and accuracy, the history of minorities and the relations with neighbouring countries. The Special Rapporteur noticed with concern that the parts of the history books dedicated to the history of the Buraku people, the Ainu, the people of Okinawa, the Koreans and the Chinese have been particularly reduced, and therefore urges the Government to proceed to the revision of such textbooks in order to include a detailed section on the history and culture of these groups, in the perspective of the long memory of history, the relations and interactions with the people and communities concerned, and the origins and reasons of the discrimination to which they were subjected. Their important contribution to the construction of the Japanese identity should also be highlighted. Textbooks should also include explanations of the crimes linked to the colonial era and wartime committed by Japan, including a recognition of its responsibility, and for the establishment of the “comfort women” system. The Special Rapporteur is concerned that decisions on the content of the school textbooks can be taken locally without any capacity of control at the national level. He therefore recommends the adoption of a legal provision at the national level which guarantees that the above-mentioned minimum content requirements be included in school textbooks. Moreover, given the fundamental impact of the drafting and teaching of history in the actual and future relations between the countries of the region, the Special Rapporteur recommends that, in the spirit and the scientific methodology of the drafting by UNESCO of the regional histories of Africa, Latin America, the Caribbean countries and Central Asia, Japan in consultation and with the agreement of all the countries of the region invite UNESCO to start the process of drafting the general history of the region.

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87. The Government should facilitate the creation of independent Ainu media, managed by the Ainu and financed by public funds, in order to guarantee effective pluralism in the Japanese media and give the Ainu an additional and truly effective means to promote their culture and identity.

89. The Government should adopt all measures required to eliminate differential treatment between Korean schools and other foreign schools, which can be considered as racial discrimination. In particular, Korean schools should be allowed to receive subsidies and other financial assistance, as well as the recognition of their certificates as university entrance examination qualifications, on the same footing as other foreign schools, and even more so taking into account the special historical circumstances of the Korean presence in Japan.

90. The Government should adopt strong preventive and punitive measures to stop and firmly sanction violent racially motivated acts against Korean children.

91. The Government should adopt remedial measures for Koreans who are more than 70 years old and who have no access to pension benefits because of the existence of the nationality clause when they were of working age.

92. Concerning the situation of the Korean community living in Utoro, the Government should enter into a dialogue with the Utoro residents and take immediate action to protect them against forced evictions and prevent them from becoming homeless. In the light of the fact that the Koreans residents of Utoro have been placed in this land during the colonial times to work for the Japanese State for its war effort, and considering that they have been allowed to live there for 60 years, the Government should take appropriate measures to recognize their right to continue to live in this land.

93. Japanese national media should give more space to programmes on minorities, in order to reflect the pluralism of its society and promote a culture of reciprocal knowledge and interactions. Such programmes could be elaborated with the collaboration of minorities.

94. The Government should adopt appropriate measures to guarantee that foreigners are treated equally in Japan. It should avoid the adoption of any measure that would discriminate against them in the fields of employment, social security, housing, etc., as well as in the exercise of all their rights and freedoms, in particular their freedom to move, to access public places and their right not to be persecuted and perceived as potentially more dangerous than the Japanese. Situations such as blatant refusal to foreigners for them to access public places are totally unacceptable in a democratic country and should not be allowed.

95. The Government should also adopt measures to combat prejudices against foreigners through culture, in particular through promoting the knowledge of depth of the culture of the other. This could be most effectively achieved by promoting a vast programme of intercultural and interreligious dialogue, the organization of foreign cultural festivals and by creating dynamic cultural centres, of African, Arab, European and other countries, and developing Japanese cultural centres, in particular in the countries of the new migrants' population, where prejudices are combated by knowing, understanding and appreciating the culture and history of others.

96. Communities can only plead for the respect of their human right as a discriminated community if they guarantee the respect of human rights and do not allow for discrimination within their communities. In this context, all communities, and specifically the Buraku and Ainu communities, should make sure that women can exercise their rights, as guaranteed by the Convention on the Elimination of All Forms of Discrimination against Women, in all fields of the political, economic, social and cultural life, within and outside the community, on an equal footing with men.

97. Groups that are discriminated should act in a spirit of solidarity between them, and support each others against causes, as a way to achieve a truly pluralistic society, where all are minorities are respected and have their place.

IX. The right to development and international cooperation

n/a

X. Comments from the Government²⁵

n/a

²⁵ As published as official documents of the CHR.

KYRGYZSTAN

Introduction

The Special Rapporteur on the independence of judges and lawyers visited the country from 18 September to 1 October 2005 (please refer to document E/CN.4/2006/52/Add.3).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.3, para. 78)

78. The Special Rapporteur welcomes the current process of constitutional and legislative reform, which he considers an important opportunity to enhance the country's adhesion to democratic principles and good governance. He calls upon the new leadership to firmly pursue and consolidate the ongoing reform process and to make sure that it is done in an inclusive manner, allowing for broad and adequate consultation.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.3, para. 83)

83.

(d) It is imperative to ensure prompt, impartial and full investigations into allegations of torture and cruel, inhuman or degrading treatment or punishment, as well as to prosecute, where appropriate, the alleged perpetrators;

(e) The use of metal cages in courtrooms should be discontinued, particularly in the case of persons accused of non-violent offences, as this practice seriously questions the principle of the presumption of innocence;

(g) The introduction of a summary procedure, as foreseen by the draft Criminal Procedure Code, may encourage the use of torture or ill-treatment to obtain confessions. Any such procedure must be complemented by sufficient procedural safeguards;

IV. Administration of justice and the rule of law

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.3, paras. 79-86)

79. While the first draft of the constitutional amendments proposed some improvements which would enhance the independence of the judiciary, the second draft has virtually removed these positive proposals. The Special Rapporteur therefore hopes that these negative developments will be seriously reconsidered and corrected.

80. Indeed, one of the major aims of the constitutional reform process under way should be to address the persistent lack of trust of the population in the judicial system. To that effect, a deep judicial reform process should be at the heart of the ongoing constitutional reform process, itself complemented by the current consultation on a number of important draft laws, including a draft Criminal Code, a draft Criminal Procedure Code and a draft Law on Advocate Activity.

81. The Special Rapporteur hopes that full advantage will be taken of this welcome process, in order to provide for a legal framework better equipped to ensure the full independence of judges and lawyers and enhanced respect for international human rights principles.

82. In this regard, the Special Rapporteur makes the following recommendations:

- The Constitutional Court should in no way be downgraded to a chamber of the Supreme Court. Furthermore, the right of individuals to bring complaints on the constitutionality of official acts should be reintroduced;
- The supervisory power of the prosecutor should be repealed. The power to issue warrants for arrest, detention, search and seizure should be transferred from the procuracy to the judiciary as a matter of priority and not be postponed to 2010, as envisaged by the draft constitutional amendments;
- The Special Rapporteur welcomes the current moratorium on executions and calls for the death penalty to be abolished. In the meantime, he calls on the Government to ensure that it extends the current moratorium on executions. He further calls on it to declare an immediate moratorium on the passing of death sentences and to publish information on the number and identity of persons concerned by the moratorium;
- The judiciary should be accorded greater control over the budgetary funds allocated to the court system. The Special Rapporteur notes that the Supreme Court and the Constitutional Court already enjoy budgetary autonomy but would welcome further autonomy for the lower courts. At the same time, a proper independent auditing of the judiciary should be guaranteed.

83. The Special Rapporteur is concerned that the conduct of judicial proceedings does not sufficiently conform to the principle of equality of arms, and that the prosecutor currently exerts excessive control over the proceedings at both the pretrial and trial stages. Furthermore, higher-level prosecutors can bring special appeals even after a final judgement has been rendered. It is vital that steps be taken, in law and in practice, to reduce the dominant role of the prosecutor in judicial proceedings in order to ensure a fairer balance between the respective roles of the prosecutor and the defence lawyer. In this regard, the Special Rapporteur makes the following recommendations:

- The constitutional guarantee on access to a lawyer as from the moment of arrest should be reflected in the Criminal Procedural Code and implemented in a consistent and effective manner. The requirement that a lawyer should obtain permission from the investigator before gaining access to his or her client should be repealed;
- The system for legal aid should be drastically improved to ensure that all persons who are accused of a criminal offence have access to an independent legal counsel and that advocates receive adequate remuneration for legal aid;
- The judiciary must ensure that evidence that may have been obtained by torture is not relied upon as evidence. As part of the legislative reform process, the law should henceforth provide a definition of inadmissible evidence and detailed rules on the exclusion of inadmissible evidence at the pretrial and trial stages of criminal proceedings;

(...)

- The current procedure allowing judges to remit cases for further investigation, as in cases where the prosecutor has failed to provide sufficient evidence to convict, should be repealed. In the event that the prosecution fails to present sufficient evidence to convict, the defendant should be acquitted;
- Steps should be taken, in the context of the reform of the Criminal Code, to introduce alternatives to the deprivation of liberty and to reduce the upper limit of prison sentences;
- In the interests of legal certainty and the right to a trial within a reasonable time, the procedure for appellate review should be amended to ensure that the higher courts render final decisions, as opposed to returning cases to the lower courts for further review;
- The right of prosecutors to bring special appeals, known as supervisory reviews, even after cases have been closed, should be repealed. This practice has a negative impact on the equality of arms and undermines the principle of legal certainty. The reopening of closed cases should be made subject to an exhaustive list of preconditions, such as the existence of new evidence on behalf of the person convicted;
- A separate system of juvenile justice should be established as a priority. Juveniles should be tried under a specific juvenile justice system, in compliance with the relevant provisions of the Convention on the Rights of the Child, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).

84. The Special Rapporteur is of the opinion that the judiciary must be significantly strengthened in order to enable it to act as a fully independent institution capable of protecting fundamental human rights

and freedoms. In this regard, the Special Rapporteur makes the following recommendations, which should be seen in the context of the ongoing process of constitutional reform:

- Judicial candidates should be required to have a high level of relevant professional experience, and candidates for judicial positions in the higher courts should be required to have a prior solid judicial experience;
- The selection procedure should be carried out in an objective and transparent manner. In this regard, the Special Rapporteur is concerned about the position of the National Judicial Council under the Office of the President. An independent body, preferably composed of judges only, should administer the selection procedure;
- The Special Rapporteur is concerned at the short periods of judicial tenure, which in his view seriously undermine judicial independence. The constitutional reform process should not further decrease judicial tenure, and full consideration should be given to the progressive introduction of life tenure for judges;
- The reappointment procedure should be carried out on an objective basis, in a manner that is not linked to the judicial judgements made by the candidate during his or her previous period of tenure. In particular, complaints about specific judicial decisions made by the prosecutor should in no way be taken into account in the reappointment procedure;
- The Constitution should clearly list possible grounds for the removal of judges at all levels before the end of their term, along with a clear and transparent procedure to be followed in this regard. Furthermore, serious steps should be taken to protect judges from external pressure to resign before the end of their period of tenure;
- With a view to preventing corruption, salary levels of the judiciary must be progressively increased, and salaries must be paid in a timely manner;
- The current provisions on judicial ethics should be rationalized into a clear and accessible code that it is widely disseminated within the judiciary. Training on judicial ethics should be included in the training provided to incoming judges and any professional development course provided to sitting judges;
- Disciplinary procedures should be administered by an institution which is independent from the executive branch.

85. The Special Rapporteur considers that a series of steps should be taken to strengthen the bar, ensuring that it can play its fundamental role in protecting the human rights of clients. In this regard, he makes the following recommendations:

- Steps should be taken to ensure the quality and consistency of the legal education provided by universities. To this end, in close cooperation with all interested parties, a national curriculum should be developed, integrating practical legal skills, professional ethics and training on international human rights norms;
- A mandatory entrance examination for all candidates who wish to be admitted to the bar should be introduced. In particular, the current waiver that is applied to candidates with five years' experience with a relevant government body should be repealed. The examination should be in a written format and be administered and assessed by a body made up of members of the profession;
- A body comprised primarily of members of the profession should be responsible for issuing licences, on an objective basis, to new members of the profession. The current role of the Ministry of Justice accords the Government too much control over the composition of the bar;
- Serious consideration should be given to the creation of a single bar association to represent the profession as a whole. The creation of a unified association may assist the profession in playing a greater self-regulatory role and to more effectively promote the interests and independence of the profession;
- A unified code of professional ethics for advocates should be introduced and efforts should be made to train and increase awareness and understanding of professional ethics. The profession should be responsible for regulating disciplinary procedures.

86. The Special Rapporteur considers that it is important to strengthen the court system and other relevant institutions and to provide them with the appropriate material resources to enable them to function in an effective and transparent manner. In this regard, the Special Rapporteur recommends the following:

- The mandate of the Judicial Training Centre should be extended to include training for incoming judges, and serious consideration should be given to making participation in such courses mandatory. The Judicial Training Centre should be sufficiently funded to ensure that it can effectively fulfil its important role;

- The Office of the Ombudsman should be strengthened, in line with the Paris Principles. In particular, the Special Rapporteur considers that training programmes for staff members regarding the processing of individual complaints would be appropriate;
- The Special Rapporteur welcomes the ongoing discussion regarding the introduction of a jury system and lay assessors. He encourages legislators to carry out broad consultations to identify the most appropriate mechanism for Kyrgyzstan, keeping in mind the need to ensure the independence of any lay assessors;
- The judicial system should be equipped with sufficient computers and access to legislative databases to enable all judges to have unimpeded access to Kyrgyz laws and regulations. The judiciary and relevant court personnel should receive training in the use of such databases;
- Steps should be taken to increase the security of judges and court personnel in the courtroom. This could include, for example, providing guards for all levels of the court system. The court buildings should also be maintained in an appropriate state of repair;
- Supreme Court judgements, as is currently the case with Constitutional Court judgements, should be disseminated to the lower courts free of charge. A system should be instituted to ensure that the courts maintain accurate transcripts of all court hearings. Judgements and transcripts should be made public on a consistent and coherent basis, in accordance with the law;
- In order to increase the transparency of judicial proceedings, steps should be taken to ensure that there are sufficient courtrooms available so that all civil and criminal cases can be heard in courtrooms, as opposed to private offices. It is important to ensure that the constitutional and legislative guarantees on the publicity of court proceedings are uniformly implemented.

V. Fundamental freedoms

n/a

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.3, paras. 83; 87)

Juvenile justice

83. (...)

- A separate system of juvenile justice should be established as a priority. Juveniles should be tried under a specific juvenile justice system, in compliance with the relevant provisions of the Convention on the Rights of the Child, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).

Women and ethnic minorities

87. The Special Rapporteur considers that until a better balance is achieved it may be relevant to introduce affirmative action measures, with a view to enhancing the participation of women and ethnic minorities in the judiciary at all levels.

IX. The right to development and international cooperation

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.3, paras. 88-89)

88. The Special Rapporteur is aware of the fact that appropriate means need to be made available for the implementation of his recommendations. In this context, he calls upon the international community to support Kyrgyzstan in the reform efforts. In this respect, he encourages the Government to proactively come forward with proposals to international donors.

89. Finally, the Special Rapporteur strongly supports the United Nations Country Team in Kyrgyzstan in its endeavours to establish the post of a human rights adviser.

X. Comments from the Government²⁶
n/a

²⁶ As published as official documents of the CHR.

LEBANON

Introduction

During the period under review, the Special Rapporteur on trafficking in persons, especially women and children, visited the country from 7 to 16 September 2005 (please refer to document E/CN.4/2006/62/Add.3).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.3, paras. 75- 84; 91-94; 99-101)

National and international cooperation

75. The Government, in close cooperation with civil society and the international community, should develop a comprehensive national strategy on trafficking to bring Lebanon into compliance with its international obligations with regard to trafficking. The strategy should be embedded into a national action plan on human rights and take into account the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking.

76. A national task force comprising officials from all relevant parts of Government (including labour, law enforcement and social assistance) and representatives of civil society should be set up to ensure that Lebanon implements and fulfils its international obligations with regard to trafficking in persons.

77. The Government should conclude bilateral or multilateral agreements with countries sending large numbers of migrant workers on the standardization and mutual recognition of employment contracts, the monitoring of employment agencies, safe repatriation and successful social reintegration of trafficked persons and other areas requiring cooperation between the sending countries and Lebanon. The bilateral agreements should also stipulate that consular officers have at least monthly access to all migrant workers, including detained persons, and immediate access if complaints are received.

78. The Government should sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and relevant International Labour Organization (ILO) Conventions on migrant workers.

Legislative reform

79. Lawmakers should become more involved in preventing and combating trafficking by initiating and realizing legislative reform. The Parliamentary Committees on Foreign Affairs and Human Rights should take responsibility in monitoring and ensuring that the international obligations Lebanon has assumed by acceding to international treaties such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons are effectively implemented into domestic law. Programmes to inform and educate Members of Parliament about these international obligations are also welcome.

80. The adequacy of the legislative framework on migration should be reviewed in light of the large-scale migration to Lebanon. A modification of the sponsorship system should be considered to allow migrant workers to freely change their employers.

81. The Penal Code should be amended so as to criminalize all forms of trafficking as defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons. In addition, legislation should explicitly prohibit and separately criminalize the confiscation of passports and other identity documents by private persons.

82. The protection of the 1946 Labour Code should be extended to domestic workers. For the implementation of this reform, expert advice and technical cooperation should be sought from the ILO.

83. Legislation should be passed and implemented establishing a national human rights commission that complies with the Principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles). It should be allocated sufficient resources to effectively monitor the conduct of Government and undertake public-awareness-raising and education programmes. These programmes should place particular emphasis on discrimination on the basis of race, colour, ethnicity and gender and other root causes of trafficking.

84. Legislation should also strengthen the mandates of the Parliamentary Human Rights Committee and the Higher Council for Childhood. Sufficient resources should be allocated to these institutions as well.

Identification, protection and safe repatriation of trafficked persons

91. Trafficked persons have to be identified as such. When migrants in a seemingly irregular visa situation are apprehended, the circumstances of each individual case have to be determined. The identification of victims should not be left to the discretion of individual General Security officers; rather, specific identification guidelines and procedures should be developed and followed. Potential victims of trafficking and exploitation, including women that have contracted HIV/AIDS or other sexually transmitted diseases, must not be immediately deported but given adequate legal, medical and social assistance, including access to interpretation in a language they understand.

92. All persons detained in immigration detention centres must be treated with humanity and with respect for the inherent dignity of the human person. Representatives of non-governmental organizations and officials outside the Ministry of Interior should be given periodic access to the detention centres to verify compliance with applicable international standards. The detention centre in Adlieh should be relocated to a more suitable and healthy location.

93. Trafficked persons that have been identified should be granted the right to stay in Lebanon until they have a chance to give evidence in the criminal trial against their traffickers and until it is established that repatriation would not present a major security risk to the trafficked person or her family.

94. Trafficked persons should not, in any circumstances, be detained or prosecuted for illegal presence in Lebanon or unlawful activities that are a direct consequence of their situation as trafficked persons. Instead, safe and adequate shelter should be provided to all trafficked persons. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Those victims who decide to cooperate with the prosecution must be given special witness protection so that they do not feel threatened or intimidated. The Ministry of Social Affairs should support existing non-governmental safe house initiatives and, in collaboration with civil society and the international community, create additional capacity. The special needs in terms of shelters and structures for trafficked children should be assessed and measures taken to ensure that children receive the assistance and protection to which they are entitled.

Recommendations to the sending countries

99. All countries sending significant numbers of migrants to Lebanon should establish embassies or consulates in Lebanon that are sufficiently staffed and resourced to exercise effective consular protection to nationals.

100. Sending countries should propose and strongly advocate the conclusion of bilateral agreements with the Government of Lebanon.

101. Sending countries should establish pre-departure training programmes that empower prospective migrant workers by educating them about their rights according to international and Lebanese law. Workers should also be informed about means and ways to enforce their rights. Sending countries should encourage migrant workers to become involved in labour unions in addition to forming their own support groups.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

IV. Administration of justice and the rule of law

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.3, paras. 91-94; 95-98)

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Prosecution

95. All cases of trafficking or exploitation should be thoroughly and effectively investigated by the law enforcement authorities. Senior police officials should issue explicit orders to their staff to conduct thorough unbiased investigations into reports alleging trafficking and exploitation, while bearing in mind their responsibility to ensure the safety and immediate well-being of trafficked persons. Prosecutors and judges should make effective use of the penalties for existing criminal offences in the prosecution and adjudication of cases of trafficking and exploitation until the Penal Code has been amended.

96. The Ministries of Interior and Justice, collaborating with civil society, the judiciary and the international community, should systematically compile statistics on investigations, prosecutions and convictions relating to trafficking in persons. Data on the traffickers' modes of operation and networks should also be systematically gathered and analysed. In this regard, the Ministries should, as a matter of priority, give their attention to their technical cooperation project with UNODC and UNICEF on enhancing measures to combat trafficking.

97. Officers of the Departments of General Security and Internal Security, prosecutors and judges should be given special training on effectively detecting, investigating, prosecuting and adjudicating trafficking in persons. The training should be sensitive to the needs of trafficked persons. Expert advice should be sought for this purpose.

98. Increased efforts should be made to identify and combat all forms of child trafficking, especially for exploitation in begging and child prostitution. Special training on trafficking of children and the protection to which they are entitled under national and international law, as well as child-focused methods of intervention, detection, identification and assistance should be given to all relevant actors (officials, judges, social workers, NGOs and the media).

V. Fundamental freedoms

n/a

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.3, paras. 85- 90; 98)

Domestic migrant workers

85. The Ministry of Labour should interview and inspect the households of all persons wishing to hire a domestic migrant worker. Persons who are not capable of offering adequate living conditions to a domestic worker with regard to accommodation, food and treatment should not be allowed to sponsor an entry visa.

86. Until bilateral agreements on standardized and mutually recognized contracts are concluded with all major sending countries, the Ministry of Labour and the General Security Department should approve only those contracts that are simultaneously drawn up in Arabic and a language the migrant worker can read and understand. Contracts should set out detailed employment conditions with regard to the type of work, hours of work, weekly leave, annual leave and living conditions.

87. Ministry of Labour officials should also periodically inspect households employing migrant workers. Violations of applicable norms should result in administrative sanctions. In cases involving criminal conduct, the employer should be prohibited from sponsoring visas for a certain period of time and the case should be referred to the law enforcement authorities. The Ministry should also systematically monitor the compliance of employment agencies with the requirements stipulated by Ministry of Labour Decision 1/5 and all other applicable laws. The licences of agencies involved in the abuse or exploitation of migrant workers should be revoked and the perpetrators referred to the law enforcement authorities.

Women migrant workers

88. Women holding employment contracts as nightclub dancers, models, etc. should receive the same degree of protection from the labour authorities that is extended to all other groups of persons covered by the 1946 Labour Code. Ministry of Labour officials should monitor compliance with the Labour Code, including through the periodic inspection of adult clubs and other places where these women are present.

89. General Security directives and any other norms limiting the freedom of movement of women holding artist or domestic worker visas should be abolished.

90. Police methods for dealing with children living or working in the streets, children in conflict with the law and children who are victims of crime should be modernized through greater focus on proactive outreach work, confidence-building measures and cooperation with social services. Social services should

reach out and assist children living and working in the streets and other high-risk groups; professionals coming into contact with children living or working in the streets should be sensitized to child protection, as should the general population.

Child trafficking

98. Increased efforts should be made to identify and combat all forms of child trafficking, especially for exploitation in begging and child prostitution. Special training on trafficking of children and the protection to which they are entitled under national and international law, as well as child-focused methods of intervention, detection, identification and assistance should be given to all relevant actors (officials, judges, social workers, NGOs and the media).

IX. The right to development and international cooperation

Special Rapporteur on trafficking (E/CN.4/2006/62/Add.3, paras. 102- 105)

Recommendations to civil society, the media and the international community

102. Human rights NGOs should give more attention to the human rights of foreign nationals, especially migrant workers and women in the sex industry. They should address discrimination by the State and society with regard to race, colour, ethnicity, social status and gender as a matter of priority. The union movement should reach out to migrant workers, including domestic migrant workers, and advocate their equal protection in accordance with national and international labour standards.

103. Humanitarian organizations working with migrant workers should adopt a human-rights-based approach and advocate change on the basis of the Protocol to Prevent, Suppress and Punish Trafficking in Persons and the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking.

104. The media has a key role in raising awareness of the situation of foreign nationals in Lebanon and increasing the visibility of problems faced by foreign domestic workers, women in the sex industry and children from socially marginalized backgrounds. The media should also address social, cultural and religious taboos preventing public discussion of problems related to sexuality and take a strong stand against all forms of discrimination on the basis of gender, race, colour, ethnicity or social status.

105. The international community should devote special attention to the situation of foreign nationals. It should encourage, politically support and fund initiatives to combat trafficking in persons and the various forms of exploitation emanating from it, including exploitative domestic labour, sexual exploitation, forced labour and child labour. Particular emphasis should be placed on the training of officials and efforts to address the root causes of trafficking, including discrimination, early marriage, poverty and lack of access to education and vocational training.

X. Comments from the Government²⁷

n/a

²⁷ As published as official documents of the CHR.

LIBERIA

Introduction

During the period under review, the Independent expert on Liberia visited the country 25 September to 6 October 2005 (please refer to document E/CN.4/2006/114).

I. Institutional and legal framework for the promotion and protection of human rights

Independent expert on Liberia (E/CN.4/2006/114 , para. 53)

53. The independent expert recommends to the National Transitional Government of Liberia and the new Government that they:

- Establish without delay the Truth and Reconciliation Commission and the Independent National Human Rights Commission;
- Establish a judicial council and law reform commission to assist with the reorganization of the judicial sector and comprehensive reform of national legislation respectively;
- Implement the Governance and Economic Management Assistance Programme to address the serious concerns about corruption. Government should also consider signing on to the New Partnership for Africa's Development;
- Seriously consider engaging judges, magistrates and judicial officers from similar jurisdictions, including the Economic Community of West African States/African Union to address the serious gaps in the administration of justice especially the dearth of law officers;
- Undertake a comprehensive salary review exercise to ensure that the remunerations of government officials are commensurate with the work they are expected to undertake and takes into account rational economic indices;
- Expedite action in giving effect within national jurisdiction to international treaties recently ratified by the Government;
- Extend the vetting process currently limited to the security services, to also include the civil service. In this regard, establish an independent commission to institute a vetting process for appointees to government positions especially the civil service and judiciary.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

Independent expert on Liberia (E/CN.4/2006/114, para. 53)

53. The independent expert recommends to the National Transitional Government of Liberia and the new Government that they:

- Establish without delay the Truth and Reconciliation Commission and the Independent National Human Rights Commission;
- Establish a judicial council and law reform commission to assist with the reorganization of the judicial sector and comprehensive reform of national legislation respectively;
- Seriously consider engaging judges, magistrates and judicial officers from similar jurisdictions, including the Economic Community of West African States/African Union to address the serious gaps in the administration of justice especially the dearth of law officers;
- Expedite action in giving effect within national jurisdiction to international treaties recently ratified by the Government;

– Extend the vetting process currently limited to the security services, to also include the civil service. In this regard, establish an independent commission to institute a vetting process for appointees to government positions especially the civil service and judiciary.

V. Fundamental freedoms

n/a

VI. Economic and social rights

Independent expert on Liberia (E/CN.4/2006/114, para. 53)

53. The independent expert recommends to the National Transitional Government of Liberia and the new Government that they:

- Implement the Governance and Economic Management Assistance Programme to address the serious concerns about corruption. Government should also consider signing on to the New Partnership for Africa’s Development;
- Undertake a comprehensive salary review exercise to ensure that the remunerations of government officials are commensurate with the work they are expected to undertake and takes into account rational economic indices.

VII. Cultural rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

Independent expert on Liberia (E/CN.4/2006/114, para. 52; 54-55; 56)

52. The independent expert recommends to the Security Council that it strengthen and extend the current human rights mandate of UNMIL to include robust implementation of human rights, in addition to monitoring and reporting.

54. The independent expert recommends to the Office of the United Nations High Commissioner for Human Rights that it continue to support UNMIL/Human Rights Protection Section in the implementation of the human rights mandate of UNMIL, and as a priority provide resources to resuscitate the Human Rights Unit in the Ministry of Justice.

55. The independent expert recommends to the donor community and Governments that they:

- Support the speedy establishment of bodies provided for in the Comprehensive Peace Agreement especially the Truth and Reconciliation Commission and the Independent National Commission on Human Rights through the timely provision of resources;
- Redeem pledges made to cover the US\$ 10 million shortfall for the rehabilitation and reintegration phase of the disarmament, demobilization, rehabilitation and reintegration process in Liberia;
- Prioritize the capacity-building especially of government officials and parliamentarians in the post-election period. Continue to support civil society groups through the provision of resources and expertise.

56. The independent expert recommends to the Commission on Human Rights that it remain seized of the matter to assure continuing attention to the human rights needs of Liberia and avoid a recurrence of the post-1997 situation, when Liberia relapsed to war upon the withdrawal of the United Nations.

X. Comments from the Government

n/a

MEXICO

Introduction

During the period under review, the Special Rapporteur on violence against women, its causes and consequences visited the country from 21 to 25 February 2005 (please refer to document E/CN.4/2006/61/Add.4).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.4, paras. 69, (a), (d), (e), (f))

69. La Relatora Especial recomienda al Gobierno:

- a) Poner fin a la impunidad respecto de la violencia contra la mujer llevando a cabo reformas de la legislación, los procedimientos de investigación y el sector judicial:
 - i) Enmendar la Constitución Federal y la legislación pertinente para otorgar a las autoridades federales competencias para investigar, proceder y juzgar en los casos en que las autoridades estatales incumplan repetidamente sus obligaciones de derechos humanos al no investigar ni encausar con la debida diligencia los delitos de violencia, sobre todo los perpetrados contra mujeres.
 - iii) Promulgar en todos los Estados y a escala federal leyes específicas para prevenir los actos de violencia contra la mujer y responder a ellos.
 - iv) Investigar con la debida diligencia todos los supuestos actos de violencia contra de la víctima, prestando una atención particular a la relación entre la violencia contra la mujer y el tráfico de drogas y seres humanos; llevar a juicio a los agresores; ofrecer rápidamente indemnizaciones adecuadas y brindar apoyo a los supervivientes. la mujer, ya se produzcan en el hogar, en la comunidad o en el lugar de trabajo
 - vi) Velar, reformando la legislación si fuera necesario, por que todos los actos de violencia contra civiles cometidos por personal militar sean investigados por las autoridades civiles, encausados por las autoridades civiles y juzgados por tribunales civiles independientes e imparciales.
 - vii) Crear una base de datos electrónica nacional de personas desaparecidas que ponga a disposición de todas las autoridades de orden público federales, estatales y municipales la información necesaria, incluso muestras de ADN de la persona desaparecida o de sus parientes cercanos.
 - viii) Aprobar una ley federal que tipifique como delito la violencia doméstica.
- d) Crear una base de información y conocimientos que tenga en cuenta las cuestiones de género:
 - i) Normalizar la recopilación y el análisis de datos sobre la violencia contra la mujer en todo el país y crear una base de datos nacional comparativa que sirva para determinar qué Estados y municipios presentan un nivel particularmente elevado de violencia contra la mujer, y para identificar los puntos en común y las conexiones de las distintas formas de violencia;
 - ii) Apoyar la investigación de todas las formas de violencia contra la mujer y de la relación entre las actitudes sociales, la estructura familiar, el cambio socioeconómico y las políticas públicas, así como sus repercusiones en el comportamiento violento;
 - iii) Utilizar datos e investigaciones que tengan en cuenta las cuestiones de género para formular políticas bien fundadas a fin de acabar con la violencia y supervisar y evaluar los progresos.
- e) Fortalecer las infraestructuras institucionales:
 - i) Crear un observatorio de delitos cometidos contra la mujer en todo el país;
 - ii) Afianzar la base jurídica y financiera de todas las instituciones estatales que promueven específicamente los derechos de la mujer, como el Instituto Nacional de las Mujeres;
 - iii) Definir claramente los mandatos de los diversos mecanismos nacionales y estatales para el adelanto de la mujer con el fin de evitar la duplicación, aumentar la eficiencia y

- permitir la coordinación de todas las políticas públicas sobre las cuestiones de género entre los Estados y el Gobierno federal;
- iv) Prever e implantar el establecimiento de presupuestos por género en todos los niveles de gobierno para garantizar la correcta utilización de los fondos.
- f) Promover programas operacionales, de capacitación y de sensibilización:
- i) Intensificar y ampliar las iniciativas en curso para capacitar a los funcionarios de justicia y policía y al personal técnico, como médicos forenses, en la protección de los derechos de la mujer, las técnicas de investigación que tengan en cuenta las cuestiones de género, y la sensibilidad a las necesidades especiales de las mujeres víctimas de violencia;
 - ii) Llevar a cabo campañas de divulgación jurídica para informar a las mujeres de sus derechos y de las instituciones ante las que pueden presentar denuncias;
 - iii) Iniciar campañas en los medios de comunicación para rechazar la violencia contra la mujer y todas las formas de discriminación, y para promover el respeto por los derechos humanos;
 - iv) Garantizar a las niñas la igualdad de acceso a la educación primaria y secundaria y a la formación técnica y profesional;
 - v) Trabajar con las autoridades de las comunidades indígenas para instituir programas que promuevan la observancia de los derechos de la mujer y del niño en el ejercicio del derecho consuetudinario;
 - vi) Promover mediante los planes de estudios escolares y campañas en los medios de comunicación el reconocimiento del carácter multicultural de la sociedad y su valor como factor de riqueza cultural.

70. La Relatora Especial recomienda a la sociedad civil, incluidas las organizaciones de derechos humanos y los medios de comunicación:

- a) Crear redes de solidaridad con grupos diversos, prestando particular atención a la participación de las organizaciones de mujeres indígenas y migrantes, a fin de establecer estrategias comunes para el adelanto de la mujer y aunar los esfuerzos para exigir responsabilidades al Gobierno en el plano de la promoción y la protección de los derechos de la mujer.
- b) Vigilar la aplicación de la ley por el sistema de justicia penal en los casos de violencia contra la mujer, reunir datos e informar sobre la situación de las mujeres, en especial las de grupos marginados, y establecer lazos de colaboración con las autoridades para formular políticas destinadas a abordar los problemas.
- c) Llevar a cabo estudios sobre el derecho consuetudinario y su relación con la discriminación por motivos de sexo y la violencia de género, en especial la violencia sexual y doméstica.
- d) Seguir desempeñando una función de promoción, entre otras cosas, mediante la cooperación con los medios de comunicación, para sensibilizar a la sociedad sobre la magnitud y la gravedad del problema de la violencia contra la mujer.
- e) Los medios de comunicación, como se establece en la Declaración y Plataforma de Acción de la Cuarta Conferencia Mundial sobre la Mujer, celebrada en Beijing, deben evitar los estereotipos sobre los sexos y demostrar sensibilidad hacia las necesidades de las víctimas y sus familiares cuando informen sobre incidentes de violencia contra la mujer. Los medios de comunicación deberían colaborar con otros agentes sociales en la superación de actitudes sociales que discriminan a la mujer.

II. Non-discrimination and equality before the law

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.4, paras. 69, (a))

69.

- a) ii) Eliminar todas las disposiciones discriminatorias por motivos de género que todavía figuren en la legislación federal o estatal; vincular los derechos reproductivos con el derecho laboral y la trata de mujeres con las leyes que regulan la migración.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.4, para. 69, (b), (c))

- b) Identificar y encauzar de manera transparente a todos los autores de asesinatos de mujeres o actos de violencia contra la mujer en el Estado de Chihuahua:
 - i) Tratar de manera global los asesinatos de mujeres en Ciudad Juárez, Chihuahua y otros lugares dentro del Estado de Chihuahua, y ampliar como corresponda los mandatos de las autoridades especializadas federales y estatales que se ocupan del asunto;
 - ii) Dar mayor impulso a la Comisión para Prevenir y Erradicar la Violencia contra las Mujeres en Ciudad Juárez, otorgarle acceso a los expedientes de casos individuales, conferirle competencias para examinarlos y velar por que colabore estrechamente con la Procuradora Federal Especial;
 - iii) Lograr que las fiscalías federales y estatales investiguen conjuntamente todos los casos hasta que se hayan obtenido pruebas pertinentes, se haya entendido el contexto del crimen y se haya determinado la identidad del autor;
 - iv) Poner en práctica las recomendaciones de la Oficina de las Naciones Unidas contra la Droga y el Delito (ONUDD) sobre la modernización de las técnicas de investigación y la documentación de las fases de la investigación;
 - v) Seguir prestando un apoyo eficaz y facilitando fondos suficientes a la segunda fase del proyecto de identificación de víctimas de asesinato puesto en práctica por el Equipo Argentino de Antropología Forense (EAAF);
 - vi) Respetar escrupulosamente las garantías procesales pertinentes, especialmente la prohibición de torturar, en todas las fases de la investigación y las actuaciones penales;
 - vii) Investigar todas las alegaciones de tortura de sospechosos, solicitando incluso un Dictamen Médico/Psicológico Especializado, y llevar a juicio a los funcionarios responsables;
 - viii) Investigar todas las acusaciones de negligencia, omisión o complicidad contra funcionarios en relación con asesinatos u otros actos de violencia contra la mujer en el Estado de Chihuahua, examinar la legitimidad de los sobreseimientos de causas por prescripción de los hechos y encausar a toda persona contra quien se pronuncien cargos con pruebas sustanciales y sin vicios de procedimiento;
 - ix) Velar por que las víctimas, sus familias o sus representantes legales puedan ejercer realmente su derecho a examinar el expediente del caso y sugerir líneas de investigación, y por que estén al corriente de toda novedad;
 - x) Utilizar sin dilación el dinero del Fondo de Auxilio Económico a Familiares de las Víctimas de Homicidio de Mujeres en el Municipio de Juárez, en Chihuahua, en función de criterios no discriminatorios, sin abandonar los programas gubernamentales que proporcionan ayuda a los familiares a cargo de las víctimas para cubrir sus necesidades de educación, salud y manutención.
- c) Prestar servicios de protección y apoyo a las víctimas de la violencia o a sus familias, así como a las mujeres que corren el riesgo de sufrir actos de violencia:
 - i) Fomentar la creación y ampliación de centros de acogida y servicios de asesoramiento (incluidas las líneas telefónicas de urgencia) para mujeres víctimas de la violencia, y asignar recursos públicos suficientes para mantenerlos.
 - ii) Ordenar a la policía que reaccione sin demora y de manera prioritaria cuando se denuncie que se está perpetrando un acto de violencia contra una mujer.
 - iii) Crear los sistemas y procedimientos policiales necesarios para que las denuncias de desaparición de personas se investiguen con toda la prontitud que sea posible y razonable. En las regiones donde sea muy probable que se produzcan formas graves de violencia contra la mujer, las operaciones de búsqueda deberían comenzar inmediatamente después de que se denuncie una desaparición.
 - iv) Rehabilitar los lugares públicos donde las mujeres son vulnerables a las agresiones y mejorar las condiciones de seguridad en esos lugares.

- v) Ayudar a las familias con ingresos bajos, a los hogares encabezados por mujeres y a las mujeres indígenas mediante, por ejemplo, la asignación de fondos para la formación profesional, la alfabetización de adultos, los programas de crédito y la concesión de incentivos para su empleo, la asistencia para la atención de la salud y las subvenciones para la vivienda.
- vi) Crear programas de protección de testigos que cuenten con los mecanismos necesarios para su eficaz puesta en práctica.

IV. Administration of justice and the rule of law

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.4, paras. 69, (a))

- a) i) Enmendar la Constitución Federal y la legislación pertinente para otorgar a las autoridades federales competencias para investigar, proceder y juzgar en los casos en que las autoridades estatales incumplan repetidamente sus obligaciones de derechos humanos al no investigar ni encausar con la debida diligencia los delitos de violencia, sobre todo los perpetrados contra mujeres.
- iv) Investigar con la debida diligencia todos los supuestos actos de violencia contra de la víctima, prestando una atención particular a la relación entre la violencia contra la mujer y el tráfico de drogas y seres humanos; llevar a juicio a los agresores; ofrecer rápidamente indemnizaciones adecuadas y brindar apoyo a los supervivientes. la mujer, ya se produzcan en el hogar, en la comunidad o en el lugar de trabajo
- v) Fortalecer la administración de justicia, prestando atención especial a los obstáculos de derecho y de procedimiento que impiden el acceso de las mujeres, especialmente las mujeres indígenas y migrantes, a recursos judiciales y medios de protección eficaces. Para esto sería necesaria la rápida aplicación de los memorandos de entendimiento firmados con Guatemala y El Salvador sobre la protección de migrantes, especialmente las mujeres, niños y víctimas del tráfico de seres humanos.

V. Fundamental freedoms

n/a

VI. Economic and social rights

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.4, para. 69,(d))

- d) Crear una base de información y conocimientos que tenga en cuenta las cuestiones de género:
 - i) Normalizar la recopilación y el análisis de datos sobre la violencia contra la mujer en todo el país y crear una base de datos nacional comparativa que sirva para determinar qué Estados y municipios presentan un nivel particularmente elevado de violencia contra la mujer, y para identificar los puntos en común y las conexiones de las distintas formas de violencia;
 - ii) Apoyar la investigación de todas las formas de violencia contra la mujer y de la relación entre las actitudes sociales, la estructura familiar, el cambio socioeconómico y las políticas públicas, así como sus repercusiones en el comportamiento violento;
 - iii) Utilizar datos e investigaciones que tengan en cuenta las cuestiones de género para formular políticas bien fundadas a fin de acabar con la violencia y supervisar y evaluar los progresos.

VII. Cultural rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.4, para. 71)

71. La Relatora Especial recomienda a la comunidad internacional:

- a) Dar prioridad, mediante la financiación bilateral y multilateral, a las iniciativas de organizaciones de mujeres, institutos de investigación y centros de estudios superiores relativas a proyectos operacionales, de investigación y de promoción que tengan por objeto contribuir al adelanto de la mujer, en particular la mujer indígena y migrante;
- b) Facilitar recursos suficientes para fortalecer la capacidad del equipo de las Naciones Unidas en el país para integrar la promoción y protección de los derechos de la mujer en todas sus actividades.

X. Comments from the Government Introduction

n/a

MONGOLIA

During the period under review, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited the country from 6 to 9 June 2005 (please refer to document E/CN.4/2006/6/Add.4).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on torture (E/CN.4/2006/6/Add.4, paras. 55-56)

55. The Special Rapporteur notes that in recent years the Government has taken measures to amend its Criminal Code and Criminal Procedure Code to bring its legislation into line with international human rights standards. However, despite these provisions, he concludes that torture and ill-treatment of alleged criminal suspects persists in Mongolia that perpetrators enjoy impunity, and that in practice there is no effective and adequate means for victims of torture and ill-treatment to obtain justice, compensation and rehabilitation. Accordingly, the Special Rapporteur recommends to the Government of Mongolia that:

(a) The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be subject to prosecution;

(b) The crime of torture be defined in accordance with article 1 of the Convention, with penalties commensurate with the gravity of torture;

(c) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours. After this period, they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted;

(d) Custody registers be scrupulously maintained, recording of the time and place of arrest, the identity of the police officers, the actual place of detention, the state of health of the person upon arrival at the detention centre, the time family or a lawyer was contacted and visited the detainee, and information about the compulsory medical examinations undertaken upon being brought to a detention centre and upon transfer;

(e) Confessions made by persons in custody without the presence of a lawyer and which are not confirmed before a judge should not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of all persons present during proceedings in interrogation rooms;

(f) Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination;

(g) All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that investigating or prosecuting the case against the alleged victim. In the opinion of Special Rapporteur, the NHRCM could be entrusted with this task;

(h) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted;

(i) Victims of torture and ill-treatment receive substantial compensation and adequate medical treatment and rehabilitation;

(j) The declaration be made with respect to article 22 of the Convention recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention;

(k) The Criminal Procedure Code be amended to ensure that it shall not be the general rule that persons awaiting trial are detained in custody, particularly for non-violent, minor or less serious offences, and that the use of non-custodial measures, such as bail and recognizance, are increased. The maximum period of pre-trial detention shall be reduced, especially for persons under 18. Pre-trial detention shall be authorized by a judge only as a measure of last resort and for the shortest appropriate period of time;

(p) Law enforcement recruits undergo extensive and thorough training following a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of police equipment, and that serving officers receive continuing education; and

(q) Systematic training programmes and awareness-raising campaigns be carried out on the principles of the Convention for the public at large, law enforcement officials, legal professionals and the judiciary.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on torture (E/CN.4/2006/6/Add.4, para. 55)

55.

(l) The current special isolation regime for long-term prisoners be ended and that it ensured that ensuring that all persons deprived of their liberty are detained strictly in accordance with the Standard Minimum Rules for the Treatment of Prisoners, with the aim of rehabilitation and resocialization, as envisaged by article 10 of the Covenant;

(m) Death row prisoners be detained strictly in accordance with the Standard Minimum Rules for the Treatment of Prisoners, and in particular they should not be handcuffed and shackled in detention;

(n) A moratorium on the death penalty be imposed, with a view to its abolition, and that the Government ratify the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty;

(o) It ratifies the Optional Protocol to the Convention and that a truly independent monitoring mechanism be established, to visit all places where persons are deprived of their liberty throughout the country. In the view of the Special Rapporteur, such a mechanism could be situated within NHRM

IV. Administration of justice and the rule of law

Special Rapporteur on torture (E/CN.4/2006/6/Add.4, para. 55)

55.

(a) The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be subject to prosecution;

(b) The crime of torture be defined in accordance with article 1 of the Convention, with penalties commensurate with the gravity of torture;

(c) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention, which should not exceed 48 hours. After this period, they should be transferred to a pre-trial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted;

(d) Custody registers be scrupulously maintained, recording of the time and place of arrest, the identity of the police officers, the actual place of detention, the state of health of the person upon arrival at the detention centre, the time family or a lawyer was contacted and visited the detainee, and information about the compulsory medical examinations undertaken upon being brought to a detention centre and upon transfer;

(e) Confessions made by persons in custody without the presence of a lawyer and which are not confirmed before a judge should not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of all persons present during proceedings in interrogation rooms;

(f) Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination;

(g) All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that investigating or prosecuting the case against the alleged victim. In the opinion of Special Rapporteur, the NHRCM could be entrusted with this task;

(h) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted;

V. Fundamental freedoms

n/a

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

Special Rapporteur on torture (E/CN.4/2006/6/Add.4, para. 56)

56. The Special Rapporteur recommends that the Government request relevant international organizations, including OHCHR, to provide assistance in the follow-up to the above recommendations.

X. Comments from the Government²⁸

n/a

²⁸ As published as official documents of the CHR.

MOZAMBIQUE

Introduction

During the period under review, the Independent expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights, particularly economic, social and cultural rights visited the country (please refer to document E/CN.4/2006/46/Add.1).

I. Institutional and legal framework for the promotion and protection of human rights

Independent expert on the effects of economic reform policies and foreign debt (E/CN.4/2006/46/Add.1, paras. 44-45 (d))

44. Moreover, it is acknowledged that the prolonged civil war has had a draining effect in terms of human development and capacity. There is still a gulf between general commitment by the Government for the promotion and protection of all human rights and the capacity of the Government to protect these rights and of the citizens to claim them. Further progress is yet to be realized on reform of the judicial sector and establishing an independent institution for the protection of human rights. Better coordination, monitoring and accountability mechanisms are needed to ensure coordination and linkages with the overall national development plan, so that the commitments the Government made under international treaties will be translated into reality and lead to an improvement in the enjoyment of all human rights by the poor and the vulnerable.

45. Fully recognizing the formidable nature of these challenges and the positive actions taken by the Government with the support of the international community, the independent expert respectfully submits the following recommendations to the Government of Mozambique and other concerned parties:

(d) The independent expert encourages an early establishment of a national human rights commission in accordance with the Paris Principles which could play an important role in the independent monitoring and evaluation of the PARPA implementation from the human rights perspectives.

II. Non-discrimination and equality before the law

Independent expert on the effects of economic reform policies and foreign debt (E/CN.4/2006/46/Add.1, paras. 45 (a))

45. Fully recognizing the formidable nature of these challenges and the positive actions taken by the Government with the support of the international community, the independent expert respectfully submits the following recommendations to the Government of Mozambique and other concerned parties:

(a) Human rights norms and principles, such as equality and non-discrimination, participation and inclusion, and accountability and the rule of law, should guide and inform the implementation of the new cycle of PARPA for 2006-2010. The current efforts in the area of judicial sector reform need to accelerate. At the same time, human rights principles should be integrated under all PARPA objectives as a cross-cutting issue. The contribution of PARPA towards full realization of all human rights would be further strengthened by clearly stipulating the obligations of the State under the international human rights treaties it ratified, and by elaborating on the means to implement them;

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

Independent expert on the effects of economic reform policies and foreign debt (E/CN.4/2006/46/Add.1, paras. 45 (a))

45. Fully recognizing the formidable nature of these challenges and the positive actions taken by the Government with the support of the international community, the independent expert respectfully submits the following recommendations to the Government of Mozambique and other concerned parties:

(a) Human rights norms and principles, such as equality and non-discrimination, participation and inclusion, and accountability and the rule of law, should guide and inform the implementation of the new cycle of PARPA for 2006-2010. The current efforts in the area of judicial sector reform need to accelerate. At the same time, human rights principles should be integrated under all PARPA objectives as a cross-cutting issue. The contribution of PARPA towards full realization of all human rights would be further strengthened by clearly stipulating the obligations of the State under the international human rights treaties it ratified, and by elaborating on the means to implement them;

V. Fundamental freedoms

VI. Economic and social rights

Independent expert on the effects of economic reform policies and foreign debt (E/CN.4/2006/46/Add.1, paras. 41-43: 45 (b), (c))

41. Mozambique has made important strides in achieving economic growth, macroeconomic stability and debt sustainability, recovering as it is from long civil war and a series of natural disasters. The HIPC initiatives and a series of debt reschedulings have enabled the Government to protect social expenditures, but the country remains highly dependent on external assistance and faces important challenges in terms of both poverty reduction and human rights. Despite the high rate of economic growth in recent years, the country remains at the bottom of the human development index. There is also wide regional disparity within the country in terms of progress in poverty reduction.

42. The mission of the independent expert was extremely informative in developing an understanding that economic growth and macroeconomic stability are necessary, but not in themselves sufficient, conditions for the reduction of poverty and the realization of human rights. The general finding of the independent expert is that, while commending the efforts made by all stakeholders for the implementation of PARPA, more conscious efforts are needed to integrate human rights into its goals, plans and processes, if the opportunities afforded by the debt relief are to have a sustainable impact on poverty reduction. At the time of the mission of the independent expert, the Government was in the process of formulating the PARPA II (2006-2010), and it is hoped that many of the shortcomings and lessons learned from the first PARPA will be reflected in the new document.

43. Mozambique also provides an interesting lesson in terms of innovative partnership and cooperation modality between donors and the Government. The general budget support and its joint review mechanisms offer wide opportunities to ensure country ownership, transparency and accountability. Human rights could offer important guiding principles in providing a strong legal basis for these concepts.

45. Fully recognizing the formidable nature of these challenges and the positive actions taken by the Government with the support of the international community, the independent expert respectfully submits the following recommendations to the Government of Mozambique and other concerned parties:

(b) While the country is well on track in terms of debt sustainability, more efforts are needed to continue monitoring of public expenditure and new loan contraction in order to strengthen debt surveillance. Furthermore, close monitoring would be required to ensure that the proceeds from debt relief are effectively used to meet the needs of the most vulnerable segment of the population;

(c) Monitoring and accountability frameworks should be further strengthened by improving the engagement of other stakeholders - in particular the Parliament and civil society - and developing their capacity to scrutinize public budget under the lens of human rights;

VII. Cultural rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

n/a

X. Comments from the Government²⁹

n/a

²⁹ As published as official documents of the CHR.

MYANMAR

Introduction

The Special Rapporteur on the situation of human rights in Myanmar is submitting his report to the Commission on Human Rights (please refer to document E/CN.4/2006/34).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2006/3436, paras. 108; 111; 116; 118)

108. The human rights concerns enumerated in the present report are largely the same as those highlighted by the Special Rapporteur when he commenced his mandate, six years ago. Despite early indications from the Government that it was willing to address these problems, he regrets that all such willingness appears to have disappeared. Recommendations formulated by the Secretary-General of the United Nations and his Special Envoy as well as those advocated by the Special Rapporteur have not been implemented. Those detailed by the Special Rapporteur in his previous reports, therefore, remain valid, their implementation all the more essential given the stagnancy of the transition process, the lack of progress towards national reconciliation and the deteriorating humanitarian situation.

111. The procedures and principles which govern the National Convention remain fundamentally anti-democratic. The Special Rapporteur wishes to emphasize that the framework of reference for his comments about the National Convention and the political situation has not been attributable to any individual or group of Member States but is firmly based upon the pledge repeatedly made since 1990 by the Government to the people of Myanmar and to the international community to institute a democratic Government.

116. There is also an urgent need to establish transparent mechanisms of accountability to ensure that acute humanitarian problems are promptly identified and addressed and to monitor the disbursement of financial assistance. In this connection, the Special Rapporteur calls upon the Government to deepen its dialogue with international humanitarian agencies, stakeholders and beneficiaries to articulate an effective and coordinated strategy for action in tackling the critical humanitarian exigencies in Myanmar. The statement issued in September by “The Student Generation Since 1988” Group encouraging the Government to work together with all stakeholders to ameliorate the humanitarian situation in the country was a welcome development.

118. The Special Rapporteur is convinced that any progress towards resolving the ethnic conflict in Myanmar is unlikely to be possible or sustainable without tangible political reform. The ongoing armed conflict in several ethnic minority areas continues to underpin the most grave human rights abuses in the country, to exacerbate Myanmar’s humanitarian decline and to inhibit socio-economic development. Without an inclusive reform process, such urgent challenges for the country will not be addressed by the Government’s current road map process.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2006/34, para. 119)

119. No transition process is worthy of the name as long as fundamental freedoms of assembly, expression and association are denied; voices advocating democratic reform are silenced; elected

representatives are imprisoned; and human rights defenders are criminalized. No progress will be made towards national reconciliation as long as key political representatives are being locked behind bars, their constituents subject to grave and systematic human rights abuses and their political concerns disregarded.

IV. Administration of justice and the rule of law

n/a

V. Fundamental freedoms

Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2006/34, para. 119)

119. No transition process is worthy of the name as long as fundamental freedoms of assembly, expression and association are denied; voices advocating democratic reform are silenced; elected representatives are imprisoned; and human rights defenders are criminalized. No progress will be made towards national reconciliation as long as key political representatives are being locked behind bars, their constituents subject to grave and systematic human rights abuses and their political concerns disregarded.

VI. Economic and social rights

Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2006/34, para. 114)

114. Deep-rooted and worsening poverty, the continued violation of economic rights and the lack of economic reform which is subjecting the population to unnecessary privation are moving the country towards a humanitarian crisis. This worsening situation is not beyond redress and must be addressed by the Government with the assistance available from the international community, which has a duty to ensure that humanitarian aid does not become hostage to politics. The increased scrutiny and excessive bureaucratic restrictions to which humanitarian organizations are being subjected should not deter the international community from its duty to respond to the humanitarian crisis within the country. There have been many other contexts where humanitarian action has been implemented in a hostile political environment.

VII. Cultural rights

n/a

VIII. Situation of specific groups

Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2006/34, para. 115)

Migrants

115. The Special Rapporteur believes the Government's failure to engage in policy-level dialogue and cooperate with international humanitarian agencies to address the acute protection needs of forced migrants is exacerbating an already very serious humanitarian situation. Evidently, the most effective and fundamental form of protection from forced displacement in Myanmar would be the cessation of human rights abuses and the resolution of the armed conflict through inclusive dialogue.

IX. The right to development and international cooperation

Special Rapporteur on the situation of human rights in Myanmar (E/CN.4/2006/34, para. 111-114; 117)

111. The procedures and principles which govern the National Convention remain fundamentally anti-democratic. The Special Rapporteur wishes to emphasize that the framework of reference for his comments about the National Convention and the political situation has not been attributable to any individual or group of Member States but is firmly based upon the pledge repeatedly made since 1990 by the Government to the people of Myanmar and to the international community to institute a democratic Government.

112. The Special Rapporteur believes that it would be counterproductive to wait until the end of the political transition process to empower civil society. As in many similar humanitarian emergencies in nations undergoing political transition processes to democracy, the main challenge for the international community is to prevent social capital from being completely exhausted. As well as addressing the suffering of the people today, it is necessary to protect and strengthen the ability of communities and individuals to participate in the eventual political transition.

113. At the conclusion of his mandate, the Special Rapporteur strongly commends the determined efforts of those civil society organizations based both inside and outside the country, who document human rights abuses inside Myanmar, assist internally displaced persons and provide essential support to and empower refugee and migrant communities. He wishes also to acknowledge the contribution made by international non-governmental organizations, which continue to operate in the country, under increasingly difficult circumstances, towards providing basic social needs and building the capacity of the people of Myanmar.

114. Deep-rooted and worsening poverty, the continued violation of economic rights and the lack of economic reform which is subjecting the population to unnecessary privation are moving the country towards a humanitarian crisis. This worsening situation is not beyond redress and must be addressed by the Government with the assistance available from the international community, which has a duty to ensure that humanitarian aid does not become hostage to politics. The increased scrutiny and excessive bureaucratic restrictions to which humanitarian organizations are being subjected should not deter the international community from its duty to respond to the humanitarian crisis within the country. There have been many other contexts where humanitarian action has been implemented in a hostile political environment.

117. The Special Rapporteur believes that the briefing to the members of the Security Council in December provided an opportunity to build a constructive and coordinated strategy towards Myanmar, in view of the urgent humanitarian needs of the population. He strongly hopes that such a positive step represents the beginning of a new momentum internationally, to proactively facilitate the long overdue transition from authoritarian to democratic rule in Myanmar. In this connection, he believes the instrumental role of ASEAN and of neighbouring countries in promoting the rights and fundamental freedoms of the people of Myanmar is of key importance in carrying this momentum forward.

X. Comments from the Government³⁰

n/a

³⁰ As published as official documents of the CHR.

NEPAL

Introduction

During the period under review, the following mandates visited the country:

- Representative of the Secretary-General on the human rights of internally displaced persons from 13 to 23 April 2005 (please refer to document E/CN.4/2006/71/Add.2).
- Special Rapporteur on torture and other cruel, inhuman or degrading treatment from 10 to 17 September 2005 (please refer to document E/CN.4/2006/6/Add.5).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on torture (E/CN.4/2006/6/Add.5, paras. 31; 33-34)

31. The Special Rapporteur concludes that torture is systematically practised by the police, armed police and Royal Nepalese Army. Legal safeguards are routinely ignored and effectively meaningless. Impunity for acts of torture is the rule, and consequently victims of torture and their families are left without recourse to adequate justice, compensation and rehabilitation.

33. Accordingly, the Special Rapporteur recommends to the Government of Nepal that:

- (l) The declaration be made with respect to article 22 of the Convention against Torture recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention;
- (m) The Optional Protocol to the Convention against Torture be ratified and a truly independent monitoring mechanism established to visit all places where persons are deprived of their liberty throughout the country;
- (n) The appointments to the National Human Rights Commission, in the absence of Parliament, be undertaken through a transparent and broadly consultative process;
- (o) The Rome Statute of the International Criminal Court be ratified;
- (p) Police, the armed police and RNA recruits undergo extensive and thorough training using a curriculum that incorporates human rights education throughout and that includes training in effective interrogation techniques and the proper use of policing equipment, and that existing personnel receive continuing education;
- (q) Systematic training programmes and awareness-raising campaigns be carried out on the principles of the Convention against Torture for the public at large, security forces personnel, legal professionals and the judiciary; and
- (r) Security forces personnel recommended for United Nations peacekeeping operations be scrupulously vetted for their suitability to serve, and that any concerns raised by OHCHR in respect of individuals or units be taken into consideration.

34. The Special Rapporteur calls on the Maoists to end torture and other cruel, inhuman or degrading treatment or punishment and to stop the practice of involuntary recruitment, in particular of women and children.

Representative on the human rights of internally displaced persons (E/CN.4/2006/71/Add.2, paras. 66-69)

66. In order to take the necessary measures to prevent and to protect against conflict-induced displacement in Nepal,

- To order the RNA to avoid collateral damages to the civilian population when planning their open and covert military operations, and especially to refrain from putting the civilian population in danger. In particular, this means refraining from methods that put the civilians, who wish to remain neutral, at risk of reprisals from the CPN-Maoists;
- To strive for the re-establishment of the administration in areas outside of the district centres;

- To ratify Protocol Additional II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts and take all necessary measures to implement its article 17;
 - To allow and enable the National Human Rights Commission to function in conformity with the Paris Principles.
- (b) The Representative recommends to the CPN-M:
- To make a public statement of commitment to the Guiding Principles on Internal Displacement and to implement them in practice.
67. Regarding protection during displacement,
- (a) The Representative recommends to the Government:
- To finalize, in cooperation with relevant United Nations agencies, and adopt as soon as possible a comprehensive national IDP policy based on a non-discriminatory and broad notion of “internally displaced persons”, as provided for by the Guiding Principles on Internal Displacement and in accordance with Nepal’s international human rights obligations as expressed in these Principles, covering all the protection and assistance needs of the displaced;
 - To adopt necessary legislation and, if necessary, to bring existing legislation in line with such a policy, including in the areas of education or political rights, and to take the necessary institutional measures, with a view to its full implementation;
 - To consult with the IDPs concerned the implementation of the national IDP policy, where appropriate;
 - To provide in the budget and with support from the international community, where needed, the resources necessary to implement the new IDP policy;
 - To train national and local authorities, both civil and military, on the Guiding Principles and on the rights of IDPs as reflected in them, and on the protection of the civilian population;
 - To assess through appropriate means, including surveys undertaken by international agencies or NGOs or through information and counselling centres run by such organizations, the number and situation of internally displaced persons;
 - To ensure that school admission, access to health care and other services is granted on a needs basis and does not depend on registration;
 - To make particular efforts to facilitate the enrolment of displaced children in schools even when they cannot produce the necessary documentation. Particular attention should be paid to the schooling of girl children. Furthermore, efforts should be made to ensure that the IDP children can remain in school and not be obliged to leave school to work for their own sustenance;
 - To support the coping mechanisms that the IDPs have developed and to help the IDPs to remain self-sufficient;
 - To support local communities receiving IDPs to cope with the additional burden;
 - To include and consult IDPs in the planning of new sites for temporary resettlement;
 - To ensure that any extrajudicial killing of an internally displaced person be appropriately investigated and the necessary protection measures taken in consultation with the IDPs concerned;
 - To ensure that IDP property left behind is adequately protected;
- (b) The Representative recommends to the CPN-M:
- To fully respect the rights of persons displaced in the areas controlled by the CPN-M, in accordance with the Guiding Principles;
 - To protect and respect the property belonging to IDPs which has been left behind;
 - To allow free access of humanitarian aid and human rights monitors to these areas and to fully respect the Basic Operating Guidelines of the United Nations agencies and donor agencies.
68. Regarding protection after displacement,
- (a) The Representative recommends to the Government:
- To create conditions conducive to the return in safety and with dignity of the persons displaced from their homes;

- To recognize the right of displaced persons to choose freely between returning to their homes and resettling in another part of the country;
- To include in its IDP policy all necessary measures aimed at facilitating the return of displaced persons, including necessary measures to allow for the restitution of property, and to implement them.
- (b) The Representative recommends to the CPN-M:
 - To allow for the unimpeded return of displaced persons, in safety and with dignity, and to respect their human rights including rights related to the protection of property;
 - To grant access to organizations providing assistance to returnees;
 - To grant access to human rights monitors assessing the human rights situation of returnees.
- (c) The Representative recommends to the UNCT and other international actors:
 - To support measures aimed at finding and implementing durable solutions for internally displaced persons;
 - To monitor, through the Office of the High Commissioner for Human Rights in Nepal and NGOs as the case may be, the human rights situation of returnees and to address violations when necessary.

69. The Representative recommends to the National Human Rights Commission, working in conformity with the Paris Principles, and to NGOs and other civil society actors to take measures within the framework of their mandates to contribute to the protection and assistance of internally displaced persons.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on torture (E/CN.4/2006/6/Add.5, para. 33)

33.

(k) Victims of torture and ill-treatment receive substantial compensation proportionate to the gravity of the physical and mental harm suffered, and adequate medical treatment and rehabilitation;

Representative on the human rights of Internally Displaced Persons (E/CN.4/2006/71/Add.2)

66. In order to take the necessary measures to prevent and to protect against conflict-induced displacement in Nepal,

- (a) The Representative recommends to the Government:
 - To continue to condemn the emergence of self-defence or vigilante groups and discourage them from taking the law into their hands;
 - To immediately investigate all incidences of extrajudicial executions and punish the perpetrators;
 - To ensure that both in law and in practice all people arrested by the RNA are immediately transferred and tried by civilian judicial authorities;
- (b) The Representative recommends to the CPN-M:
 - To respect and ensure respect for common article 3 to the Geneva Conventions of 1949 and relevant norms of customary international humanitarian law and publicly commit themselves to go beyond these minimal standards. This means concretely to distinguish between combatants and persons who do not or no longer participate in the combat; to abstain from killing civilians, spreading terror among them, extorting them, abducting teachers and school children for indoctrination and training purposes, restricting the movements of civilians and largely contributing to a general climate of fear and uncertainty;

IV. Administration of justice and the rule of law

Special Rapporteur on torture (E/CN.4/2006/6/Add.5, para. 33)

33. Accordingly, the Special Rapporteur recommends to the Government of Nepal that:
- (a) The highest authorities, particularly those responsible for law enforcement activities, declare unambiguously that the culture of impunity must end and that torture and ill-treatment by public officials will not be tolerated and will be prosecuted;
 - (b) The crime of torture is defined as a matter of priority in accordance with article 1 of the Convention against Torture, with penalties commensurate with the gravity of torture;
 - (c) Incommunicado detention be made illegal, and persons held incommunicado released without delay;
 - (d) Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pretrial detention, which should not exceed 48 hours. After this period they should be transferred to a pretrial facility under a different authority, where no further unsupervised contact with the interrogators or investigators should be permitted;
 - (e) The maintenance of custody registers be scrupulously ensured, including recording of the time and place of arrest, the identity of the personnel, the actual place of detention, the state of health upon arrival of the person at the detention centre, the time family and a lawyer were contacted and visited the detainee, and information on compulsory medical examinations upon being brought to a detention centre and upon transfer;
 - (f) All detained persons be effectively guaranteed the ability to challenge the lawfulness of their detention, e.g. through habeas corpus. Such procedures should function effectively and expeditiously;
 - (g) Confessions made by persons in custody without the presence of a lawyer and that are not confirmed before a judge not be admissible as evidence against the persons who made the confession. Serious consideration should be given to video and audio taping of all persons present during proceedings in interrogation rooms;
 - (h) Judges and prosecutors routinely ask persons brought from police custody how they have been treated and, even in the absence of a formal complaint from the defendant, order an independent medical examination;
 - (i) All allegations of torture and ill-treatment be promptly and thoroughly investigated by an independent authority with no connection to that investigating or prosecuting the case against the alleged victim. In the opinion of the Special Rapporteur, the NHRC might be entrusted with this task;
 - (j) Any public official indicted for abuse or torture, including prosecutors and judges implicated in colluding in torture or ignoring evidence, be immediately suspended from duty pending trial, and prosecuted;

Representative on the human rights of internally displaced persons (E/CN.4/2006/71/Add.2, para. 66)

66. In order to take the necessary measures to prevent and to protect against conflict-induced displacement in Nepal,
- (a) The Representative recommends to the Government:
 - To continue to condemn the emergence of self-defence or vigilante groups and discourage them from taking the law into their hands;
 - To immediately investigate all incidences of extrajudicial executions and punish the perpetrators;
 - To ensure that both in law and in practice all people arrested by the RNA are immediately transferred and tried by civilian judicial authorities;

V. Fundamental freedoms

n/a

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

Special Rapporteur on torture (E/CN.4/2006/6/Add.5, para. 34)

Women and children

34. The Special Rapporteur calls on the Maoists to end torture and other cruel, inhuman or degrading treatment or punishment and to stop the practice of involuntary recruitment, in particular of women and children

Representative on the human rights of Internally Displaced Persons (E/CN.4/2006/71/Add.2, paras. 67-68)

67. Regarding protection during displacement,
- (a) The Representative recommends to the Government:
- To finalize, in cooperation with relevant United Nations agencies, and adopt as soon as possible a comprehensive national IDP policy based on a non-discriminatory and broad notion of “internally displaced persons”, as provided for by the Guiding Principles on Internal Displacement and in accordance with Nepal’s international human rights obligations as expressed in these Principles, covering all the protection and assistance needs of the displaced;
 - To adopt necessary legislation and, if necessary, to bring existing legislation in line with such a policy, including in the areas of education or political rights, and to take the necessary institutional measures, with a view to its full implementation;
 - To consult with the IDPs concerned the implementation of the national IDP policy, where appropriate;
 - To provide in the budget and with support from the international community, where needed, the resources necessary to implement the new IDP policy;
 - To train national and local authorities, both civil and military, on the Guiding Principles and on the rights of IDPs as reflected in them, and on the protection of the civilian population;
 - To assess through appropriate means, including surveys undertaken by international agencies or NGOs or through information and counselling centres run by such organizations, the number and situation of internally displaced persons;
 - To ensure that school admission, access to health care and other services is granted on a needs basis and does not depend on registration;
 - To make particular efforts to facilitate the enrolment of displaced children in schools even when they cannot produce the necessary documentation. Particular attention should be paid to the schooling of girl children. Furthermore, efforts should be made to ensure that the IDP children can remain in school and not be obliged to leave school to work for their own sustenance;
 - To support the coping mechanisms that the IDPs have developed and to help the IDPs to remain self-sufficient;
 - To support local communities receiving IDPs to cope with the additional burden;
 - To include and consult IDPs in the planning of new sites for temporary resettlement;
 - To ensure that any extrajudicial killing of an internally displaced person be appropriately investigated and the necessary protection measures taken in consultation with the IDPs concerned;
 - To ensure that IDP property left behind is adequately protected;
- (b) The Representative recommends to the CPN-M:
- To fully respect the rights of persons displaced in the areas controlled by the CPN-M, in accordance with the Guiding Principles;
 - To protect and respect the property belonging to IDPs which has been left behind;
 - To allow free access of humanitarian aid and human rights monitors to these areas and to fully respect the Basic Operating Guidelines of the United Nations agencies and donor agencies.

68. Regarding protection after displacement,
- (a) The Representative recommends to the Government:
 - To create conditions conducive to the return in safety and with dignity of the persons displaced from their homes;
 - To recognize the right of displaced persons to choose freely between returning to their homes and resettling in another part of the country;
 - To include in its IDP policy all necessary measures aimed at facilitating the return of displaced persons, including necessary measures to allow for the restitution of property, and to implement them.
 - (b) The Representative recommends to the CPN-M:
 - To allow for the unimpeded return of displaced persons, in safety and with dignity, and to respect their human rights including rights related to the protection of property;
 - To grant access to organizations providing assistance to returnees;
 - To grant access to human rights monitors assessing the human rights situation of returnees.
 - (c) The Representative recommends to the UNCT and other international actors:
 - To support measures aimed at finding and implementing durable solutions for internally displaced persons;
 - To monitor, through the Office of the High Commissioner for Human Rights in Nepal and NGOs as the case may be, the human rights situation of returnees and to address violations when necessary.

IX. The right to development and international cooperation

Representative on the human rights of Internally Displaced Persons (E/CN.4/2006/71/Add.2)

65.

(f) Internally displaced persons in Nepal have been largely neglected in the past. While the Government has set up some assistance programmes on several occasions, resources made available for IDPs have been inadequate. Furthermore, by solely focusing on financial compensation and support, the Government has largely neglected other assistance and protection needs of IDPs. The United Nations as well as bilateral donor agencies and international NGOs have in the past dealt with problems faced by IDPs in an ad hoc manner and have not addressed the displacement crisis in a comprehensive and systematic way. So far, the response by the Government and the international community to the IDP situation in Nepal has been insufficient.

66.

- (c) The Representative recommends to the UNCT and other international actors:
- To monitor and address, through the Office of the High Commissioner for Human Rights in Nepal, human rights situations that could lead to conflict-induced displacement and to support NGOs involved in such monitoring.

67.

- (c) The Representative recommends to UNCT and other international actors:
- To draw up a comprehensive strategy and create a framework to respond to the human rights and humanitarian needs of IDPs in a coordinated and effective manner and to plan for a more consistent response in case of further displacement, in order to avoid protection and assistance gaps;
 - In doing so, to adopt an approach that integrates support for internally displaced persons with support for other civilians affected by the conflict without thereby neglecting the protection and assistance needs that are specific to those who are displaced;
 - To support, complement or substitute, as appropriate, the efforts undertaken by the Government to protect and assist the IDPs;
 - To provide the necessary financial means to effectively address the protection and assistance needs of internally displaced persons.

X. Comments from the Government³¹

³¹ As published as official documents of the CHR.

NEW ZEALAND

Introduction

During the period under review, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited the country from 16 to 26 November 2005 (please refer to document E/CN.4/2006/78/Add.3)

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on indigenous people (E/CN.4/2006/78/Add.3, paras. 84-87; 91-92; 95; 102-103)

A. Recommendations to the Government

Constitutional issues

84. Building upon continuing debates concerning constitutional issues, a convention should be convened to design a constitutional reform in order to clearly regulate the relationship between the Government and the Maori people on the basis of the Treaty of Waitangi and the internationally recognized right of all peoples to self-determination.

85. The Treaty of Waitangi should be entrenched constitutionally in a form that respects the pluralism of New Zealand society, creating positive recognition and meaningful provision for Maori as a distinct people, possessing an alternative system of knowledge, philosophy and law.

86. The MMP electoral system should be constitutionally entrenched to guarantee adequate representation of Maori in the legislature and at the regional and local governance levels.

87. *Iwi* and *hapu* should be considered as likely units for strengthening the customary self-governance of Maori, in conjunction with local and regional councils and the functional bodies created to manage treaty settlements and other arrangements involving relations between Maori and the Crown.

Human rights and the Waitangi Tribunal.

91. The New Zealand Bill of Rights should be entrenched to better protect the human rights of all citizens regardless of ethnicity or race.

92. The Foreshore and Seabed Act should be repealed or amended by Parliament and the Crown should engage in treaty settlement negotiation with Maori that would recognize the inherent rights of Maori in the foreshore and seabed and establish regulatory mechanisms allowing for the free and full access by the general public to the country's beaches and coastal area without discrimination of any kind.

Treaty settlements

95. The Crown should engage in negotiations with Maori to reach agreement on a more fair and equitable settlement policy and process.

International indigenous rights

102. The Government of New Zealand should continue to support efforts to achieve a United Nations declaration on the rights of indigenous peoples by consensus, including the right to self determination.

103. The Government of New Zealand should ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

II. Non-discrimination and equality before the law

Special Rapporteur on indigenous people (E/CN.4/2006/78/Add.3, paras. 88; 104-105)

88. The Legal Services Act should be amended to ensure that legal aid is available to Maori *iwi* and *hapu* as bodies of persons so as to afford them access to the protection mechanisms of human rights, and in order to eliminate discrimination against Maori collectives.

B. Recommendations to the civil society

104. Public media should be encouraged to provide a balanced, unbiased and non-racist picture of Maori in New Zealand society, and an independent commission should be established to monitor their performance and suggest remedial action.

105. Representatives and leaders of political parties and public organizations should refrain from using language that may incite racial or ethnic intolerance.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

Special Rapporteur on indigenous people (E/CN.4/2006/78/Add.3, paras. 89-90)

Human rights and the Waitangi Tribunal.

89. The Waitangi Tribunal should be granted legally binding and enforceable powers to adjudicate Treaty matters with the force of law.

90. The Waitangi Tribunal should be allocated more resources to enable it to carry out its work more efficiently and complete its inquiries within a foreseeable time frame

V. Fundamental freedoms

n/a

VI. Economic and social rights

Special Rapporteur on indigenous people (E/CN.4/2006/78/Add.3, paras. 94; 96; 101)

Treaty settlements

94. Existing settlement acts should be amended, and other such acts in the future should be framed, so as to enable *iwi* and *hapu* to self-determine an appropriate corporate structure for receipt and management of assets.

Environment

96. The Crown should take an active interest in supervising the compliance of the paper company in cleaning up the waste site at Kawerau and the waste disposal build-up at Maketu.

Social policy

101. Social delivery services, particularly health and housing, should continue to be specifically targeted and tailored to the needs of Maori, requiring more targeted research, evaluation and statistical data bases.

VII. Cultural rights

Special Rapporteur on indigenous people (E/CN.4/2006/78/Add.3, paras. 93; 97-100)

Treaty settlements

93. In all Treaty settlements, the right of Maori to participate in the management of their cultural sites according to customary precepts should be specifically acknowledged, thereby enabling greater expression of Maori cultural and spiritual relationships.

Education and culture

97. More resources should be put at the disposal of Maori education at all levels, including teacher training programmes and the development of culturally appropriate teaching materials.

98. Student fees should be lowered and allowances increased so as to stimulate the passage of more Maori students from certificate and diploma to degree level programmes in tertiary education.

99. Maori sacred sites and other places of particular cultural significance to Maori should be incorporated permanently into the national cultural heritage of New Zealand.

100. The Maori cultural revival involving language, customs, knowledge systems, philosophy, values and arts should continue to be recognized and respected as part of the bicultural heritage of all New Zealanders through the appropriate cultural and educational channels.

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

n/a

X. Comments from the Government³²

n/a

³² As published as official documents of the CHR.

NIGERIA

Introduction

During the period under review:

- Special Representative of the Secretary-General on the situation of human rights defenders visited the country from 3 to 12 May 2005 (please refer to document E/CN.4/2006/95/Add.2).
- Special Rapporteur on freedom of religion or belief visited the country from 27 February to 7 March 2005 (please refer to document E/CN.4/2006/5/Add.2).
- Special Rapporteur on extrajudicial, summary or arbitrary executions visited the country from 27 June to 8 July 2005 (please refer to document E/CN.4/2006/53/Add.4).

I. Institutional and legal framework for the promotion and protection of human rights

Special Representative on the situation of human rights defenders (E/CN.4/2006/95/Add.2, paras. 92-96, 100-104)

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.

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.

Special Rapporteur on freedom of religion or belief (E/CN.4/2006/5/Add.2, paras. 103-106; 110-111; 114-115)

General policy with regard to religions

103. With regard to the general policy of the Government of Nigeria vis-à-vis religion and belief, the Special Rapporteur recommends that the Government adopt a more careful approach when it comes to supporting one or the other religious community and consider the possibility of refraining from interfering with religious matters whenever these do not endanger human rights. At the same time, the Government should take very firm positions whenever religion is at the origin of human rights violations, regardless of which religious community is concerned.

104. The Government should further strengthen the existing inter-religious dialogue to address the overall objective of promoting religious tolerance, and therefore extend the scope of the dialogue and increase the number of stakeholders in the process. Such initiatives must link local dialogues to the national scene so that signs of trouble are detected early and resolved before violence breaks out. Such dialogue would further create better understanding and accommodation. It must include women and members of civil society so that their concerns are also heard.

105. The Government should also take concrete steps to strengthen the education system throughout Nigeria in order for children to receive teaching on religious tolerance.

106. The Government should reassess its position with regard to traditional religions as well as other forms of religion or belief. Adherents of traditional religions should be given a place in the mainstream policy and be represented in institutions and other forums that deal with religious matters.

110. The rights of members of religious minorities should be systematically monitored and protected whenever regulations - whether or not adopted in the name of religion - affect the enjoyment of their rights.

111. As a matter of urgency, the Special Rapporteur calls upon the Government to take all necessary measures to put an end to the practice of Hisbah, including by declaring these groups outside the law and investigating any particular act they have committed that may amount to a human rights violation.

114. The mechanisms created by the Government to promote interreligious dialogue should be strengthened and extended. In particular, they should ensure that religious leaders of all communities can participate and involve the civil society. Mechanisms at the local level should be created in as many places as may require them because of the composition of the population, past experience, or any other indication of possible religious tensions.

115. The Government should also increase its support for such initiatives coming from the civil society and disseminate principles of good practice.

Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2006/53/Add.4, paras. 109-110)

109. *The armed forces*

The Nigerian Armed Forces are essentially unaccountable except to the President and he will rarely call them to account. Legislation should be enacted making it an offence for police and military officers to fail to cooperate with official inquiries into alleged extrajudicial executions.

110. A follow-up report will evaluate all measures taken by the Government to implement these recommendations.

II. Non-discrimination and equality before the law:

Special Rapporteur on freedom of religion or belief (E/CN.4/2006/5/Add.2, paras. 107-109)

Sharia penal codes

107. With respect to the sharia penal codes adopted by states in the north, the Federal Government has the obligation to respect the international human rights conventions to which it is a party and therefore ensure, as a priority, that the laws of the nation, whether local or federal, are in conformity with these conventions. In this regard, the Special Rapporteur recommends that the Federal Republic of Nigeria carry out an assessment of all the laws in force and analyse their compatibility with international human rights law.

108. In particular, the Special Rapporteur insists that the Government should ensure within the context of freedom of religion and freedom of expression that Nigerians can express themselves and dissent even within their religion without fear of any form of retaliation or threat. This is especially important in a context where it is religion rather than general laws that is governing human behaviour. In that context, the State must ensure that there is a space for dissent.

109. In this respect, and taking into account the absence so far of any constitutional challenge at the Federal Court level of sharia penal codes and their implementation, the authorities of Nigeria should ensure that appropriate mechanisms are put in place so that citizens who are willing to contest the constitutionality of these laws are neither attacked nor threatened or intimidated.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Representative on the situation of human rights defenders (E/CN.4/2006/95/Add.2, paras. 93, 95, 97-99; 105-106)

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.

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.

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.

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.

Special Rapporteur on freedom of religion or belief (E/CN.4/2006/5/Add.2, paras. 108; 113)

108. In particular, the Special Rapporteur insists that the Government should ensure within the context of freedom of religion and freedom of expression that Nigerians can express themselves and dissent even within their religion without fear of any form of retaliation or threat. This is especially important in a context where it is religion rather than general laws that is governing human behaviour. In that context, the State must ensure that there is a space for dissent.

113. The Government should also abide by its basic obligation to ensure the protection and security of religious groups which may be targeted and which should be entitled to practise their religions freely and without any obstacles, including those created by non-State actors. The Government should reassess the efficiency of its mechanisms in order to be able to intervene in a timely and proper manner when such violence occurs. Early warning mechanisms should also be strengthened.

IV. Administration of justice and the rule of law

Special Representative on the situation of human rights defenders (E/CN.4/2006/95/Add.2, para. 105)

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Religious tensions and communal violence

112. With respect to religious tensions and communal violence, the Special Rapporteur is of the opinion that the obligation of the Government of Nigeria is first and foremost to ensure that justice is done promptly and properly. This obligation should include a full investigation of the violence that occurred, including the identification and prosecution of alleged perpetrators, allowing victims to file proper claims for the damage they have suffered, and recognizing their proper status as victims in trials as well as awarding them appropriate compensation.

Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2006/53/Add.4, paras. 103-107)

103. *Commissions of inquiry*

Inquiries are often used for whitewashing purposes. One State Attorney-General could recall no case of prosecutions following such an inquiry. Their main purpose, he observed, was to facilitate a “cooling of the political temperature”.

(a) The only slightly delayed publication of the report of the Apo 6 inquiry is exemplary and this should become standard practice. To that end the Federal Government should legislate to require the publication within six months of all commission of inquiry reports relevant to extrajudicial executions. In cases of non-publication a specific national security exemption should need to be invoked, and justified;

(b) The full report of the Apo 6 inquiry should be made public immediately.

104. *The death penalty*

- (a) The Federal Government should reiterate that the imposition of the death penalty for offences such as adultery and sodomy is unconstitutional. It should commit to undertaking a constitutional challenge at the earliest opportunity;
- (b) The sentence of every prisoner who has served more than five years on death row should be commuted immediately and consideration given to commuting all such sentences;
- (c) All persons sentenced to death or life imprisonment under martial law should have their convictions reviewed in recognition of the highly unsatisfactory due process protections applied at the time. Since judicial review is probably beyond the capacity of an inefficient and overstretched court system, an administrative procedure should undertake an initial vetting of all such convictions and make recommendations to the Government;
- (d) UNICEF should commission a consultant to review the files of all prisoners on death row for crimes committed before they were 18. Judicial review should then be sought to ensure compliance with the Convention on the Rights of the Child.

105. *Executions and accountability*

- (a) There are no systematic police statistics recording extrajudicial executions.^v An annual register should be published and strong disciplinary measures applied to those who fail to report fully, promptly and accurately all deaths at the hands of police;
- (b) Professionally staffed and well equipped forensic laboratories should be established in key regional centres without delay;
- (c) Armed robbery per se should be removed as a capital offence which warrants a shoot-to-kill response. Its current classification has pernicious effects far beyond any benefits that result. The rules regarding the use of firearms by police officers (Police Order No. 237) should be amended immediately as recommended above.

106. *Police reform*

- (a) There should be an independent external review of the Police Service Commission, taking account of recent South African reforms, designed to establish an effective police accountability system. The Commission needs (i) commissioners committed to achieving results; (ii) the capacity to collect and disseminate information on police misconduct; (iii) independence from the Nigeria Police, including its own investigative capacity; (iv) assured funding; and (v) an obligation to publish its results;^{vi}
- (b) Petty, everyday, police corruption is a constant reminder to the populace that justice can be bought, that the police cannot be relied upon for protection, and that police and criminals are all too often involved in the same enterprise. “Nipping points” symbolize the rampant corruption. Initiatives to eliminate them have been loudly proclaimed but pathetically under-implemented. Routine checkpoints should be abolished immediately and senior officers demoted when their forces are caught “rogering”;^{vii}
- (c) The Nigeria Police should issue an order that no medical professional will be prejudiced as a result of providing urgent life-saving treatment to a wounded person without first obtaining police authorization;
- (d) Linked to these reforms, police pay and conditions, especially for the lowest ranks, should be greatly improved. Existing salary levels invite corruption.

107. *Vigilantes and community policing*

- (a) The corruption and unreliability of the police force provides a convenient excuse for efforts to marginalize it: use of the military for policing, hiring “supernumary” police by oil companies, and support of vigilantes gangs. But these developments further undermine the community standing of the police and make reforms even less likely. The police, at all levels, must begin to see that it is in their own interests to clean up their act. The recently launched Community Policing Initiative has huge potential to obviate the need for vigilantes and to link the police to local communities. It should be greatly expanded;
- (b) Tackling the vigilante problem is especially urgent. The Federal Government should prepare and publish an authoritative inventory of all vigilante groups enjoying any form of official support and playing any role whatsoever in law enforcement. Each state Government concerned should promulgate rules regulating the activities of such groups. And the relevant authorities must investigate and prosecute any illegal vigilante activities involving torture, detention or executions.

V. Fundamental freedoms:

Special Representative on the situation of human rights defenders (E/CN.4/2006/95/Add.2, paras. 102-104)

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.

Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2006/53/Add.4, paras. 103-107)

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107. *Vigilantes and community policing*

(a) The corruption and unreliability of the police force provides a convenient excuse for efforts to marginalize it: use of the military for policing, hiring “supernumary” police by oil companies, and support of vigilantes gangs. But these developments further undermine the community standing of the police and make reforms even less likely. The police, at all levels, must begin to see that it is in their own interests to clean up their act. The recently launched Community Policing Initiative has huge potential to obviate the need for vigilantes and to link the police to local communities. It should be greatly expanded;

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VI. Economic and social rights

Special Representative on the situation of human rights defenders (E/CN.4/2006/95/Add.2, para. 97)

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.

Special Rapporteur on freedom of religion or belief (E/CN.4/2006/5/Add.2, para. 105)

105. The Government should also take concrete steps to strengthen the education system throughout Nigeria in order for children to receive teaching on religious tolerance.

VII. Cultural rights

n/a

VIII. Situation of specific groups

Special Representative on the situation of human rights defenders (E/CN.4/2006/95/Add.2, paras. 97, 98, 99, 106)

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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.

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.

Special Rapporteur on freedom of religion or belief (E/CN.4/2006/5/Add.2, paras. 106; 110)

106. The Government should reassess its position with regard to traditional religions as well as other forms of religion or belief. Adherents of traditional religions should be given a place in the mainstream policy and be represented in institutions and other forums that deal with religious matters.

110. The rights of members of religious minorities should be systematically monitored and protected whenever regulations - whether or not adopted in the name of religion - affect the enjoyment of their rights.

IX. The right to development and international cooperation

Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2006/53/Add.4, paras. 104 (d); 108)

104

(d) UNICEF should commission a consultant to review the files of all prisoners on death row for crimes committed before they were 18. Judicial review should then be sought to ensure compliance with the Convention on the Rights of the Child.

108. *Development assistance*

Support for these recommendations must also come from the international community. Rule of law programmes have been too narrowly defined,^{xi} and the taming of high-level corruption, as vital as it is, seems to represent the total picture for some agencies.

X. Comments from the Government³³

n/a

³³ As published as official documents of the CHR.

RUSSIAN FEDERATION

Introduction

During the period under review, the Special Rapporteur on violence against women, its causes and consequences visited the country from 17 to 24 December 2004 (please refer to document E/CN.4/2006/61/Add.2).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.2)

A. General recommendations

- Develop and implement a national human rights action plan, which provides for the full protection of all human rights for all persons in the Federation;
- Investigate all allegations of human rights violations and ensure that perpetrators of human rights violations are held accountable;
- Eliminate discrimination against women in all fields, including in employment, guaranteeing equal pay for equal work, as prescribed by the recommendations of CEDAW as well as those contained in recommendations of other treaty bodies;
- Establish, in accordance with the Beijing Platform for Action, national machinery for the advancement of women, at the highest level and with the power to make binding policy decisions and allocate the necessary human and financial resources to ensure its effective functioning;
- Create a parliamentary committee on violence against women, including in the context of the situation in the North Caucasus;
- Collect data in all fields, disaggregated by gender, and support research on gender issues to guide policy and programmes;
- Support and strengthen women's NGOs, including by amending the tax law to enhance their capacity to contribute effectively to the elimination of violence against women.

B. Domestic violence

- Ensure protection by legislative reform by:
Adopting specific legislation on domestic violence, providing for full protection of victims, unhindered access to medical, social and legal services, and for perpetrators to be held accountable; Amending housing legislation to assist women victims of violence to escape violent households, enforcing the abolition of propiska registration systems, and considering the adoption of legislation that would provide for the eviction of a violent partner from the shared living space;
- Establish shelters and crisis centres to assist women victims of violence and assist NGO initiatives;
- Promote changes in gender-sensitive attitudes and behaviours by:
Providing training to police, prosecutors, judges, medical personnel and others having contact with women victims of violence on proper handling of such cases, while ensuring full respect for women's human rights;
Promoting media campaigns to sensitize the public about women's human rights and to change gender biases, particularly regarding the acceptance of male infidelity and aggression as normal, and changing school curricula accordingly.

C. Violence against women in the North Caucasus

- Take the necessary measures to prevent and protect women's human rights by:
Ensuring that discrimination against women is not legitimized by the passage of anti-terrorism legislation and that when women are detained or arrested, a female police officer is present at all times;
Supporting the establishment of an ombudsman in the Republic of Chechnya who would be empowered to receive and act upon individual complaints of human rights violations;
Enforcing orders designed to protect against arbitrary detention and enforced disappearances, ensuring that operations against people's homes are properly conducted by clearly identifiable State agents, in clearly identifiable vehicles, in the presence of representatives of the prosecutor and civil society;

Rebuilding the courts in Chechnya, establishing necessary procedures to guarantee access to justice (including the provision of free legal aid to those in need) and ensuring that female prisoners have access to their basic rights including the right to family visits;

- Investigate all allegations of human rights violations and prosecute the perpetrators by:

Establishing clear jurisdiction between military and civilian prosecutors to ensure that all human rights violations are appropriately investigated in a transparent manner and that victims of human rights violations and their legal representatives are made fully aware of the jurisdictional procedures;

Urgently ensuring the timely resolution of pending cases of alleged disappearance and other human rights violations, and communicating the conclusions to the victims or their family members; Preventing and investigating any attacks on and reprisals against human rights defenders and supporting their work to document, monitor and report on human rights violations in the region;

- Ensure the rights and safety of IDPs by:

Providing protection against the forced return of IDPs from Ingushetia until the situation in Chechnya has stabilized;

Ensuring that TACs meet basic minimum living standards and that women who live there are protected from violence and abuse;

Recognizing ethnic Ingush who fled North Ossetia as IDPs and enabling them to receive the accompanying rights and benefits;

- Rebuild infrastructure and housing in Chechnya in order to enhance and stabilize the socioeconomic situation in Chechnya.

II. Non-discrimination and equality before the law

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.2)

A. General recommendations

- Eliminate discrimination against women in all fields, including in employment, guaranteeing equal pay for equal work, as prescribed by the recommendations of CEDAW as well as those contained in recommendations of other treaty bodies;

C. Violence against women in the North Caucasus

- Take the necessary measures to prevent and protect women's human rights by:

Ensuring that discrimination against women is not legitimized by the passage of anti-terrorism legislation and that when women are detained or arrested, a female police officer is present at all times;

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.2)

C. Violence against women in the North Caucasus

Supporting the establishment of an ombudsman in the Republic of Chechnya who would be empowered to receive and act upon individual complaints of human rights violations;

Enforcing orders designed to protect against arbitrary detention and enforced disappearances, ensuring that operations against people's homes are properly conducted by clearly identifiable State agents, in clearly identifiable vehicles, in the presence of representatives of the prosecutor and civil society;

Urgently ensuring the timely resolution of pending cases of alleged disappearance and other human rights violations, and communicating the conclusions to the victims or their family members; Preventing and investigating any attacks on and reprisals against human rights defenders and supporting their work to document, monitor and report on human rights violations in the region;

IV. Administration of justice and the rule of law

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.2)

A. General recommendations

- Develop and implement a national human rights action plan, which provides for the full protection of all human rights for all persons in the Federation;
- Investigate all allegations of human rights violations and ensure that perpetrators of human rights violations are held accountable;
- Promote changes in gender-sensitive attitudes and behaviours by:
Providing training to police, prosecutors, judges, medical personnel and others having contact with women victims of violence on proper handling of such cases, while ensuring full respect for women’s human rights;
Promoting media campaigns to sensitize the public about women’s human rights and to change gender biases, particularly regarding the acceptance of male infidelity and aggression as normal, and changing school curricula accordingly.
Enforcing orders designed to protect against arbitrary detention and enforced disappearances, ensuring that operations against people’s homes are properly conducted by clearly identifiable State agents, in clearly identifiable vehicles, in the presence of representatives of the prosecutor and civil society;
Rebuilding the courts in Chechnya, establishing necessary procedures to guarantee access to justice (including the provision of free legal aid to those in need) and ensuring that female prisoners have access to their basic rights including the right to family visits;
- Investigate all allegations of human rights violations and prosecute the perpetrators by:
Establishing clear jurisdiction between military and civilian prosecutors to ensure that all human rights violations are appropriately investigated in a transparent manner and that victims of human rights violations and their legal representatives are made fully aware of the jurisdictional procedures;
Urgently ensuring the timely resolution of pending cases of alleged disappearance and other human rights violations, and communicating the conclusions to the victims or their family members; Preventing and investigating any attacks on and reprisals against human rights defenders and supporting their work to document, monitor and report on human rights violations in the region;
- Rebuild infrastructure and housing in Chechnya in order to enhance and stabilize the socioeconomic situation in Chechnya.

V. Fundamental freedoms

n/a

VI. Economic and social rights

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.2)

B. Domestic violence

- Ensure protection by legislative reform by:
Adopting specific legislation on domestic violence, providing for full protection of victims, unhindered access to medical, social and legal services, and for perpetrators to be held accountable; Amending housing legislation to assist women victims of violence to escape violent households, enforcing the abolition of *propiska* registration systems, and considering the adoption of legislation that would provide for the eviction of a violent partner from the shared living space;
- Promote changes in gender-sensitive attitudes and behaviours by:
Promoting media campaigns to sensitize the public about women’s human rights and to change gender biases, particularly regarding the acceptance of male infidelity and aggression as normal, and changing school curricula accordingly.

C. Violence against women in the North Caucasus

- Rebuild infrastructure and housing in Chechnya in order to enhance and stabilize the socioeconomic situation in Chechnya.

VII. Cultural rights

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.2)

B. Domestic violence

- Promote changes in gender-sensitive attitudes and behaviours by:

Promoting media campaigns to sensitize the public about women's human rights and to change gender biases, particularly regarding the acceptance of male infidelity and aggression as normal, and changing school curricula accordingly.

VIII. Situation of specific groups

Special Rapporteur on violence against women (E/CN.4/2006/61/Add.2)

IDPs

C. Violence against women in the North Caucasus

- Ensure the rights and safety of IDPs by:

Providing protection against the forced return of IDPs from Ingushetia until the situation in Chechnya has stabilized;

Ensuring that TACs meet basic minimum living standards and that women who live there are protected from violence and abuse;

Recognizing ethnic Ingush who fled North Ossetia as IDPs and enabling them to receive the accompanying rights and benefits;

IX. The right to development and international cooperation

n/a

X. Comments by the Government ³⁴

n/a

³⁴ As published as official documents of the CHR.

SERBIA AND MONTENEGRO

Introduction

During the period under review, the Representative of the Secretary-General on the human rights of internally displaced persons visited the country from 16 to 24 June 2006 (please refer to document E/CN.4/2006/71/Add.5).

I. Institutional and legal framework for the promotion and protection of human rights

Representative on the human rights of internally displaced persons (E/CN.4/2006/71/Add.5, paras. 72-75)

72. Many IDPs are marginally aware of the rights to which they are entitled, both under domestic and international law. Others are unable for practical reasons to access entitlements and remedies provided in Government offices. These disadvantages are coupled with local administrative systems which too often have cumbersome and complex requirements, particularly in the area of documentation and registration. This frequently results in aggravated helplessness, disorientation and disempowerment suffered by IDPs, who become even more firmly locked into their existing situations. Obstacles to access to health care, education, social security benefits and other State services or to the labour market can easily become insurmountable. Since there seems to be no social safety net for those who fall outside the system, those who have not managed to get into the system, owing to the burdensome administrative practices, are further marginalized and pushed into the informal economy. The Representative recommends accelerating administrative reforms with a view to simplifying the administrative registration requirements and processes for all people. He emphasizes that particular attention should be paid to the additional difficulties IDPs have to face when trying to regularize their situation.

73. One among several reasons why returns have been so low is the fact that many IDPs lack appropriate information and feel disempowered; they also receive an overwhelming negative message about their region of origin, reinforcing their subjective feelings of insecurity. The Representative recommends that all concerned authorities discourage systematic negative images of the IDPs' places of origin in the media and in their official speeches. He also encourages organized or spontaneous "go and see" visits and welcomes the fact that such visits have been organized on several occasions.

74. Many interlocutors expressed their concerns that the massive return of former refugees or rejected asylum-seekers from certain Western European countries who could not return to their homes in Kosovo would add to the burden caused by internal displacement in the different parts of Serbia and Montenegro. The Representative calls upon Governments concerned to implement returns cautiously and to refrain from returning members of threatened communities and particularly vulnerable persons to situations where they risk becoming IDPs without assistance and protection of their rights.

75. The continuation of the current federated State of Serbia and Montenegro may soon require a definitive resolution, and the long-term status of Kosovo is currently under discussion. These developments could cause new problems for the displaced, in particular regarding their citizenship rights and infringe upon their rights. The Representative calls upon the Governments concerned to ensure that the new arrangements do not create new IDPs or turn them into refugees, to safeguard the rights of the displaced, including to return, to protection of their property and its restitution or compensation and to pension benefits; and to take measures to make sure that no IDPs, including those who are not yet registered, become stateless. Furthermore, the number of remaining IDPs should be reduced by achieving durable solutions, once the final status of the relevant regions and States is decided.

II. Non-discrimination and equality before the law

Representative on the human rights of internally displaced persons (E/CN.4/2006/71/Add.5, para. 71)

71. The Representative encountered practices that discriminated against Roma and other minorities. Members of these groups frequently have had problems providing proof of their origin. They often have been thwarted in trying to establish a legal address, or otherwise denied access to adequate information on legal and practical options available to them and ways of exercising these possibilities. As a result, these minorities are marginalized and vulnerable and are exposed to the further risk of discriminatory treatment by local authorities and other parts of society. The Representative calls upon the national and local authorities to ensure that the members of these minorities can meaningfully exercise practical and legal access, on an equal basis to the entitlements to which they have a right as citizens. In doing so, it is important to sensitize authorities to the particular needs of these groups, as well as inform such groups, in a culturally appropriate fashion, of their rights and entitlements, and how these may be realized.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

n/a

V. Fundamental freedoms

n/a

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

Representative on the human rights of internally displaced persons (E/CN.4/2006/71/Add.5, paras. 67-70; 76; 78)

67. The efforts of the international community and national authorities have been almost exclusively focused on return as the only solution. Consequently, local integration has been discouraged: integration of persons displaced since many years should not be ruled out, and in fact many internally displaced persons (IDPs) have already done so. To allow IDPs to live a normal life and return are not mutually exclusive but reinforce each other. People leading productive lives are more likely to have the strength and the impetus to return to their places of origin, once the time is right. While welcoming steps taken by the Republic of Montenegro towards local integration, the Representative strongly recommends removing obstacles hindering IDPs from starting a normal life while in displacement and supporting those who wish to do so in their efforts to become economically productive and to acquire property. This should not prejudice their possibilities to return to Kosovo, once it becomes feasible in their eyes.

68. Another consequence of the focus on return is a lack of institutional responsibility for IDPs during displacement, particularly for those living outside of collective shelters in Serbia and in Kosovo, and to a lesser extent, also in Montenegro. The Representative recommends to clearly mandate appropriate offices and organs for the assistance and protection of the human rights of the IDPs and to provide them with the appropriate powers and budgets.

69. Thousands of IDPs continue to live in very difficult conditions in collective centres and irregular settlements, among them elderly, ill, disabled, severely traumatized individuals, witnesses in war crime investigations and trial, female-headed households and families of missing persons, i.e. the most vulnerable among the IDPs whose situations have not been satisfactorily resolved. The international community is in the process of withdrawing its support from many of these centres and many buildings are ramshackle and no longer offer acceptable living conditions. Irregular settlements have sprung up where displaced Roma, Ashkali and Egyptians are living in misery. Many of them are especially vulnerable. No

durable solutions are available to these IDPs. The time has come to find a dignified solution for these extremely vulnerable populations as a matter of priority, since they are unlikely to return to their places of origin even in the event of dramatic changes or to become able to live on their own.

70. The Representative recommends that national and local authorities, in coordination with international agencies and donors, urgently seek durable solutions for these persons, including alternative housing and appropriate institutional arrangements such as social housing, foster families or homes respecting their right to human dignity and develop a comprehensive plan of action in this regard.

Specific conclusions and recommendations for the Republic of Serbia

76. In the light of the concerns highlighted in this report, the Representative recommends to the competent authorities of the Republic of Serbia that they:

- (a) Simplify, in line with the Guiding Principles on Internal Displacement, the registration requirements and processes for issuing or reissuing documents for IDPs, including “working booklets”, in order to give them full access to services, in particular health services, and the labour market, and speed up the promised administrative reforms in this regard. Particular attention should be paid to the particular difficulties that unregistered members of displaced minorities, amongst them the Roma, have to face when trying to regularize their situation;
- (b) Give the Commissioner for Refugees the mandate to assist and protect all IDPs, as well as the adequate funds. The creation of an oversight mechanism, such as an Ombudsperson would not only strengthen the protection of the human rights of the population in general, but also those of IDPs;
- (c) Provide particular support in the areas of housing, access to livelihoods, and education to Roma, Ashkali and Egyptian IDPs, in particular those living in irregular settlements, by taking into consideration the size of their families and their particular cultural needs;
- (d) Facilitate and proactively support IDPs who want to participate in the society and its economic life to do so. Far from stopping people from returning, leading a normal life empowers them and gives them the energy to envisage a new life, as well as the capital to invest upon return. This message needs to come from the highest authorities.

Specific conclusions and recommendations for the Republic of Montenegro

78 The Representative, while commending the Republic of Montenegro for its new Refugee and IDP Strategy that explicitly acknowledges integration as one form of durable solution besides return and resettlements to third countries, recommends:

- (a) The provision of this possibility not only to refugees but also IDPs;
- (b) The provision of access to secondary health care and social welfare also to IDPs without permanent residency;
- (c) The abolition of higher tax obligations for such IDPs as well as the requirement for employers to pay a special fee for employing them;
- (d) The adoption of a national strategy that would reach out to Roma, Ashkali and Egyptian IDPs and other minorities, and to provide particular support in the areas of housing, access to livelihoods, and education to, in particular, those living in irregular settlements, by taking into consideration the size of their families and their particular cultural needs.

IX. The right to development and international cooperation

Representative on the human rights of internally displaced persons (E/CN.4/2006/71/Add.5, paras. 74; 77; 79)

74. Many interlocutors expressed their concerns that the massive return of former refugees or rejected asylum-seekers from certain Western European countries who could not return to their homes in Kosovo would add to the burden caused by internal displacement in the different parts of Serbia and Montenegro. The Representative calls upon Governments concerned to implement returns cautiously and to refrain from returning members of threatened communities and particularly vulnerable persons to situations where they risk becoming IDPs without assistance and protection of their rights.

Specific conclusions and recommendations for Internationally-administered Kosovo

77. The Representative recommends that UNMIK and the Provisional Institutions of Self-Government in Kosovo:

- (a) Proceed with a humanitarian evacuation of IDPs in Northern Mitrovica as fast as possible, taking into due consideration Guiding Principle 7;
- (b) Assign responsibility for IDPs still in displacement in Kosovo to an appropriate office of the Provisional Institutions of Self-Government in Kosovo;
- (c) Take seriously the fears expressed by the minorities left in Kosovo and to publicly condemn harassment and acts of hostility undertaken against them, as well as undertake appropriate action to stop the perpetrators;
- (d) Protect public buildings and places of worship belonging to the minorities, given their symbolic value for minorities;
- (e) Encourage the Housing and Property Directorate to administer the residential properties of IDPs currently unwilling or unable to return and to reclaim them; and the Housing and Property Claims Commission to settle the claims concerning non-residential titles, such as commercial and agricultural properties;
- (f) Continue efforts to improve the security for the returnees and to put in place adequate infrastructures to enable them to live and to ensure their own livelihoods.

Specific conclusions and recommendations for the international community and donors

79. The Representative recommends that the international community and donors:

- Undertake a coordinated effort to assist and support endeavours to find durable solutions for the most vulnerable among the IDPs, many of whom live in collective centres and irregular settlements;
- Provide the necessary means to implement the return of IDPs to their places of origin or former habitual settlement in Kosovo, where projects for such return are ready and could be implemented with the agreement of the IDPs and the municipalities concerned;
- Ensure that new arrangements regarding the future status of Kosovo would safeguard the rights of the displaced, including to return, to protection of their property and its restitution or compensation, and to pension benefits and take measures to make sure that no IDPs, including those who are not yet registered become stateless.

X. Comments by the Government ³⁵

n/a

³⁵ As published as official documents of the CHR.

SOUTH AFRICA

Introduction

During the period under review, the following procedures visited the country:

- Working Group on Arbitrary Detention from 4 to 19 September 2005 (please refer to document E/CN.4/2006/7/Add.3).
- Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people from 28 July to 8 August 2005 (please refer to document E/CN.4/2006/78/Add.2).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2006/78/Add.2, paras. 81-85; 103-104; 107)

A. Recommendations to the Government

Legislation

81. Indigenous communities should be recognized as such constitutionally in parity with the speakers of the 11 officially recognized languages. This refers specifically to the various Khoi and San groups, the Nama and also the Griqua who are not named as such in the Constitution.

82. National framework legislation, as recommended in the Status Quo Reports, should be promptly enacted with the full participation of indigenous communities.

83. Actions should be undertaken towards the removal from all legitimate claimants to indigenous identity of the stigma attached to having been classified as “Coloured” during the apartheid regime, and that the National Khoi-San Council receive statutory recognition. That the various Khoi-San leadership lineages be included in the National and Provincial Houses of Traditional Leaders, wherever relevant and after due and objective evaluation of their respective claims.

84. A national register of officially recognized indigenous communities should be maintained, allowing the recommendation of the report of the SAHRC of 2000 and the Cabinet memorandum of 2004.

85. The Government and the Parliament should take all the necessary steps, in consultation with indigenous peoples in the country, to ensure a prompt ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989).

B. Recommendations to civil society

103. The political parties in the country should take a stand in favour of the constitutional recognition of indigenous peoples.

104. Non-governmental organizations should engage more systematically with the various indigenous communities identified in the present report in order to help the general public in the country to understand their demands and aspirations within the new South Africa.

D. Recommendations to the academic community

107. The Special Rapporteur recommends that the country’s universities and research centres establish focal points for research on and teaching about the issues and problems faced by the various indigenous communities in their diverse circumstances.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Working Group on Arbitrary Detention (E/CN.4/2006/7/Add.3, para. 86)

86. While the Working Group recognizes the efforts of the Government to seek ways to improve the conditions of detention and to reduce the prison population, it is essential that urgent measures be taken to address the overcrowding in pretrial facilities and police stations, by making more use of alternative measures to detention and by taking whatever steps are necessary to reduce the duration of pretrial detention and, as far as possible, to avoid holding pretrial detainees in police cells. In addition, an independent inspecting body should be set up to visit police cells and immigration detention centres; alternatively, the competence of the Inspecting Judge be extended to cover this area.

IV. Administration of justice and the rule of law

Working Group on Arbitrary Detention (E/CN.4/2006/7/Add.3, paras. 87-89)

87. Laws and practice in the criminal justice system should be reviewed to ensure that, in sentencing a person convicted of an offence, the court takes into account any time spent in pretrial detention, even if it appears to reduce the sentence below the mandatory minimum. The practice of sentencing should seek to avoid a situation where people may be incarcerated simply because of their poverty. The use of alternative sentencing options should be encouraged when financial circumstances render a person unable to pay a fine or fulfil a sentence that contains some monetary obligation.

88. The Working Group encourages the Government to continue the reforms already engaged in order to improve the treatment of young offenders and to set up a specialized justice for minors in conformity with articles 37, 39 and 40 of the Convention on the Rights of the Child, to which South Africa is a party. The Working Group therefore recommends that pretrial detention for minors be practised as an exceptional measure applied only in last resort, that minors under the age of 16 be excluded from the correctional system and that separate institutions be established for minors under 18 who are sentenced to detention.

89. Concerning the persons detained under immigration legislation, the Working Group invites the Government to take the appropriate measures to allow for an effective challenge of the detention of illegal foreigners so that they may be able to exercise all the rights guaranteed in the Constitution.

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2006/78/Add.2, paras. 99-100)

Administration of justice and related justice issues

99. Special training activities for personnel in the judiciary should be undertaken to overcome the prevailing cultural ignorance of the specific needs of indigenous communities. A system of visiting or roving tribunals should be instituted for distant communities in which access to the judiciary is difficult and costly in practice.

100. In the case of the death of Optel Rooi, the Special Rapporteur recommends that the court case be resolved as soon as possible, that compensation be paid to the family of the victim, and that greater efforts be made to train the local police (as elsewhere in the country) to be even handed and fair towards the San. He also wishes to underline the urgency of the South African Human Rights Commission's recommendation that there is need for a circuit, periodic or special court in the local area (Ashkam or Rietfontein) to deal with these issues.

V. Fundamental freedoms

n/a

VI. Economic and social rights

Land rights

86. Needs-assessment research in indigenous communities should be undertaken by the competent government authorities that might define the magnitude of the problem and suggest practical remedial measures.

87. In the case of indigenous communities that were dispossessed of their lands by colonial and discriminatory legislation or practice before the Native Land Act of 1913, positive legal and judicial action should be initiated to enable these communities and individuals to file legitimate claims for restitution within a wider perspective of human rights and transitional justice. Likewise, the Government is urged to provide the necessary resources and technical cooperation to such indigenous communities, enabling them to proceed in this direction.

88. The land restitution process, in terms of collective land rights of indigenous communities, should be accelerated, given the dire needs of many indigenous communities around the country and indigenous communities should be provided with resources and technical cooperation to pursue these claims successfully.

Poverty and exclusion

89. Official social and economic statistics should be disaggregated to specify indigenous communities, and special poverty reduction and social services delivery programmes (such as health care, housing, nutrition, education and others) should be designed also to target indigenous communities within South Africa's efforts to meet its Millennium Development Goals.

90. Poverty reduction strategies focused on the needs of specific groups must include also the indigenous communities, just as they are now focused on women, youth, or people with disabilities. This will require an assessment of the specific needs and requirements of these communities and the use of disaggregated data (which do not exist at present) when monitoring the results of such policies.

Social services, education and health

91. The relevant ministries should set up economic, social and human development indicators for indigenous peoples, in order to ensure in official statistics the inclusion of specific data on these peoples, as a basis for effective public policies and programme planning for social services and economic development purposes.

92. High-priority attention should be given to the needs and grievances of the Khomai San in the Kalahari and an independent, accountable, self-financing development authority should be established in consultation with the Khomani San to enable them, among other issues, to manage efficiently the farms that they received as a result of their successful milestone land claim in 1999.

93. The inter-departmental task team for the development of Khoi-San communities should be fully supported at the highest level by all government departments involved and the need to promote and protect the rights of indigenous communities should be acknowledged as a crosscutting human rights issue in all relevant departments.^{94.} The Ministry of Health should study possible solutions to the constraints being faced by the indigenous communities in Platfontein, including the possibility of establishing a fully equipped clinic able to respond to the health demands of the inhabitants of that township.

95. Health care delivery services should target specifically the marginalized indigenous communities and particularly their poorest members.

96. The introduction of drinking water to indigenous communities should be considered as a priority in the developments plans of the areas where such service still does not exist or where these services are insufficient.

97. The KNSLB should establish as a priority a comprehensive feasible plan to preserve, protect and promote indigenous languages in South Africa and their preservation should be protected by law. Its advice should be given careful attention by the Government and be followed up by relevant legislation and public policy. The assistance of the United Nations Educational, Scientific and Cultural Organization (UNESCO) should be sought.

98. The efforts of the Nama Development Institute to promote the Nama language through language education in primary and secondary schools and the establishment of a Nama radio station should be supported by the relevant authorities and international cooperation.

VII. Cultural rights:

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2006/78/Add.2, paras 101-102)

Intellectual property

101. The intellectual property rights of indigenous communities should be protected by law as for example in the case of the commercial exploitation of the *Hoodia gordonii* plant used by the San, the conservation of the various rock art and sacred sites that have special meaning for indigenous communities, and the preservation of traditional medical practices.

102. The ongoing efforts by several non-governmental organizations, particularly WIMSA, to develop a number of comprehensive local development plans with indigenous communities, concentrating on community-based tourism, crafts and eco-tourism ventures combined with varying degrees of hunting and wild food gathering, should be supported by the various governmental departments and the international community.

VIII. Situation of specific groups

Working Group on Arbitrary Detention (E/CN.4/2006/7/Add.3, para. 86)

Minors in detention

88. The Working Group encourages the Government to continue the reforms already engaged in order to improve the treatment of young offenders and to set up a specialized justice for minors in conformity with articles 37, 39 and 40 of the Convention on the Rights of the Child, to which South Africa is a party. The Working Group therefore recommends that pretrial detention for minors be practised as an exceptional measure applied only in last resort, that minors under the age of 16 be excluded from the correctional system and that separate institutions be established for minors under 18 who are sentenced to detention.

Foreigners

89. Concerning the persons detained under immigration legislation, the Working Group invites the Government to take the appropriate measures to allow for an effective challenge of the detention of illegal foreigners so that they may be able to exercise all the rights guaranteed in the Constitution.

IX. The right to development and international cooperation

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2006/78/Add.2, paras 105-106)

C. Recommendations to the international community

105. The United Nations country team should find ways to increase the attention of their respective agencies and programmes to the needs of indigenous peoples and concentrate on specific coordinated programs concerning indigenous communities in South Africa, with particular emphasis on the needs of indigenous women, youth and children.

106. The International Labour Organization (ILO) and the Office of the High Commissioner for Human Rights should work together in promoting awareness in the country of the provisions of ILO Convention No. 169 (1989), aiming to support efforts for its prompt ratification as well as other relevant international human rights standards.

X. Comments from the Government³⁶

n/a

³⁶ As published as official documents of the CHR.

SRI LANKA

Introduction

During the period under review, the following special procedures visited Sri Lanka:

- Special Rapporteur on freedom of religion or belief visited the country from 2 to 12 May 2005 (please refer to document E/CN.4/2006/5/Add.3).
- Special Rapporteur on extrajudicial, summary or arbitrary executions from 28 November to 7 December (please refer to document E/CN.4/2006/53/Add.5).
- Representative of the Secretary-General on the human rights of internally displaced persons from 28 February to 2 March 2005 (special report).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on freedom of religion or belief (E/CN.4/2006/5/Add.3, paras. 127-131)

Religious tensions

127. For the reasons explained in section V and in the above conclusions, the Government should reconsider whether to adopt legislation that would criminalize so called unethical conversions, and instead take suitable measures to implement existing criminal provisions that could appropriately address the behaviour of certain religious groups and organizations.

128. The Government should urgently take steps to consider the different mechanisms proposed to deal with religious tensions, including those aiming at creating an inter-religious body, and start the relevant procedures for their implementation. In this context, the Government should hold consultations with members of the civil society and representatives of religious communities, both at the national and at the local level, and make a detailed assessment of the needs to be addressed by these mechanisms.

129. In addition, the Government should seek assistance from United Nations agencies and civil society to explore possible models for the creation of an inter-religious body that would help to diffuse tensions and take appropriate measures to maintain a constant dialogue between religious communities at all levels of the society and encourage all initiatives that seek to promote religious tolerance in the educational system.

130. The Special Rapporteur also calls on all religious actors and groups as well as religiously affiliated NGOs present in Sri Lanka to abide strictly by the recognized principle of humanitarian ethics as well to demonstrate sensitivity and respect for the religious symbols and sentiments of the Sri Lankan society in all their activities.

131. Finally, the Special Rapporteur urges the leaders of the LTTE to further implement a culture of religious tolerance in the territories they control, to increase their efforts to fully reintegrate with dignity the Muslim communities that have been displaced during the conflict in their places of origin, to allow access to all places of worship and other religious sites, and to ensure the protection of religious minorities present on their territory, regardless of their size.

Special Rapporteur on arbitrary executions (E/CN.4/2006/53/Add.5, paras. 71; 74-75; 80-83; 90)

Strengthening the ceasefire and respect for human rights and humanitarian law

71. At the time of writing, the Government and LTTE had agreed to talks on strengthening the implementation of the CFA in late February 2006. Issues relating to extrajudicial executions are fundamental to the recent erosion of the ceasefire and the threats to the credibility of its monitoring mechanisms. The recommendations below should be squarely addressed in the talks:

(a) The Government and LTTE should complement the CFA with a wide-ranging human rights agreement, as discussed during their earlier rounds of talks in 2003. An effective international human rights monitoring mechanism should be established with powers to document and investigate abuses, to report to the relevant authorities, and to work closely with other agencies involved in human rights at all levels;

(b) The Government needs to take the various steps outlined below immediately in order to comply with its existing human rights obligations;

(c) The LTTE, in compliance with its professed commitment to human rights, and in response to the international community's requirement that all non-State actors respect the Universal Declaration of Human Rights, must take a range of concrete steps to demonstrate that it is serious about human rights. These are outlined below;

(d) All parties to the conflict, including the Government, the LTTE and the Karuna group, must comply with their legal obligations under common article 3 of the Geneva Conventions of 12 August 1949 and customary international humanitarian law. In particular, humanitarian law requires respect in the conduct of hostilities for the distinction between civilians and combatants. The killing of anyone not taking an active part in hostilities (regardless of civilian status) is prohibited.

The Government

74. The Government should publicly reiterate its renunciation of any form of collaboration with the Karuna group, and should demonstrably take action to discipline military officers who breach this rule.

75. The Government is requested to provide an analysis of who gets compensation and under what circumstances and to put in place a revised set of arrangements intended to ensure fair and equitable access to compensation for the families of non-combatants subjected to extrajudicial execution. Existing arrangements are uneven at best, and non-existent at worst.

National Police Commission^{xii}

80. The members of the National Police Commission should be promptly appointed.

81. The Government should publicly confirm that it will insist upon respect for the Constitution's allocation of powers between the NPC and the IGP. Accordingly, the IGP should play only a consultative role in the NPC's exercise of its "powers of promotion, transfer, disciplinary control and dismissal".^{xiii}

82. The Government should provide the NPC with the resources required to enable it to effectively exercise its investigative and disciplinary powers.

The ICC Statute

83. The Government should ratify the Rome Statute of the ICC without reservation or declaration. Members of the Sri Lanka Army and LTTE fighters should be made aware of the rules of individual criminal responsibility and be trained in the provisions of international criminal law.

Follow-up

90. A follow-up to this report by the Special Rapporteur will evaluate all measures taken to implement these recommendations.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Special Rapporteur on freedom of religion or belief (E/CN.4/2006/5/Add.3, para. 126)

Persecution of religious minorities

126. The Government should also abide by its obligation to ensure the protection and security of all religious groups that may be targeted and that should be entitled to practise their religions freely and without any obstacles, including those erected by non-State actors. This obligation includes the protection of religious groups within wider religious communities and ensuring that the right to freedom of religion of members of these groups is not limited. In this regard, the Government should pay particular attention to the protection of Muslim minorities and take the appropriate measures to ensure for the members of the Ahmadiyyas community the full enjoyment of their rights.

IV. Administration of justice and the rule of law

Special Rapporteur on freedom of religion or belief (E/CN.4/2006/5/Add.3, para. 125)

Persecution of religious minorities

125. With respect to the persecution of religious minorities, the Special Rapporteur is of the opinion that the primary obligation of the Government of Sri Lanka is to ensure that justice is done promptly and properly. This obligation extends to guaranteeing the full investigation of all acts of violence or other acts of religious intolerance committed against religious minorities, including the identification and prosecution of the alleged perpetrators, allowing victims the possibility of filing claims for the damage they have suffered and the awarding of appropriate compensation.

Special Rapporteur on arbitrary executions (E/CN.4/2006/53/Add.5, paras. 72; 76-79; 83)

72. In any revision of the CFA, the monitoring role of the SLMM should be de-linked from the role of facilitating the peace process. As a more immediate measure, steps should be taken to strengthen the SLMM's work, including:

- (a) More sustained follow-up to killings with a view to identifying the party and persons responsible;
- (b) The prompt and accessible publication, within necessary limits, of complaints received and of the results of investigations;
- (c) The establishment of a protocol to better protect witness identities;
- (d) The designation of a senior human rights officer in each SLMM field office and a senior focal point in headquarters.

Police

76. The CFA must not be used as a pretext for failures to investigate killings. The Government should unambiguously instruct the police to investigate all killings vigorously and, wherever possible, to apprehend suspects.

77. A programme is urgently needed to provide essential training in criminal detection and investigation to all police reservists.

78. A police force which can only communicate very poorly in the Tamil language will be hard pressed to win the confidence and trust of the general public. The Government should adopt a programme of financial and other incentives to recruit Tamil and Tamil-speaking police officers, especially to work in the north and east.^{xiv}

79. The Government and the LTTE should initiate and regularize contact between the government police and the policing forces that operate in LTTE-controlled areas with a view to minimizing the CFA's adverse effects on crime control.

The ICC Statute

83. The Government should ratify the Rome Statute of the ICC without reservation or declaration. Members of the Sri Lanka Army and LTTE fighters should be made aware of the rules of individual criminal responsibility and be trained in the provisions of international criminal law.

V. Fundamental freedoms

Special Rapporteur on arbitrary executions (E/CN.4/2006/53/Add.5, paras. 74-75; 84-86)

The Government

74. The Government should publicly reiterate its renunciation of any form of collaboration with the Karuna group, and should demonstrably take action to discipline military officers who breach this rule.

75. The Government is requested to provide an analysis of who gets compensation and under what circumstances and to put in place a revised set of arrangements intended to ensure fair and equitable access to compensation for the families of non-combatants subjected to extrajudicial execution. Existing arrangements are uneven at best, and non-existent at worst.

Liberation Tigers of Tamil Eelam

84. The LTTE should unequivocally denounce and condemn any killing attributed to it for which it denies responsibility. Mere denials are neither adequate nor convincing.

85. The LTTE should refrain from violating human rights, including those of non-LTTE-affiliated Tamil civilians. This includes in particular respect for the rights to freedom of expression, peaceful assembly, freedom of association with others, family life, and democratic participation, including the right to vote. The LTTE should specifically affirm that it will abide by the North-East Secretariat on Human Rights charter.

86. The LTTE should refrain from providing arms, training and encouragement to groups such as the “People’s Army” civilian proxies and self-defence organizations.

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

Special Rapporteur on arbitrary executions (E/CN.4/2006/53/Add.5, paras. 73; 87-89)

73. The Government should invite the Office of the High Commissioner for Human Rights to expand its field presence in Sri Lanka to enable it to provide technical support and assistance to the Human Rights Commission, SLMM and other United Nations agencies, pending the creation of a broader monitoring mechanism.

The international community

87. The human rights capacity of the United Nations Country Team should be expanded immediately, pending the creation of a broader monitoring mechanism.

88. Concerned Member States, particularly the Donor Co-Chairs and contributing countries to SLMM, should provide political, human and financial resources for expanded human rights monitoring by SLMM or another international mechanism.

89. The Governments of all United Nations Member States in which there is a significant Tamil diaspora should enter into serious dialogue with those communities in light of the findings in this report. The diaspora has a responsibility to use its considerable political and financial influence and funding to promote and to insist upon respect for human rights.

X. Comments from the Government

n/a

Special report of the Representative of the Secretary-General on the human rights of internally displaced persons

A Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons Walter Kälin 27 February to 5 March 2005 (Sri Lanka and Thailand)

Recommendations for future actions

Throughout his mission most interlocutors responded positively to the points raised by the Representative. There was a positive response concerning the need for a human rights based approach in developing and implementing a response to natural disasters, in particular following the immediate emergency relief phase. It was recognized that there was an inherent risk that the response would be inadequate if the human rights dimension were neglected, although words of caution were expressed on the need to strike a balance in the immediate emergency phase between championing human rights and reaching as many people as possible. There was wide agreement that while a human rights focus had been largely absent in the initial phase of the response to the 26 December tsunamis, now that the immediate emergency phase was over, it was important to include human rights in the next phases. The Representative noted that experience shows that the longer displacement caused by natural disasters lasts, the greater the risk of discrimination and of violations of economic, social and cultural rights, and also of some civil and political rights. Such violations are often not intended but they result from inappropriate policies, and therefore could be easily avoided if relevant human rights guarantees were to be taken into account from the beginning. The Representative stressed that for these reasons there was a need for all involved actors to be more proactive with regard to the protection of IDPs in the next phases of the response.

Protection of internally displaced persons in situations of natural disaster

He recommended that national Governments, when developing and implementing programs of reconstruction and reintegration for internally displaced persons, aim at finding equitable solutions for them in accordance with the human rights requirements that they have undertaken upon ratifying international human rights treaties and in doing so, take into account the Guiding Principles on Internal Displacement. He also urged the UN agencies to better integrate a rights based approach in their programming and implementation of the projects listed in the Flash Appeal and to include specific human rights projects, e.g. as regards the protection of property, the rights of women and children or the protection of minorities and indigenous peoples.

In all cases he strongly recommended a systematic consultation and inclusion of IDPs in decisions that affected their current and future situations. With a view to avoiding future conflicts, he furthermore reminded the donors of their particular responsibility to ensure that the people displaced due to prior existing conflict were not discriminated against in comparison to the tsunami displaced persons, as well as to avoid assistance to those displaced by the tsunami that would reinforce pre-existing inequalities between different ethnic, religious or social groups, or on grounds of gender.

He encouraged National Human Rights Institutions to monitor the situation of internally displaced persons, in particular to identify patterns of violations or systemic problems with a view to enabling Governments and agencies to address them at an early stage. He welcomed the fact that the representatives of the National Human Rights Institutions of the affected countries (India, Maldives, Sri Lanka, Indonesia and Thailand) were willing to play a significant role in the next phase of the response, in particular through monitoring the human rights situation of the displaced and agreed to work on developing a common methodology for this role with regard to internally displaced persons in the context of natural disasters based on the Guiding Principles on Internal Displacement.

He furthermore encouraged the Office of the High Commissioner for Human Rights (OHCHR) to become more involved now that the emergency phase was over, in particular in supporting the National Human Rights Institutions in their monitoring role and advising the relevant actors.

While stressing that it was obviously the national Governments which had the primary duty and responsibility to ensure the protection of IDPs, the Representative suggested that the international actors involved in the response could also find useful guidance in the Guiding Principles. In this regard, the Representative recommended that OHCHR and the Office for the Coordination of Humanitarian Affairs (OCHA), in consultation with relevant partners, should jointly develop guidelines on human rights for humanitarian and human rights actors in situations of natural disasters, in particular with regard to internally displaced persons, which could provide practical operational guidance to IASC (Inter-Agency Standing Committee) members on the ground.

SUDAN

Introduction

During the period under review, the following special procedures visited the Sudan:

- Independent Expert on the situation of human rights in the Sudan visited the country from 15 to 22 October 2005 (please refer to document E/CN.4/2006/111).
- Representative of the Secretary-General on internally displaced persons (please refer to document E/CN.4/2006/71/Add.6).

I. Institutional and legal framework for the promotion and protection of human rights

Independent Expert on the situation of human rights in the Sudan (E/CN.4/2006/111, para. 81 (a), (b))

(a) To the parties to the conflict:

- All parties to the conflict should cease all hostilities and sit at the negotiation table. Furthermore, all parties should respect international humanitarian law and human rights law, in particular with regard to the protection of civilians and the recruitment and use of child soldiers;
- All parties to the conflict should strengthen their cooperation with the International Criminal Court and ensure that in any peace agreement there is no amnesty for persons who committed war crimes and crimes against humanity.

(b) To the Government of National Unity:

- Comprehensive law reform in consultation with civil society should be a priority to ensure conformity with the Interim National Constitution and international human rights. The immediate focus should be on legislation regulating the police, the armed forces, the press, NGOs and the criminal law;
- Institutional and legislative reform of National Security should be undertaken immediately to ensure that its functions are consistent with the Interim National Constitution. In particular, broad powers of arrest and detention should be repealed (articles 31 and 33 of the National Security Forces Act) and judicial oversight mechanisms established;
- The institutions provided under the Comprehensive Peace Agreement and the new Interim National Constitution should be established without delay. This includes national institutions crucial for the protection and promotion of human rights such as the Constitutional Court and a National Human Rights Commission in accordance with the Paris Principles. These institutions should be established in accordance with the provisions of the INC and the CPA and wide consultation with the relevant sections of society should be undertaken prior to their establishment. The independence of the Human Rights Commission must be guaranteed;
- A comprehensive plan with time lines should be established to fulfil the Government's obligation to disarm the Janjaweed. This should include disarmament of all irregular groups not formally within the military. Efforts should be made to remove militias integrated into Joint Integrated Units from areas of return;
- The GNU should ensure that law enforcement officials have the necessary training, resources and logistics to fulfill their functions in a manner consistent with international law enforcement and human rights standards;
- All reports of human rights violations should be investigated and the perpetrators brought to justice without undue delay. The GNU should publicly commit itself to bringing to justice perpetrators of human rights violations, including gender-based violence and torture, and to ending impunity;
- The action plan to eliminate gender-based violence in Darfur should be implemented according to its time frames;

- The Government should encourage and facilitate larger participation by women in the institutions responsible for the implementation of the CPA;
- Urban rezoning that results in relocations should occur in a manner that respects the dignity and rights of the affected communities. Procedural and legal safeguards including consultations, adequate notice to residents and compensation should be established. Relocation sites must be fit for human habitation. The GNU should continue to cooperate with its humanitarian partners in the design and implementation of planning and development of poor areas;
- In accordance with its agreement with the GNU, UNMIS should be given full, unfettered and unannounced access to all places of detention in the Sudan, including those operated by National Security and Military Intelligence. The policy should be unequivocally communicated to the authorities who implement it;
- To demonstrate its commitment to human rights, the GNU should ratify the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Rome Statute of the International Criminal Court;
- Clear mechanisms for reparation and reconciliation should be adopted by the Government in consultation with victims and civil society in order to respect the full human dignity of the victims. The implementation should be monitored closely by the United Nations and civil society.

Representative of the Secretary-General on internally displaced persons (E/CN.4/2006/71/Add.6, paras. 60, 65, 67, 75 (a); 79)

60. The Representative recommends that the Government of the Sudan and the Government of Southern Sudan develop and implement a strategy, in accordance with the Guiding Principles on Internal Displacement (the Guiding Principles), which addresses the three elements set out above. He also calls on the international community to assist the authorities in their efforts.

65. The Representative recommends that the competent Sudanese authorities contribute to finding durable solutions for IDPs, inter alia, by continuing its programme of offering plots of land to IDPs on a voluntary basis. To this end, the authorities should design effective, rights-based policies and integration programmes for IDPs wishing to remain in the north, and should collect consistent and reliable information through representative consultations with IDPs themselves, about their intentions to return or integrate locally. He recommends that IDPs wishing to receive a plot of land should be provided with the necessary documents and with accessible and complete information about administrative procedures, which should be transparent and accountable in accordance with the law. The Representative encourages the authorities to engage in regular dialogue and close cooperation with the international community concerning these issues.

67. The Representative urges the Sudanese authorities, in accordance with Guiding Principles 5 and 6, to take all necessary steps to avoid the forced displacement of persons by thoroughly addressing its root causes. Based on the encouraging example of the Comprehensive Peace Agreement, he urges the Government of National Unity to seize the opportunity, with the support of the international community, to put an end to the conflict in Darfur.

75. The Representative:

(a) Calls upon all Sudanese authorities and political actors to refrain from promoting premature returns to areas where the necessary structures to absorb large numbers of returnees are not in place, and provide those considering return with comprehensive, updated and relevant information about scarcities and difficulties awaiting them;

79. The Representative recommends strengthening of existing mechanisms and creating new mechanisms for the settlement of disputes, including disputes about the use of land and property in particular in urban and semi-urban areas. It is important that these mechanisms be non-discriminatory,

consistent with international human rights norms, transparent and accountable and that unrestricted access by members of particularly vulnerable groups is ensured.

II. Non-discrimination and equality before the law

Representative of the Secretary-General on internally displaced persons (E/CN.4/2006/71/Add.6, paras. 81-83)

81. The Representative urges all relevant actors to ensure that IDPs and returnees without the necessary documentation are registered and issued relevant documents at low or no cost. He urges the Government of Southern Sudan to ensure recognition of all official documents issued in the north.

82. Although many host communities display impressively welcoming and accommodating attitudes to returnees, the Representative was informed of some instances of discrimination on the basis of gender, ethnic origin, language and displacement. Consultations with community representatives indicated that increasing returns and the ensuing competition over scarce resources may aggravate discrimination and ethnic tensions.

83. The Representative recommends that all actors involved closely monitor and investigate reports of discrimination and design humanitarian and recovery activities in a way which facilitates the non-discriminatory access of all beneficiaries, and avoids creating tensions between different categories of IDPs and returnees or communities. The political participation of women, representatives of all ethnic groups, and returnees must be ensured, and reconciliation programmes should be developed for areas affected by ethnic tensions.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

Independent Expert on the situation of human rights in the Sudan (E/CN.4/2006/111, para. 81 (b), (d))

(b) To the Government of National Unity:

- The GNU should ensure that law enforcement officials have the necessary training, resources and logistics to fulfill their functions in a manner consistent with international law enforcement and human rights standards;
- All reports of human rights violations should be investigated and the perpetrators brought to justice without undue delay. The GNU should publicly commit itself to bringing to justice perpetrators of human rights violations, including gender-based violence and torture, and to ending impunity;
- The action plan to eliminate gender-based violence in Darfur should be implemented according to its time frames;
- The Government should encourage and facilitate larger participation by women in the institutions responsible for the implementation of the CPA;
- Urban rezoning that results in relocations should occur in a manner that respects the dignity and rights of the affected communities. Procedural and legal safeguards including consultations, adequate notice to residents and compensation should be established. Relocation sites must be fit for human habitation. The GNU should continue to cooperate with its humanitarian partners in the design and implementation of planning and development of poor areas;
- In accordance with its agreement with the GNU, UNMIS should be given full, unfettered and unannounced access to all places of detention in the Sudan, including those operated by National Security and Military Intelligence. The policy should be unequivocally communicated to the authorities who implement it;
- To demonstrate its commitment to human rights, the GNU should ratify the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Rome Statute of the International Criminal Court;

- Clear mechanisms for reparation and reconciliation should be adopted by the Government in consultation with victims and civil society in order to respect the full human dignity of the victims. The implementation should be monitored closely by the United Nations and civil society.

(d) To the SLA and JEM and other rebel factions:

- They should take every appropriate measure to prevent and punish human rights abuses and violations of international humanitarian law by rebel commanders and combatants, including abductions and attacks on civilians and aid workers, AMIS non-combatants, and humanitarian convoys. They should stop obstructing the freedom of movement of civilians.

IV. Administration of justice and the rule of law

Independent Expert on the situation of human rights in the Sudan (E/CN.4/2006/111, para 81 (a), (c), (d))

(a) To the parties to the conflict:

- All parties to the conflict should strengthen their cooperation with the International Criminal Court and ensure that in any peace agreement there is no amnesty for persons who committed war crimes and crimes against humanity.

(c) To the Government of National Unity:

- All reports of human rights violations should be investigated and the perpetrators brought to justice without undue delay. The GNU should publicly commit itself to bringing to justice perpetrators of human rights violations, including gender-based violence and torture, and to ending impunity;

(d) To the SLA and JEM and other rebel factions:

- They should take every appropriate measure to prevent and punish human rights abuses and violations of international humanitarian law by rebel commanders and combatants, including abductions and attacks on civilians and aid workers, AMIS non-combatants, and humanitarian convoys. They should stop obstructing the freedom of movement of civilians.

Representative of the Secretary-General on internally displaced persons (E/CN.4/2006/71/Add.6, para. 71 (a), (b))

71. The Representative:

(a) Urges the authorities to grant unrestricted access to international actors carrying out monitoring and protection activities and remove bureaucratic hurdles to their deployment and operation. He also recommends that they enhance their own protection capacities by strengthening law enforcement agencies such as the police and the judiciary in all parts of Southern Sudan, and calls upon all actors to invest heavily in the capacity-building and strengthening of national and local authorities enforcing the law, as well as not tolerating impunity;

(b) Urges the Government of Southern Sudan and the Sudan People's Liberation Army/Movement to continue to make every effort to integrate militias into the Joint Integrated Units or to disarm as well as relocate them from areas of return, and demilitarize communities by separating military units from civilian settlements, by demobilizing armed elements and by returning civilian infrastructure such as school buildings currently occupied by armed forces to their original purpose;

V. Fundamental freedoms

n/a

VI. Economic and social rights

Representative of the Secretary-General on internally displaced persons (E/CN.4/2006/71/Add.6, paras. 76-78, 79)

76. With local infrastructure mostly destroyed, State structures still largely absent, non-food items chronically underfunded, and skills and basic resources scarce, the ability of returnee communities to sustain themselves in the near future, instead of remaining dependent on the humanitarian assistance provided by the authorities or the international community, is impaired. Given the widespread absence or insufficient availability of water, primary health care and education in most areas of return, there is an urgent need for creating conditions for sustainable return, mainly in the areas of security, health and education, food and water security, land and property issues and documentation.

77. The Representative:

(a) Recommends that all relevant actors closely coordinate and combine humanitarian assistance for returnees with recovery and development efforts at the earliest stage of planning instead of planning in successive phases, as envisaged by the United Nations Country Team 2006 Workplan, especially in sectors such as water and education. Fast recovery programmes, including the provision of non-food items including seeds, tools, fishing nets and basic building materials with an immediate impact on the ground need to be interlinked with long-term development planning;

(b) Recommends that all actors find flexible and creative community-based solutions for providing basic infrastructure and health and education services in order to bridge the period until full services can be installed everywhere. In particular, the speedy provision of communities with basic building and stationery material, together with the encouragement of educated community members and returnees to teach youth even in the absence of an official qualification, will diminish the risk of a prolonged interruption of basic education;

(c) Urges the Government of Southern Sudan to support community-based recovery and development efforts by publicly signalling encouragement, by removing or refraining from creating bureaucratic obstacles and by making sufficient budgetary allocations.

78. With return, issues concerning the distribution of land have arisen and will continue to arise, and may lead to tensions between and within communities, particularly in and around urban and semi-urban areas.

79. The Representative recommends strengthening of existing mechanisms and creating new mechanisms for the settlement of disputes, including disputes about the use of land and property in particular in urban and semi-urban areas. It is important that these mechanisms be non-discriminatory, consistent with international human rights norms, transparent and accountable and that unrestricted access by members of particularly vulnerable groups is ensured.

VII. Cultural rights

n/a

VIII. Situation of specific groups

Women

Independent Expert on the situation of human rights in the Sudan (E/CN.4/2006/111, para. 81 (d))

(d) To the Government of National Unity:

- The action plan to eliminate gender-based violence in Darfur should be implemented according to its time frames;
- The Government should encourage and facilitate larger participation by women in the institutions responsible for the implementation of the CPA;

- To demonstrate its commitment to human rights, the GNU should ratify the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Rome Statute of the International Criminal Court;

Representative of the Secretary-General on internally displaced persons (E/CN.4/2006/71/Add.6, para. 73 (c))

73. The Representative recommends that:

(c) All relevant actors pay particular attention to the specific protection needs of women and vulnerable groups such as children and female-headed households;

IDPs

Representative of the Secretary-General on internally displaced persons (E/CN.4/2006/71/Add.6, paras. 64, 67, 69; 75 (a), (b); 79-81)

64. The Representative urges the Government of the Sudan and the Governor of Khartoum State not to expose IDPs to living conditions which fall short of international human rights standards and may induce them to return prematurely and involuntarily to the south, for example by destroying settlements without providing IDPs with viable alternatives, including a sufficient supply of clean drinking water, as well as access to economic opportunities, health and education.

67. The Representative urges the Sudanese authorities, in accordance with Guiding Principles 5 and 6, to take all necessary steps to avoid the forced displacement of persons by thoroughly addressing its root causes. Based on the encouraging example of the Comprehensive Peace Agreement, he urges the Government of National Unity to seize the opportunity, with the support of the international community, to put an end to the conflict in Darfur.

69. The Representative urges the international community to immediately implement existing plans to erect way stations along major return routes as well as any other planned measures to assist spontaneous returns. He recommends that donors release the necessary funds without delay and in a flexible manner.

75. The Representative:

(a) Calls upon all Sudanese authorities and political actors to refrain from promoting premature returns to areas where the necessary structures to absorb large numbers of returnees are not in place, and provide those considering return with comprehensive, updated and relevant information about scarcities and difficulties awaiting them;

(b) Recommends that the international community continue, for the time being, the policy of not encouraging returns while providing spontaneous returns with humanitarian assistance and protection. Regarding assisted returns, he recommends that the international community proceed cautiously and limit assisted returns to areas where conditions for safe and sustainable return are met in accordance with human rights requirements as laid out in the Guiding Principles.

79. The Representative recommends strengthening of existing mechanisms and creating new mechanisms for the settlement of disputes, including disputes about the use of land and property in particular in urban and semi-urban areas. It is important that these mechanisms be non-discriminatory, consistent with international human rights norms, transparent and accountable and that unrestricted access by members of particularly vulnerable groups is ensured.

80. IDPs often do not possess required documents, such as identity cards and other certificates, which may hamper their access to public institutions and services.

81. The Representative urges all relevant actors to ensure that IDPs and returnees without the necessary documentation are registered and issued relevant documents at low or no cost. He urges the Government of Southern Sudan to ensure recognition of all official documents issued in the north.

IX. The right to development and international cooperation

Independent Expert on the situation of human rights in the Sudan (E/CN.4/2006/111, para 81 (c))

(c) To the international community:

- In view of continuing violence around IDP camps in Darfur, AMIS and Member States should increase their efforts to ensure an AMIS civilian police presence in all camps and returnee villages;
- Member States and the AU should cooperate to provide AMIS with the necessary financial, logistical, communications and transport support to implement their protection mandate;
- The pledges made at the Oslo Conference and other bilateral agreements should be honoured;
- Technical and financial support should continue to the GNU to implement the CPA. In particular, appropriate resources should be made available for the process of law reform and harmonization of national legislation with the Interim National Constitution;
- The international community and the United Nations should help the GNU to implement comprehensive disarmament, demobilization and reintegration of the armed groups, including the Government-backed militias;
- The international community should support the people of the Sudan to overcome their suffering after more than two decades of war and destruction in order to facilitate the creation of a non-violent society that respects human dignity.

Representative of the Secretary-General on internally displaced persons (E/CN.4/2006/71/Add.6, paras. 62; 71 (a), (c); 75 (b); 77 (a); 84-85)

62. The Representative recommends that the Humanitarian Aid Commission and the Sudan Relief and Rehabilitation Commission, as well as the international community, improve the collection, exchange and management of information about available options for IDPs and conditions at places of destination, inter alia, by drawing on information which is already being gathered locally, and improve channels for the distribution of this information to IDPs and among agencies in headquarters for their planning processes. To ensure the participation of IDPs and affected communities themselves in the planning or return activities, consultative mechanisms should be created.

71. The Representative:

(a) Urges the authorities to grant unrestricted access to international actors carrying out monitoring and protection activities and remove bureaucratic hurdles to their deployment and operation. He also recommends that they enhance their own protection capacities by strengthening law enforcement agencies such as the police and the judiciary in all parts of Southern Sudan, and calls upon all actors to invest heavily in the capacity-building and strengthening of national and local authorities enforcing the law, as well as not tolerating impunity;

(c) Recommends that the international community continue mine clearance activities in return areas and along major transit roads thereto as a matter of priority, and calls upon all relevant authorities to increase their efforts towards improved cooperation.

73. The Representative recommends that:

(a) The international community and NGOs strengthen and expand their presence in all parts of Southern Sudan, to systematically monitor the human rights of returnees and put in place a comprehensive protection system to prevent and remedy violations of the rights of IDPs and returnees, including through speedy interventions with relevant actors when needed;

(b) Relevant authorities, in particular the Government of Southern Sudan, undertake all necessary efforts to enhance their own protection capacities by strengthening, with the support of the international community, law enforcement agencies such as the police and the judiciary in all parts of Southern Sudan;

(c) All relevant actors pay particular attention to the specific protection needs of women and vulnerable groups such as children and female-headed households;

(d) All actors involved, including civil society, disseminate information about and raise awareness of the human rights of IDPs and returnees, as provided by international treaties ratified by the Sudan and restated in the Guiding Principles.

75. The Representative:

(b) Recommends that the international community continue, for the time being, the policy of not encouraging returns while providing spontaneous returns with humanitarian assistance and protection. Regarding assisted returns, he recommends that the international community proceed cautiously and limit assisted returns to areas where conditions for safe and sustainable return are met in accordance with human rights requirements as laid out in the Guiding Principles.

77. The Representative:

(a) Recommends that all relevant actors closely coordinate and combine humanitarian assistance for returnees with recovery and development efforts at the earliest stage of planning instead of planning in successive phases, as envisaged by the United Nations Country Team 2006 Workplan, especially in sectors such as water and education. Fast recovery programmes, including the provision of non-food items including seeds, tools, fishing nets and basic building materials with an immediate impact on the ground need to be interlinked with long-term development planning;

84. The Representative welcomed the current and planned protection activities by United Nations agencies as well as United Nations Mission in the Sudan efforts to address protection and return/reintegration and recovery issues through designated departments building their capacity.

85. He recommends that, in order to better address the protection gap and the challenges to sustainable return described above, responsibility and accountability in these sectors need to be strengthened and a collaborative and coordinated approach by the relevant agencies and actors needs to be ensured. He urges international actors to mainstream the human rights of IDPs and returnees into their operations and, to the same end, increase human rights training for national humanitarian, administrative and law enforcement personnel.

X. Comments from the Government³⁷

n/a

³⁷ As published as official documents of the CHR.

TAJIKISTAN

Introduction

During the period under review, the Special Rapporteur on the independence of judges and lawyers visited the country from 18 September to 1 October 2005 (please refer to document E/CN.4/2006/52/Add.4).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.4, paras. 94-96)

94. National institutions and mechanisms for the protection of human rights must be strengthened. To that effect:

- Serious thought should be given to the establishment of an Ombudsman office in line with the Paris Principles;
- The competency of the Constitutional Court to consider individual complaints should be enshrined in the Constitution. Furthermore, the individual complaints procedures should be extended to all violations of constitutional rights by acts of public authority, including laws, by-laws, administrative decisions of authorities and judicial decisions;
- An effective structure for the provision of free legal assistance should be elaborated by the State, which would also provide for prompt payment to lawyers for such services.

95. The Special Rapporteur holds the view that more efforts have to be made in the area of training, continuing legal education and the availability of legal information material. In this regard, he recommends that:

- Training on international standards, in particular related to the principles of fair trial, should be made mandatory prior to assuming duties as a judge;
- Serious thought should be given to the idea of creating a single academy for all legal professions;
- Legislation, including laws and any kind of by-laws, as well as judicial decisions should be made easily accessible;
- The publication of a newsletter should be supported, in which all legal professions can express their opinions about legal and judicial reform needs and processes;
- Officials in various ministries, in particular the Ministry of Justice and the Ministry for Internal Affairs, should be trained on international standards, in particular those related to the principle of fair trial.

96. While acknowledging that there are no simple solutions to the problem of corruption, the Special Rapporteur encourages Tajikistan:

- To entrust the overall responsibility for the fight against corruption to an independent body. The Council of Justice, once strengthened as suggested above, could be considered a suitable body for this task;
- To ensure that any acts of corruption are duly sanctioned as required by law.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.4, paras. 89-93)

89. In order to assist Tajikistan to pursue and accelerate efforts in the judicial reform process leading to a fully independent judiciary in the country, the Special Rapporteur proposes the following recommendations.

90. Concentrated efforts need to be made to bring the national legal system in compliance with international standards governing the independence of the judiciary. The Special Rapporteur therefore encourages the Government to effectively pursue work on the amendments to the procedural codes and the development of an administrative codex. However, most urgently, amendments should be introduced to the newly adopted Constitutional Law on the Prosecutor's Office and the Criminal Procedural Code.

91. The following areas should be given priority:

- The powers of the Prosecutor's Office must be brought into compliance with international standards in order to strengthen the independence of the courts and to achieve de jure and de facto equality of arms between the parties in judicial proceedings. This implies, most importantly, to transfer power to issue arrest and search warrants to the courts, to guarantee independent legal counsel from the moment of arrest both de jure and de facto, and to grant unhindered access of the defence counsel to the files of the case and the possibility of the defence counsel to effectively present evidence at the trial. Reforms are also needed to reduce the period of prolonged pretrial detention that is currently determined by the Prosecutor's Office and to ensure judicial review of the determination of continued pretrial detention. Thought should also be given to the elaboration of a witness protection scheme;
- Adequate legal amendments should be introduced to ensure that confessions and other evidence obtained through torture or cruel, inhuman or degrading treatment or duress should under no circumstances be admissible in trials. The Special Rapporteur encourages the introduction of the principle of direct evidence against the background of today's frequent use of confessions extorted by illegal means during police custody. Moreover, a provision should be introduced that renunciation of the right to legal assistance by an arrested person requires the presence of an independent counsel who explains to him or her the consequences of such action. Guarantees providing for the presumption of innocence need to be strengthened, which includes the banning of metal cages from courtrooms;
- Tajikistan urgently needs to develop a juvenile justice system that complies to the relevant provisions of the Convention on the Rights of the Child, as well as of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines);
- Military courts should not have jurisdiction over cases other than those related to military crimes, nor should they be competent to conduct proceedings in which one of the parties is a civilian.

92. In order to strengthen the institutional structures and mechanisms guaranteeing the independence of the judiciary, the Special Rapporteur recommends:

- To strengthen the independence of the Council of Justice by, inter alia, increasing the number of well-trained judges in its composition;
- To entrust the judiciary with the administration of its own budget;
- To conduct objectively assessed written examinations as part of the selection procedure leading to the recommendation of judges;
- To progressively extend the tenure of judges;
- To better support judges in terms of office equipment and relevant information materials;
- To review judges' salaries for their progressive increase.

93. In order to address the problem of the weak role of lawyers, the Special Rapporteur suggests:

- The establishment of a single, self-governed body with compulsory membership, which would administer issues related to the bar such as access to the profession, removal from the

profession, disciplinary measures, respect for ethical rules and continuing legal education. This body should be independent from the executive branch;

- A reform of examination procedures granting access to the lawyer’s profession. Thought should be given to the introduction of a written examination in order to ensure objectivity, and of a right for candidates to appeal examination results;
- The introduction of a mandatory training period prior to being admitted to the profession, in order to strengthen the quality of lawyers’ services.

V. Fundamental freedoms

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.4, para. 88)

88. The Special Rapporteur trusts that Tajikistan should pursue its efforts towards democratization and improved governance and that it should, more especially, draw on its achievements reached in the peace agreement and rigorously allow for freedom of expression and opinion. The Special Rapporteur trusts that a sustained support by the international community is still important for the country to achieve these aims.

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

Special Rapporteur on the independence of judges and lawyers (E/CN.4/2006/52/Add.4, para. 97)

97. Finally, the Special Rapporteur, while acknowledging progress already made, emphasizes the urgent need to speed up the reform process in the judicial sector. To that end, he calls on the international community, in particular the United Nations, to support Tajikistan in the important work that lies ahead.

X. Comments from the Government³⁸

n/a

³⁸ As published as official documents of the CHR.

THAILAND

Introduction

During the period under review, the Representative of the Secretary-General on the human rights of internally displaced persons visited the country from 2 to 5 March 2005.

Special report of the Representative of the Secretary-General on the human rights of internally displaced persons

A Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons Walter Kälin 27 February to 5 March 2005 (Sri Lanka and Thailand)

Recommendations for future actions

Throughout his mission most interlocutors responded positively to the points raised by the Representative. There was a positive response concerning the need for a human rights based approach in developing and implementing a response to natural disasters, in particular following the immediate emergency relief phase. It was recognized that there was an inherent risk that the response would be inadequate if the human rights dimension were neglected, although words of caution were expressed on the need to strike a balance in the immediate emergency phase between championing human rights and reaching as many people as possible. There was wide agreement that while a human rights focus had been largely absent in the initial phase of the response to the 26 December tsunamis, now that the immediate emergency phase was over, it was important to include human rights in the next phases. The Representative noted that experience shows that the longer displacement caused by natural disasters lasts, the greater the risk of discrimination and of violations of economic, social and cultural rights, and also of some civil and political rights. Such violations are often not intended but they result from inappropriate policies, and therefore could be easily avoided if relevant human rights guarantees were to be taken into account from the beginning. The Representative stressed that for these reasons there was a need for all involved actors to be more proactive with regard to the protection of IDPs in the next phases of the response.

Protection of internally displaced persons in situations of natural disaster

He recommended that national Governments, when developing and implementing programs of reconstruction and reintegration for internally displaced persons, aim at finding equitable solutions for them in accordance with the human rights requirements that they have undertaken upon ratifying international human rights treaties and in doing so, take into account the Guiding Principles on Internal Displacement. He also urged the UN agencies to better integrate a rights based approach in their programming and implementation of the projects listed in the Flash Appeal and to include specific human rights projects, e.g. as regards the protection of property, the rights of women and children or the protection of minorities and indigenous peoples.

In all cases he strongly recommended a systematic consultation and inclusion of IDPs in decisions that affected their current and future situations. With a view to avoiding future conflicts, he furthermore reminded the donors of their particular responsibility to ensure that the people displaced due to prior existing conflict were not discriminated against in comparison to the tsunami displaced persons, as well as to avoid assistance to those displaced by the tsunami that would reinforce pre-existing inequalities between different ethnic, religious or social groups, or on grounds of gender.

He encouraged National Human Rights Institutions to monitor the situation of internally displaced persons, in particular to identify patterns of violations or systemic problems with a view to enabling Governments and agencies to address them at an early stage. He welcomed the fact that the representatives of the National Human Rights Institutions of the affected countries (India, Maldives, Sri Lanka, Indonesia and Thailand) were willing to play a significant role in the next phase of the response, in particular through

monitoring the human rights situation of the displaced and agreed to work on developing a common methodology for this role with regard to internally displaced persons in the context of natural disasters based on the Guiding Principles on Internal Displacement.

He furthermore encouraged the Office of the High Commissioner for Human Rights (OHCHR) to become more involved now that the emergency phase was over, in particular in supporting the National Human Rights Institutions in their monitoring role and advising the relevant actors.

While stressing that it was obviously the national Governments which had the primary duty and responsibility to ensure the protection of IDPs, the Representative suggested that the international actors involved in the response could also find useful guidance in the Guiding Principles. In this regard, the Representative recommended that OHCHR and the Office for the Coordination of Humanitarian Affairs (OCHA), in consultation with relevant partners, should jointly develop guidelines on human rights for humanitarian and human rights actors in situations of natural disasters, in particular with regard to internally displaced persons, which could provide practical operational guidance to IASC (Inter-Agency Standing Committee) members on the ground.

TURKEY

Introduction

During the period under review, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism visited the country from 16 to 23 February 2006 (please refer to document E/CN.4/2006/98/Add.2)

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2006/98/Add.2, para. 15 (a)-(n))

15. The Special Rapporteur has issued the following preliminary recommendations addressed to the Government of Turkey:

Definition of terrorism

- (a) The definition of terrorist crimes should be brought in line with international norms and standards, notably the principle of legality as required by ICCPR, article 15, including defining more precisely what crimes constitute acts of terrorism and confining them to acts of deadly or otherwise grave violence against persons or the taking of hostages (for more detailed information on the definition of terrorism see also E/CN.4/2006/98, paras. 26-50);
- (b) The need for a separate definition of “terrorism”, beyond acts that in themselves constitute terrorist crimes, should be reconsidered;
- (c) International conventions for the elimination of terrorism should be carefully taken into account when drafting new legislation against terrorism;
- (d) With regard to possible legislative amendments, the Special Rapporteur offers to engage in further dialogue before and during discussions in the Parliament. He emphasizes that in a democracy draft legislation touching upon questions of fundamental rights and freedoms should be discussed openly and transparently and that civil society should be fully involved in these debates at all stages;
- (e) If a continued need exists to classify some organizations linked to terrorist crimes as terrorist organizations, with adverse legal consequences, the procedure for such designation should be transparent and objective, and organizations should be able to appeal to an independent judicial body;
- (f) The Special Rapporteur is of the opinion that only full definitional clarity with regard to what acts constitute terrorist crimes can ensure that the crimes of membership, aiding and abetting and what certain authorities referred to as “crimes of opinion” are not abused for other purposes than fighting terrorism;

Investigation of allegations of torture and extrajudicial killings and the fight against impunity

- (g) The Special Rapporteur recommends the creation of an independent and impartial investigation mechanism with the power promptly to investigate allegations of torture or other ill-treatment. It is crucial that such a mechanism be located outside the institution that is alleged to have committed the acts of torture under investigation;
- (h) The Special Rapporteur recommends that a rapid procedure be established through which persons convicted of or charged with terrorist crimes can obtain a retrial, an amnesty or a pardon, in cases where the evidence used against them does not meet the current standard of zero tolerance in respect of torture;
- (i) The Special Rapporteur trusts that impartial, thorough, transparent and prompt investigations and fair trials are carried out in relation to the incidents in Semdinli and Kiziltepe. The objectivity, impartiality and thoroughness in conducting such investigations are necessary prerequisites for the public to enjoy confidence in such proceedings;
- (j) He encourages Turkey to ratify the Optional Protocol to the Convention against Torture. In order to combat any remnants of impunity and to strengthen the international protection of human rights he also recommends Turkey to ratify the Rome Statute of the International Criminal Court;

Victims of terrorism and prevention of terrorism

(k) Whereas the adoption of the Act on Compensation of Victims of Terrorism is a very laudable step in the right direction, the Special Rapporteur would like to remind the Government that it is confined to material compensation and falls short of full restitution and rehabilitation. Hence, measures should be taken to address rehabilitative and other needs of victims of violence related to terrorism and counter-terrorism;

(l) One means of providing restitution is through ensuring a safe environment conducive to enable persons who so wish to return to their previous villages. In this context, the Special Rapporteur recommends that the process of phasing out the village guards be accelerated and clearly articulated;

(m) The Special Rapporteur is of the opinion that, in the long run, full respect for economic, social and cultural rights helps to eliminate the risk that individuals make the morally inexcusable decision to resort to acts of terrorism;

(n) In order for all inhabitants of Turkey to fully enjoy their human rights without discrimination and to feel fully included in society, persons belonging to different cultural and linguistic groups, including the Kurdish population, should enjoy protection of their cultural, linguistic and religious rights, including the possibility to freely use their language in public and private. In particular, effective access to education for the Kurdish population should be enhanced through, at least, initial immersion in their mother tongue;

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2006/98/Add.2, para. 15 (g)-(j))

Investigation of allegations of torture and extrajudicial killings and the fight against impunity

(g) The Special Rapporteur recommends the creation of an independent and impartial investigation mechanism with the power promptly to investigate allegations of torture or other ill-treatment. It is crucial that such a mechanism be located outside the institution that is alleged to have committed the acts of torture under investigation;

(h) The Special Rapporteur recommends that a rapid procedure be established through which persons convicted of or charged with terrorist crimes can obtain a retrial, an amnesty or a pardon, in cases where the evidence used against them does not meet the current standard of zero tolerance in respect of torture;

(i) The Special Rapporteur trusts that impartial, thorough, transparent and prompt investigations and fair trials are carried out in relation to the incidents in Semdinli and Kiziltepe. The objectivity, impartiality and thoroughness in conducting such investigations are necessary prerequisites for the public to enjoy confidence in such proceedings;

(j) He encourages Turkey to ratify the Optional Protocol to the Convention against Torture. In order to combat any remnants of impunity and to strengthen the international protection of human rights he also recommends Turkey to ratify the Rome Statute of the International Criminal Court;

V. Fundamental freedoms

n/a

VI. Economic and social rights

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2006/98/Add.2, para. 15 (m))

(m) The Special Rapporteur is of the opinion that, in the long run, full respect for economic, social and cultural rights helps to eliminate the risk that individuals make the morally inexcusable decision to resort to acts of terrorism;

VII. Cultural rights

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2006/98/Add.2, para. 15 (m))

(m) The Special Rapporteur is of the opinion that, in the long run, full respect for economic, social and cultural rights helps to eliminate the risk that individuals make the morally inexcusable decision to resort to acts of terrorism;

VIII. Situation of specific groups

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2006/98/Add.2, para. 15 (n))

(n) In order for all inhabitants of Turkey to fully enjoy their human rights without discrimination and to feel fully included in society, persons belonging to different cultural and linguistic groups, including the Kurdish population, should enjoy protection of their cultural, linguistic and religious rights, including the possibility to freely use their language in public and private. In particular, effective access to education for the Kurdish population should be enhanced through, at least, initial immersion in their mother tongue;

IX. The right to development and international cooperation

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (E/CN.4/2006/98/Add.2, para. 15 (o))

International cooperation

(o) The Special Rapporteur requests relevant international organizations to provide, in a coordinated manner, assistance in the follow-up to the above recommendations.

X. Comments from the Government³⁹

n/a

³⁹ As published as official documents of the CHR.

UGANDA

Introduction

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health visited Uganda from 17 to 25 March 2005 (please refer to report E/CN.4/2006/48/Add.2)

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (E/CN.4/2006/48/Add.2, paras. 35, 41, 45-48, 59-61; 66-68; 91-93)

A. Access to health information and education

35. More can and should be done to dispel damaging myths and misinformation about neglected diseases. The Special Rapporteur recommends that the Government adopt public information campaigns targeting disadvantaged rural and urban communities, including internally displaced persons camps, which should utilize the mass media, village health teams, health professionals, church and other faith networks, schools, trade unions, and so on so as to raise awareness of neglected diseases and to promote non-discriminatory behaviour towards afflicted persons. Information should always be available in local languages.

B. Community participation

41. Community participation has a vital role to play in the struggle against neglected diseases. Vehicles for community participation, in particular Village Health Teams, are already an integral feature of Uganda's decentralized health structure. However, it is imperative that the authorities give serious attention to the urgent development of Village Health Teams. The teams must be provided with adequate resources, training and support. They should be both listened to and used strategically as delivery mechanisms in relation to neglected diseases. Also, there must be smooth and effective coordination, cooperation and collaboration between the local political structure and Health Centres I-IV.

C. Health professionals

45. In Uganda, human resources in the health sector constitute a major, urgent issue that demands a report of its own. The issue has multiple dimensions: inadequate health budget allocation that precludes the appointment of a sufficient number of health professionals; the application of a rigid ceiling on the health budget; the "skills drain" from Uganda to income-rich countries, as well as rural-to-urban migration within Uganda; poor terms and conditions; human rights training for health professionals; the corrupt practices of some health professionals; and so on. The Special Rapporteur was informed that in recent years the Ministry of Health has returned recruitment funds to the treasury. Because of space constraints, the Special Rapporteur here confines himself to only two aspects of this crucial topic.

46. First, in cooperation with development partners, the Government must urgently re-examine this issue and devise a coherent strategy, and costed plan of action, for human resources in the health sector. The maintenance of the status quo is incompatible with Uganda's right-to-health obligations.

47. Second, neglected diseases give rise to special human resource issues that require distinctive policies. Most of the disadvantaged communities afflicted by neglected diseases are located in remote rural areas far from modern amenities. When visiting health facilities in Gulu, Lira and Katakwi, the Special Rapporteur was informed that it was difficult to hire and retain health professionals in these rural districts.

48. Firm measures must be taken to break this cycle of deprivation. Two specific proposals should be given urgent consideration. First, compelling incentives should be introduced to attract health

professionals to, and retain them in, isolated disadvantaged communities. Second, on qualifying, all health professionals might be required to work for a certain period in an isolated disadvantaged community.

E. An integrated health system responsive to local priorities

59. From the perspective of the right to health, a key objective must be an *integrated* health system that is responsive to local priorities. In this context, “integrated” has two meanings. First, so far as possible, an intervention for one disease should be designed in such a way that it can also be used as a vehicle for one or more interventions in relation to one or more other diseases. Second, so far as possible, all interventions should form part of the regular health system. In no circumstances may any intervention undermine or jeopardize progress towards the long-term goal of an effective, inclusive health system of good quality for all.

60. The Ministry of Health, and other relevant actors, should urgently examine the possible alignment of various mass drug administration delivery mechanisms. Further research is urgently needed regarding the possible co-administration of some drugs, such as Albendazole, Ivermectin, Praziquantel and Azithromycin.

61. All relevant actors should urgently consider whether or not the national and international programmes in relation to HIV/AIDS, tuberculosis and malaria could also enhance interventions for other diseases that are health priorities in particular localities. At the international, national and district levels, there must be closer and more effective coordination among the various global initiatives.

F. Research and development

66. While more research and development is urgently needed in relation to neglected diseases in Uganda (and beyond), this must not obscure the fact that a number of relevant drugs and vaccines already exist but they are not reaching all those who need them. Thus, a central challenge is to enhance access to what already exists, while also engaging in research and development that will lead to more effective medical interventions.

67. The Doha Declaration confirms that the TRIPS Agreement should be implemented in a manner supportive of WTO members’ right to protect public health and promote access to medicines for all. The TRIPS Agreement contains “flexibilities” which a country may utilize to design a national patent law that protects public health. The Doha Declaration allows least developed countries not to provide patent protection for pharmaceuticals up to 2016. The Ugandan Patent Act of 1993, enacted two years before TRIPS, is not reflective of the TRIPS “flexibilities”. Thus, the legislation should be revised to take full advantage of the TRIPS “flexibilities”, as reaffirmed by the Doha Declaration.

68. The Special Rapporteur understands that the Government is establishing the Uganda National Health Research Organization to promote and strengthen national health research. He urges the Government to ensure that the Organization: engages in both classic research and development, and operational or implementation research; gives high priority to neglected diseases; advises on the most strategic use of governmental incentives to encourage research and development on neglected diseases; receives adequate national funding; and is established as a matter of priority.

H. Monitoring and accountability

91. A right-to-health approach to neglected diseases and populations requires accessible, transparent and effective human rights mechanisms of monitoring and accountability. The existing mechanisms need to be enhanced. It is recommended that, for an experimental period of three years, the Uganda Human Rights Commission establish a right-to-health unit that is responsible for monitoring those policies, programmes and projects relating to neglected diseases. For example, relying on existing data, the unit should track the incidence of neglected diseases and the initiatives taken to address them.

92. Further, the right-to-health unit should go beyond monitoring and hold all actors to account in relation to neglected diseases and the right to health. For example, adopting an evidence-based approach, the unit would endeavour to assess which initiatives are working and which are not - and if not, why not. In its monitoring and accountability functions, the unit should consider the acts and omissions of all actors bearing on neglected diseases in Uganda. Significantly, the unit should monitor and hold to account national and international actors in the public and private sectors.

93. The unit should consist of a health professional and a human rights expert. They should submit a public annual report to Parliament which would indicate where successful initiatives have led to positive health outcomes, as well as highlight where there are concerns. Whenever possible, realistic and practical recommendations should be identified for all actors. At all times, the unit's yardstick should be the national and international right-to-health standards to which the Government of Uganda has agreed to be bound.

II. Non-discrimination and equality before the law

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (E/CN.4/2006/48/Add.2, section III, paras.53-54)

D. Tackling stigmatization and discrimination

53. Wide-ranging measures are required to combat all forms of discrimination and stigma associated with neglected diseases in Uganda, including through the implementation of health-related laws and policies which confront discrimination in the public and private sectors. As referred to in section A above, public information campaigns should be developed to raise awareness of neglected diseases and to promote non-discriminatory behaviour towards afflicted persons. In addition, human rights training for health professionals should be integrated into the curricula of medical schools in Uganda.

54. The Government is encouraged to take measures to ensure that health policies and practices promote equal access to health services, and to integrate a gender perspective throughout its policies and programmes.³² The Government, development partners and other actors should support and foster vital community-based initiatives such as the Obalanga Centre.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

n/a

V. Fundamental freedoms

n/a

VI. Economic and social rights

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (E/CN.4/2006/48/Add.2, section III, paras. 35; 41; 47-48)

A. Access to health information and education

35. More can and should be done to dispel damaging myths and misinformation about neglected diseases. The Special Rapporteur recommends that the Government adopt public information campaigns targeting disadvantaged rural and urban communities, including internally displaced persons camps, which should utilize the mass media, village health teams, health professionals, church and other faith networks, schools, trade unions, and so on as to raise awareness of neglected diseases and to promote non-

discriminatory behaviour towards afflicted persons. Information should always be available in local languages.

B. Community participation

41. Community participation has a vital role to play in the struggle against neglected diseases. Vehicles for community participation, in particular Village Health Teams, are already an integral feature of Uganda's decentralized health structure. However, it is imperative that the authorities give serious attention to the urgent development of Village Health Teams. The teams must be provided with adequate resources, training and support. They should be both listened to and used strategically as delivery mechanisms in relation to neglected diseases. Also, there must be smooth and effective coordination, cooperation and collaboration between the local political structure and Health Centres I-IV.

First, in cooperation with development partners, the Government must urgently re-examine this issue and devise a coherent strategy, and costed plan of action, for human resources in the health sector. The maintenance of the status quo is incompatible with Uganda's right-to-health obligations.

C. Health professionals

47. Second, neglected diseases give rise to special human resource issues that require distinctive policies. Most of the disadvantaged communities afflicted by neglected diseases are located in remote rural areas far from modern amenities. When visiting health facilities in Gulu, Lira and Katakwi, the Special Rapporteur was informed that it was difficult to hire and retain health professionals in these rural districts.

48. Firm measures must be taken to break this cycle of deprivation. Two specific proposals should be given urgent consideration. First, compelling incentives should be introduced to attract health professionals to, and retain them in, isolated disadvantaged communities. Second, on qualifying, all health professionals might be required to work for a certain period in an isolated disadvantaged community.

VII. Cultural rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (E/CN.4/2006/48/Add.2, section III, paras. 74-77; 80-85)

G. Donors and the international community

74. A number of Uganda's development partners deserve credit for making considerable financial contributions towards the country's health sector. Also, the management of donor contributions by way of a sectorwide approach and budget support is to be warmly welcomed. However, despite existing donor support, there remains a wide gap between the cost of a national minimum health-care package in Uganda and the funds that are currently made available for this purpose. For example, according to HSSP, US\$ 28 per person per year is needed to finance Uganda's national minimum health-care package. WHO *Report of the Commission on Macroeconomics and Health* estimates that for a low-income country the minimum financing needed to cover essential health interventions is around US\$ 30 to 40 per person per year.^{xv} Yet in Uganda the public expenditure - from both the national Government and donors - is only US\$ 9 per person per year, in addition to US\$ 7 per person per year from households and employers. In short, as a United Nations report recently put it: "Uganda is a basket case in chronic underfinancing of the health sector."^{xvi} Thus, the Special Rapporteur recommends that development partners increase their sustainable and predictable contributions to the health sector in Uganda.

75. While recognizing the serious security issues, the Special Rapporteur has formed the view that most donors have paid insufficient attention to the health problems in northern Uganda, where individuals and communities are among the most vulnerable and disadvantaged on the continent.

76. The United Nations is commended for recently strengthening its engagement in the north. To give just one example, WHO has recently opened a sub-office in Gulu, and OHCHR has set up a human rights presence to undertake human rights monitoring and training, and to work on a protection strategy in cooperation with the National Human Rights Commission and the United Nations Country Team. However, on the whole, it appears to the Special Rapporteur that the United Nations was slow to recognize the severity of the humanitarian crisis in northern Uganda. For many years the acute needs of the local population did not receive the international attention and support it desperately needed. To this day, adequate and well-coordinated international assistance does not reach the people of northern Uganda. Thus, as a matter of urgency, the international community and all donors should devote more attention to, and invest more health and other resources in, northern Uganda.

77. Budget ceilings: In recent years, there has been much controversy in Uganda about macroeconomic policies, the application of inflexible ceilings to the health budget, and the absorption of foreign funds that are available to the health sector.

80. Third, development partners may not apply any pressure on the Government to impose inflexible budget ceilings that would or may have the effect of restricting the flow of available funds into the health sector.

81. “A global epidemic of global initiatives”: Uganda benefits from a large number of global initiatives for different diseases, such as the Global Alliance for Leprosy Elimination, the Global Alliance for the Elimination of Lymphatic Filariasis, and the National Onchocerciasis Control Programme. These global programmes translate into a range of national initiatives. Although these initiatives bring significant benefits, they also place a very considerable administrative burden on the Ugandan authorities. As argued elsewhere in the present report, much greater integration among interventions and initiatives is needed at the district, national and international levels, so as to make the most effective use of scarce resources (see section on “An integrated health system responsive to local priorities”). Donors and the international community have a particular responsibility to better coordinate their activities, working in close cooperation with the Ministry of Health.

82. WHO: The Special Rapporteur urges WHO to more proactively assume a coordinating role among the myriad health partners working throughout Uganda. For example, WHO could provide a regular forum for information exchange and discussion across a very wide range of health actors. WHO is also encouraged to collect more - and better quality - health information from the local level, with a view to enhancing local, national and international policy-making. Further, it is urged to invest more resources in neglected diseases and neglected populations.

83. Research and development: Donors and the international community should give a higher priority to health research and development in Uganda. They should actively seek new funding mechanisms for research and development in relation to neglected diseases. They may need to increase direct funding for public research and enhance private sector incentives, such as tax credits. Intellectual property regimes must not be allowed to constrain access to essential medicines. So far as necessary, new intellectual property frameworks for neglected diseases and essential medicines should be explored. The fruits of research and development in relation to neglected diseases must be translated into specific drugs, vaccines and diagnostics that are accessible to the afflicted populations. Donors and the international community should help Uganda enhance its economic and technological capacity so it can determine its own research and development agenda and priorities in relation to neglected diseases.

84. Pharmaceutical companies: A number of pharmaceutical companies deserve credit for initiatives that enhance access to essential medicines and medical care. However, they should be encouraged to improve their coordination amongst themselves, as well as with other actors working in the health sector.

While on mission, the Special Rapporteur was informed that the pharmaceutical companies were invisible outside the major urban areas, other than when organizing seminars to promote their products. Accordingly, they should be encouraged to regularly visit disadvantaged communities, urban and rural, including the internally displaced persons camps, to learn at first hand about the health realities of those living in poverty. Regular visits of this type should be reported to the companies' national and international headquarters with a view to informing policies and finding ways in which the companies can assist in the implementation of the right to health for all.

85. The international and regional human rights systems: Whenever possible, the international and regional human rights machinery should draw attention to the issue of neglected diseases and neglected populations. For example, when Uganda submits its periodic reports to the Committee on Economic, Social and Cultural Rights and the African Commission on Human and Peoples' Rights, among others, the Government's reports and the human rights bodies should give careful attention to the issue of neglected diseases and neglected populations.

X. Comments from the Government ⁴⁰

n/a

⁴⁰ As published as official documents of the CHR.

UNITED STATES OF AMERICA

Introduction

During the period under review, the Independent Expert on the question of human rights and extreme poverty visited the United States of America from 24 October to 4 November (please refer to document E/CN.4/2006/43/Add.1).

I. Institutional and legal framework for the promotion and protection of human rights

Independent Expert on human rights and extreme poverty (E/CN.4/2006/43/Add.1, paras. 75-77, 80, 84)

75. The independent expert summarizes his main conclusions and recommendations as follows: Extreme poverty, as defined as a composite of income poverty, human development poverty and social exclusion, is not only a problem of poor developing countries, but a phenomenon that is found in most countries in the world. But the United States is the wealthiest country on earth, and for it to have extreme poverty is a paradox.

76. There are no significant trends to indicate that extreme poverty is being reduced over time. In fact, there is qualitative and anecdotal evidence pointing to a rise in extreme poverty. The federal and local governments need to examine in depth the face of poverty in the United States, which seems largely racial and has serious gender dimensions. The institutional systems and policy environment has not been able to address these issues effectively. Inability to address these challenges, combined with a reduction in programmes such as legal aid, has meant lack of effective voice and human rights violation.

77. The groups in extreme poverty are also the most insecure and vulnerable, with limited ability to cope with natural disasters such as Hurricane Katrina.

80. It seems important that the United States adopt a comprehensive national strategy to substantially reduce poverty and eradicate extreme poverty in line with commitments made by the United States in the Copenhagen Declaration on Social Development and Programme of Action. Governments need to ensure mechanisms to monitor progress made in this regard.

84. The independent expert believes that the United States authorities, who have always upheld the principles of the Universal Declaration of Human Rights, are committed to the principles of human rights as guaranteeing freedoms in all its different forms. The rights are guaranteed in the United States Constitution and federal legislation as well as in the constitutions and legislation of the constitutive states. There is no national anti-poverty legislation in the United States, but rather, a patchwork of different laws addressing aspects of poverty in a limited manner. The TANF Cash Assistance Program is limited to five years in a lifetime and can be further reduced by the states. Medicaid does not reach everybody and excludes many groups of the working poor and immigrants. Social security for the disabled and the elderly do not reach everybody and even if it did, the levels of benefits are grossly inadequate. Legal entitlements, which were not adequately funded, were meaningless. The Federal Legal Services Corporation (FLSC) providing legal assistance to people with limited financial means has been weakened and its funding slashed, with Congress placing restrictions on FLSC, curbing its ability to advocate for the rights of the poor.

II. Non-discrimination and equality before the law

Independent Expert on human rights and extreme poverty (E/CN.4/2006/43/Add.1, para. 76)

76. There are no significant trends to indicate that extreme poverty is being reduced over time. In fact, there is qualitative and anecdotal evidence pointing to a rise in extreme poverty. The federal and local governments need to examine in depth the face of poverty in the United States, which seems largely racial and has serious gender dimensions. The institutional systems and policy environment has not been able to

address these issues effectively. Inability to address these challenges, combined with a reduction in programmes such as legal aid, has meant lack of effective voice and human rights violation.

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

n/a

V. Fundamental freedoms

Independent Expert on human rights and extreme poverty (E/CN.4/2006/43/Add.1, para. 85)

85. This policy of the United States is in direct conflict with the fundamental moral values that the United States, both its Government and people, has upheld in the name of freedom throughout its constitutional history. In view of this, the independent expert would suggest that the United States authorities and their people consider adopting the following steps which would be consistent with the foundational norms of the United States Constitution and the moral principles of democracy and freedom that their Government claim to uphold.

VI. Economic and social rights

Independent Expert on human rights and extreme poverty (E/CN.4/2006/43/Add.1, paras. 78-79, 81-82)

78. In his first report to the Commission on Human Rights, the independent expert noted that extreme poverty, as the composite of income poverty, human development poverty and social exclusion, can be defined as extreme capability deprivation. Though it may not be plausible to argue that capability deprivation is equivalent to human rights deprivation, denial of human rights can be seen to lead to conditions of extreme poverty, in which individuals suffer simultaneously from income poverty, human development poverty and social exclusion. The independent expert on the right to development had suggested planned and coordinated measures to promote a phased, progressive realization of human rights, taking into account the flexibility of social, legal and economic institutions and the availability of resources.

79. In the case of extreme poverty, there is a need for programmes with a more specific focus and time bound action: conditions of extreme poverty, as manifested in the case of the United States, cannot be left to be realized progressively or by market forces alone. Removal of extreme poverty cannot be addressed without deliberate actions and targets. If a comprehensive national programme of economic development covering all aspects of extreme poverty proves too difficult, the independent expert has recommended one set of national actions: employment generation, especially for the poorest sections. It was noted that a person living on social security may be protected from income poverty, but may not be saved from the ignominy of social exclusion that accompanies not having a job. This is important because, in most industrialized countries, unemployment is the principal cause of social exclusion.

81. Social safety nets for poor families should be provided through entitlement programmes and measures should be taken to facilitate participation in these programmes and to ensure that cumbersome enrolment procedures do not discourage people who qualify for social benefits from applying.

82. The full participation of the people living in poverty in the design, implementation, monitoring and assessment of programmes for combating poverty should be ensured. Such programmes should build on poor people's own efforts, ensuring the full participation of the people concerned and responding to their actual needs.

VII. Cultural rights

n/a

VIII. Situation of specific groups

Independent Expert on human rights and extreme poverty (E/CN.4/2006/43/Add.1, paras.)

85. This policy of the United States is in direct conflict with the fundamental moral values that the United States, both its Government and people, has upheld in the name of freedom throughout its constitutional history. In view of this, the independent expert would suggest that the United States authorities and their people consider adopting the following steps which would be consistent with the foundational norms of the United States Constitution and the moral principles of democracy and freedom that their Government claim to uphold.

86. First, the United States authorities should, in cooperation with civil society and expert organizations, identify a fraction of its population, say up to 10 per cent, as suffering from conditions of extreme poverty and most vulnerable to the challenges of modern living conditions. Such extreme poverty should be defined in terms of a combination of income poverty, human development poverty and social exclusion. The income poverty line, as it is defined today in the United States, needs careful re-examination, as has been pointed out by many national experts. Whatever may be the finally agreed income poverty line in the United States, it should be quite acceptable to consider half of that poverty line, in accordance with the current practice, as the line for extreme income poverty, with the people below that line qualifying to be included in the group of the extremely poor. To this should be added all people who are otherwise generally below the overall poverty line but who are suffering from lack of education, health, shelter and other kinds of deprivation. They would be regarded as suffering from an extreme form of human development poverty. To this should be added the marginalized, vulnerable groups of African Americans, Native Americans, Hispanics and also immigrants, especially if they are also included within the overall poverty line.

87. Once this group of people suffering from extreme poverty is identified, the United States authorities should adopt legislative provisions to accord them the legal entitlement to all the programmes that are needed and recognized in most of the existing provisions to take them out of these conditions of poverty. This legal entitlement would allow the individual members of this group of extremely poor people, or their representatives, to have recourse to the courts of law in case they are denied their entitlement.

88. The claims made by the individuals will impose an obligation on the states where these individuals reside to ensure the fulfilment of their rights, either through existing legislation or programmes or through adopting new forms of programmes and practices. The federal responsibility can be defined in terms of its binding obligation to provide the required assistance to the states if the state governments find that their existing budgetary provisions for these programmes are not adequate. There may be a mechanism to examine if the states were making their best efforts to carry out their responsibilities. But once that is established, the federal Government must be prepared to fund these programmes fully over and above what states and their existing programmes can do.

89. For this purpose, a special fund may be created by the federal Government with the sole purpose of abolishing the conditions of extreme poverty. For a \$12 trillion economy like that of the United States, this fund may not require more than a small fraction of its total national income. The federal authorities should be able to work out methods of raising this amount and fully provide for the requirements of the fund.

90. The independent expert believes that if the United States adopts such a programme for the abolition of extreme poverty, almost at par with its earlier programmes of abolishing slavery, it will set an example to the international human rights community, realizing values cherished not only by the United States itself, but by the entire civilized human community.

IX. The right to development and international cooperation

Independent Expert on human rights and extreme poverty (E/CN.4/2006/43/Add.1, para. 83)

83. The independent expert submitted this year his second report on extreme poverty and human rights (E/CN.4/2006/43) to the Commission on Human Rights. In accordance with the recommendations in that report, the independent expert suggests that the international community recognize the existence of the conditions of extreme poverty in the United States as indications of the worst form of indignity inflicted upon human beings, which should be regarded as a denial of human rights. Once it is recognized as such, it should be possible for the United States authorities to adopt programmes based on human rights principles and which would surely contribute to the eradication of the problems of extreme poverty.

X. Comments from the Government⁴¹

n/a

⁴¹ As published as official documents of the CHR.

OCCUPIED PALESTINIAN TERRITORIES

Introduction

During the period under review, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 visited the Occupied Palestinian Territories from 3 to 9 December 2005 (please refer to document E/CN.4/2006/29).

I. Institutional and legal framework for the promotion and protection of human rights

Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (E/CN.4/2006/29, paras. 53-55)

53. The Special Rapporteur is required to report on violations of human rights and international humanitarian law to the Commission on Human Rights. Implicit in his mandate is the task of alerting the Commission, and through it the international community, to a situation that may require the protection of the population concerned by the United Nations. The importance of providing protection to threatened populations was recently stressed by the General Assembly in its resolution 60/1 of 24 October 2005 on the World Summit Outcome.

54. In reporting to the Commission and appealing to the United Nations to provide protection to the Palestinian people, the Special Rapporteur is aware of the fact that the organs of the United Nations are divided over the approach to be adopted to the occupied Palestinian territory. On the one hand, the Commission, the General Assembly and ICJ are concerned about the violation of human rights and international humanitarian law in the territory, as manifested in numerous resolutions and in the 2004 advisory opinion of ICJ. On the other hand, the Security Council and the United Nations as a participant in the Quartet are engaged in a strategy of political appeasement, in which respect for human rights, international humanitarian law and the rule of law have less importance. The Security Council has yet to approve the International Court's advisory opinion and studiously avoids any reference to it. The Quartet, comprising the United Nations, the European Union, the Russian Federation and the United States of America, to which primary responsibility for dealing with the Palestinian issue has been delegated, likewise studiously avoids any reference to the advisory opinion and, while making reference to the consequences of the wall, settlements and restrictions on movement, carefully refrains from recognizing the serious violations of human rights to which Palestinians are subjected or to the de-Palestinization of Jerusalem. The main explanation for the anodyne declarations made by the Security Council and the Quartet is to be found in the refusal of the United States to accept the advisory opinion of ICJ or to acknowledge the full suffering of the Palestinian people. Another explanation is to be found in the continued adherence of the Security Council and the Quartet to the road map. The road map is a "performance-based and goal-driven road map" drawn up in 2003. Today it is hopelessly out of date. First, it is premised on the attainment of a "final and comprehensive permanent status agreement that ends the Israeli-Palestinian conflict in 2005" and such an agreement is not even in sight at the end of 2005. Secondly, it largely predates the construction of the wall, which has come to symbolize Israeli territorial expansion and oppression in the occupied Palestinian territory. Thirdly, it takes no account of the advisory opinion of ICJ, handed down in July 2004, which today constitutes the authoritative statement on the law governing the Israel-Palestine conflict and which has been recognized as such by three of the members of the Quartet. Fourthly, both Israel and the Palestinian Authority have failed to comply with the essential requirements of the road map. In these circumstances, it is suggested that there is a need for a new road map which takes account of present political realities and is anchored in respect for human rights and the rule of law in the resolution of the conflict.

55. In the prevailing circumstances the Special Rapporteur can do no more than:

- (a) Alert the Commission and the United Nations to the serious situation in the occupied Palestinian territory resulting from the continuing violation of human rights and humanitarian law;
- (b) Appeal to the Commission and the United Nations to extend protection to the Palestinian people;

(c) Suggest to the Quartet that in future it adopt a position on the Israel-Palestine conflict that takes more account of human rights violations in the occupied Palestinian territory and the refusal of Israel to comply with the advisory opinion of ICJ; and that it revise the road map in accordance with these considerations.

II. Non-discrimination and equality before the law

n/a

III. The right to life; the right to liberty and security of the person; the right to physical and moral integrity

n/a

IV. Administration of justice and the rule of law

n/a

V. Fundamental freedoms

n/a

VI. Economic and social rights

n/a

VII. Cultural rights

n/a

VIII. Situation of specific groups

n/a

IX. The right to development and international cooperation

Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (E/CN.4/2006/29, para. 55)

55.

(a) Alert the Commission and the United Nations to the serious situation in the occupied Palestinian territory resulting from the continuing violation of human rights and humanitarian law;

(b) Appeal to the Commission and the United Nations to extend protection to the Palestinian people;

(c) Suggest to the Quartet that in future it adopt a position on the Israel-Palestine conflict that takes more account of human rights violations in the occupied Palestinian territory and the refusal of Israel to comply with the advisory opinion of ICJ; and that it revise the road map in accordance with these considerations.

X. Comments from the Government⁴²

n/a

⁴² As published as official documents of the CHR.
